A LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL HISTORY OF THE FAIRNESS DOCTRINE IN TELEVISION AND RADIO BROADCASTING

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ABSTRACT

A LEGISLATIVE, ADMINISTRATIVE, AND JUDICIAL HISTORY OF THE FAIRNESS DOCTRINE IN TELEVISION AND RADIO BROADCASTING

by Donald P. Mullally

The fairness doctrine is a body of rules and policy of the Federal Communications Commission which requires that, if a broadcasting station presents one side of a controversial issue of public importance, time must be afforded for the presentation of contrasting viewpoints. It is closely related to--but not identical with--the equal-time law which regulates broadcasts by political candidates. The object of the fairness doctrine is the full discussion of controversial issues of public importance and the building of a more informed electorate. In a sense, it is an attempt to apply the principles of man's continuing desire for freedom of speech to a medium which is, by its very nature, not available to all who might wish to use it. This dissertation examines the historical development of the doctrine in three dimensions: legislative, administrative, and judicial.

The first chapter defines the doctrine, states the purpose of the paper, and limits its scope.

The second chapter begins with a brief philosophical consideration of the problem of freedom of speech, but

devotes itself primarily to the earliest period of broadcast regulation: 1912-1941. It considers the Radio Act of 1912, the Radio Act of 1927, and the Communications Act of 1934. The concept of fairness is traced from the speeches of Herbert Hoover to a specific decision of the Federal Radio Commission. The intentions of Congress are examined, and extensive quotations from Congressional debates illustrate the feelings of this branch of government relative to the standard of fairness.

Chapter III ("The Mayflower Years") covers the period 1941-1949, and deals primarily with the Mayflower Decision, the Chain Broadcasting Regulations, and several administrative and judicial decisions of this period.

The fourth chapter is concerned solely with the FCC's major promulgation of the fairness doctrine, the Report on Editorializing by Broadcast Licensees, which was issued in 1949. This document is examined virtually paragraph-by-paragraph.

Chapter V examines the development of the doctrine from 1950 to 1960, and includes extensive consideration of the 1959 amendments to Section 315 of the Communications Act of 1934.

Recent developments (1960-1968) are the subject of Chapter VI. Suspension of the equal-time law for 1960, and the proposed suspensions for 1962 and 1964 are discussed, with frequent quotations from the Congressional discussions

thereof. The "Fairness Primer" of 1964 is considered, as are three recent cases: Red Lion Broadcasting Co. v. FCC, Radio & Television News Directors Association v. FCC, and the application of the fairness doctrine of cigarette advertising. The 1968 "Fairness Panel" hearings are reported. The dissertation is current as of April, 1968.

The final chapter is titled "A Summary and A Speculation"; it summarizes the history of the fairness doctrine in six pages, and speculates on the future importance of the fairness doctrine in light of the rapidly changing nature of the electronic media.

The dissertation is completed by an extensive bibliography and five Appendices: (A) Reproduction of the "Fairness Primer" and The Report on Editorializing by Broadcast Licensees, (B) Correspondence between the FCC and the Red Lion Broadcasting Co., (C) Previously unpublished correspondence between the House Interstate and Foreign Commerce Committee and FCC Chairman Rosel Hyde, (D) Excerpts from the brief of Columbia Broadcasting System in the Radio-Television News Directors Association suit, and (E) Time-line of fairness doctrine development.

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By

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CHAPTER I

AN INTRODUCTION

How did it come about that a bill which was the subject of bitter debate in the Congress, vetoed by the President of the United States, feared by the broadcasters of this nation, and said by many to violate the constitutional guarantees of freedom of speech and due process--how did it come about that the substance of this bill should later become a powerful and important regulation of the Federal Communications Commission--a regulation that has been upheld in the courts, unopposed by any administration, and hailed by some as a regulation which preserves freedom of speech in our land, serves the public interest, and contributes to the enlightenment of public opinion while preserving open debate on controversial issues of public importance?

How did it come about that the body of rules and policy which govern the broadcasting of issues of controversy should itself become an issue of great controversy and spirited legal battles?

Definition of the Fairness Doctrine

For some years, the broadcasting industry has been much concerned by what is now known as the "fairness

doctrine." The fairness doctrine is a body of rules and policy of the Federal Communications Commission--the regulatory agency created by Congress to deal with radio, telephone, telegraph, television, and other public communications media. This body of rules and policy, although based to some extent upon the provisions of section 315 for the Federal Communications Act of 1934 (as amended)[1] and to some extent upon the mandate of this act that the Commission regulate broadcasting in the "public interest, convenience, and necessity,"[2] is actually the result of many seemingly unrelated events which have occurred in the years since 1924. The fairness doctrine deals with the presentation of controversial issues of public importance, and requires that when a licensee (station owner) presents one side of an important controversial issue, he has the obligation to afford to responsible spokesmen for other opposing points of view time to make a fair presentation of their position. In the event that a person's character or integrity is attacked over a broadcast facility, the fairness doctrine requires that the licensee provide the person attacked with an accurate transcript of the attack, and afford him time (without charge, if it is so requested) to reply to his attackers. In a recent and very important enlargement

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[1] 48 Stat. 1064, June 19, 1934.

[2] Ibid., Section 303.

of the application of this doctrine, the Commission has held that certain advertising material is controversial, and that fairness requires the presentation of a reasonable amount of material opposing the spirit of the specified advertising.[3]

Purpose of this Study

It is the purpose of this study to trace the convoluted history of the fairness doctrine from its genesis to the present. This history is, at once, legislative, administrative, and judicial in nature, for from these three branches of government the doctrine has emerged, has been implemented, and has been tested. An effort will be made, furthermore, to point out significant court decisions, for the process of judicial review is crucial to the shaping, codification, and administrative handling of so broad a body of rule and policy as the fairness doctrine.

Ultimately, the writer will attempt to place the fariness doctrine in its proper perspective, in the context of man's search for ways of preserving human liberties within the framework of a highly organized society. This will require the consideration of several basic constitutional questions, and the discussion of certain

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[3]Initially promulgated in a letter from the Commission to WCBS-TV (New York), June 2, 1967, and reaffirmed by later actions of the Commission.

philosophical problems which inevitably arise when the goal of human liberty must be balanced with the necessity of the preservation of the social order.

Limitations of the Study

It is especially noteworthy that the fairness doctrine and the so-called "equal time" provisions of Section 315 of the Federal Communications Act are not one and the same.[4] By contrast, the equal time provision applies to candidates for political office only, while the much broader fairness doctrine is applicable to all "controversial issues of public importance."[5] It is also noteworthy that the fairness doctrine requires fair, rather than equal amounts of time for presentation of opposing viewpoints. In view of this distinction, this study will be concerned with the equal time provision only peripherally, as it relates to the history of the fairness doctrine. Similarly, although the topic of financing political broadcasts is frequently mentioned bibliographically in conjunction with the fairness doctrine, the former is not really the subject of this study.

Clearly, this study cannot be a compendium of all litigation involving the fairness doctrine, for there

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[4] 48 Stat. 1064, Section 315.

[5] FCC, In the Matter of Editorializing by Broadcast Licensees, Report of the Commission, Docket No. 8516, June 1, 1949.

may have been as many as one thousand cases before the Commission and the courts in which the fairness doctrine has played a part. The history of the doctrine is filled with scores of insignificant cases which have done little to establish the principles with which this study is concerned. Rather, the writer has chosen to cite and discuss only those cases which, in the light of subsequent developments, have been landmarks in that they have established or tested the foundations of the fairness doctrine and its application to broadcasting.

Although this is a history of the legislative, administrative, and judicial history of the fairness doctrine, the interests of clarity require that these elements not be considered separately, for they are inextricably interrelated. It is for this reason that the author has chosen the chronological plan of organization, rather than a topical or case-study approach. The intervals covered by the several chapters are rather arbitrary, but are selected in view of what are, in this writer's opinion, significant stages in the development of the doctrine.

Finally, the reader should note that although many cases concerning freedom of the press and freedom of speech are cited and discussed herein, these topics will be treated only to the degree that they relate to the main subject of this study--the evolution of the fairness doctrine and its application to the electronic media.

Sources

Data for this study was gathered primarily from three sources: a) the Congressional Record and reports of the several congressional committees which have, from time to time, concerned themselves with broadcast regulation, b) the published rules and proceedings of the Federal Communications Commission and the Communications Act of 1934 (as amended)[6] which governs its activities, and c) the decisions of courts of law, including the United States Court of Appeals in the District of Columbia (to which decisions of the Commission are appealed), the United States Supreme Court, and other federal courts which have, on occasion, heard cases relevant to the fairness doctrine.

In addition to the above-cited Federal Communications Act, the writer has spent some time studying the Federal Radio Act of 1927[7] and certain other acts which relate to broadcasting.[8] Interviews of government officials, especially employees of the Federal Communications Commission, have been relied upon extensively, as have interviews with attorneys practicing before the

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[6]48 Stat. 1064, June 19, 1934.

[7]44 Stat. 1162-1174, February 23, 1927.

[8]Notably: 37 Stat. 199 (Federal Radio Act of 1912), 38 Stat. 717 and 52 Stat. 111 (Federal Trade Acts), 52 Stat. 1041 (Federal Food, Drug, and Cosmetic Act), and others.

Commission and in the courts. Moreover, the writer has had considerable correspondence with those who are involved in litigation on this problem, both as parties to the litigation, and as counsel.

Certain legal texts, cited herein, have also been of considerable value to the writer. Other more general texts, although they were not directly concerned with the fairness doctrine, offered valuable background information, historical perspective, and bibliographic guidance. Naturally, the primary source for case citations has been Pike and Fischer's Radio Regulation,[9] citations from which are indicated by the letters RR (as 10 RR, 3071 which refers to volume ten, page 3071).

Justification for the Study

The fairness doctrine, created to regulate the broadcasting of controversial issues, has, ironically enough, become a controversial issue itself.

The broadcaster, because he controls an instrument of great power and of great potential for both good and evil, has the opportunity to have inordinate influence upon public opinion, and even (as history will amply demonstrate) upon the course of public policy. It is clearly a matter of great moment when the rights of the broadcasters are abridged by oppressive and unnecessarily harsh regulation.

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[9]Pike and Fischer, Radio Regulation, Pike and Fischer, Inc., Washington, D. C. (Weekly, 1948--to date).

It is equally a matter of moment when the broadcaster abuses his public trust. The fairness doctrine, as an instrument of public policy, must straddle the frontier between these two extremes.

Within the past few months, the opposition to the fairness doctrine--opposition which has been rather quietly present for some years--has reached a new peak, culminating in numerous legal battles seeking to have the fairness doctrine declared unconstitutional, or at least to have certain provisions of the doctrine modified and their effect mitigated. The supporters of the doctrine, on the other hand, have urged its extension into previously untouched areas, and have had some success. But it seems clear that the future course of broadcasting in the United States will be profoundly affected by the impending decisions of the courts. It is also clear that the roots of the present controversy lie not in the immediate past, but in the snarl of history from which the threads of the doctrine have emerged, to be woven into a whole by the Commission in the normal course of its activities. The whole philosophy of regulation of broadcasting by government is here questioned, and will, no doubt, be reanalyzed in the light of the fight on the fairness doctrine.

Despite the importance of the fairness doctrine to broadcasters,--and particularly to the public which must live with broadcasting as it is--and despite the serious

academic need, there has, to this writer's knowledge, been no scholarly codification of the many elements of the background of the fairness doctrine. With one exception, any scholarly work has been peripheral to the central problem of this paper. (See bibliographic references). Indeed, although one Masters Thesis was written on the subject of the fairness doctrine some years ago, it appears that there has been no systematic study of the doctrine in its present form (which has radically changed even in recent months).

For these reasons, it seems that a thorough and scholarly study is not only justified, but needed by the academic community if we are to understand this important piece of regulation.

CHAPTER II

IN THE BEGINNING (1912-1941)

The problem of the regulation of broadcasting is little different from most of the other problems of our society in that it has, at its roots, certain philosophical concepts which have been important to Western man since the great Minoan age centuries ago. These basic elements are problems arising from conflict between the rights of the individual and the needs of society. Essentially, these are problems of freedom of speech, of due process, and of the power of the state to regulate the lives of its citizens.

The issue of freedom of speech is illustrative in that man has jealously guarded it, yet always sees the need of further protecting it. That it is vital is attested to by Socrates, who said, "The sun might as easily be spared from the universe as free speech from the liberal institutions of society." Ironically, Socrates was tried in what amounted to a freedom of speech case, and lost his life for his views. And Demosthenes, the Grecian orator said, "No greater calamity could come upon the people than the privation of free speech."[1]

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[1]G. J. Patterson, Free Speech and a Free Press (Boston: Little, Brown, and Co., 1939), pp. 7-18.

John Stuart Mill, in his treatise On Liberty pointed out that if an idea has sufficient value and appeal, it cannot be stifled by censorship. He uses as his example another figure from the Judeo-Christian cultural milieu. Mill shows that Christ was tried in a freedom of speech case (He has blasphemed!), and lost his life for his views. Nonetheless, those same views could not be stamped out.[2] That the desire for freedom of speech is a part of our intellectual history is a demonstrable fact. That it has not always been a reality is equally as clear.

With the increasing complexity of society--and presumably the advancement of man's state of civilization--it has been less necessary, indeed less possible, to stifle the free intercourse of ideas by either threat or decree. Not surprisingly, the free exchange of ideas has led, in the course of our intellectual history, to demands for guarantees of freedom of expression. The Magna Charta, the Confirmation of Charters, and the United States Constitution (particularly the Bill of Rights) are all attempts to guarantee to the people the rights which are, in the enlightened view of relatively recent history, theirs by nature of their humanity.

While free exchange of ideas may have been a goal, it is evident that the man who has no access to the public

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[2]John Stuart Mill, On Liberty, Great Books Edition, Vol. 43, pp. 274 et. seq., Chapter 11, "Of the Liberty of Thought and Discussion."

ear may as well be without voice; his ideas can never effectively leaven the loaf of civilization's great debate about itself. With the advent of the press and a common ability to read, the great debate was better able to proceed, presumably perfecting society and its institutions to some degree, depending only upon the effectiveness of the use of the new medium, and the qualities of mind which directed it. Because the press is relatively available to anyone who would use it, it has been a force of importance in maintaining and expanding freedom of expression.

Early Regulation: 1912-1927

The advent of broadcasting had somewhat different implications, for although it was a new means of access to the public ear, it was, because of its unique technical qualities, not as readily or universally accessible to those who would express their ideas to the mass of their fellows. This conflict between the control of the medium and the need for freedom of expression is the one with which we are here concerned. It is the horn on which even the courts are stuck. Thus, even after a decade of Supreme Court decisions which are notable for having specified even more clearly and eloquently the rights of our citizens, we find that the problems of radio regulation still turn on two basic constitutional issues: freedom of speech and due process.

The regulation of broadcasting (and, in a certain sense, the fairness doctrine itself) was born of the

chaos in the airwaves in the early 1920's. Stations changed frequency at will, increased power to drown out competitors, and devoted much of their programming to fortune tellers, medical quacks, astrologers, and all manner of hucksters purveying products of dubious value and frequently in poor taste. Understandably, the public was concerned with this problem, for even those stations which attempted to provide programs of quality could not be heard in the din. Despite the fact that the radio act of 1912[3] required every radio station to obtain a license from the Secretary of Commerce and Labor, the condition continued to grow more serious. Many stations filed complaints with the Secretary, asking him to revoke the licenses of some stations which were guilty of wanton interference.[4] But the Secretary, Herbert Hoover, could do nothing, for the law gave him no discretionary power: he had no authority to specify power or frequency, no right to limit hours of operation or to revoke the license of an errant broadcaster.[5] He was, in effect, required to issue a license to all who applied, regardless of their qualifications or intentions.

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[3]37 Stat. 199 (1912).

[4]The New York Times, July 23, 1922, Section 1, p. 17. See also Walter B. Emery, Broadcasting and Government: Responsibilities and Regulations (East Lansing: Michigan State University Press, 1961), Chapter 2.

[5]37 Stat. 199 (1912).

Hoover, convinced that something must be done, yet hamstrung by the law which had been passed a decade before, called a series of conferences to find a solution. Hoover told the assembled participants that if a conflict between the interest of the broadcaster and the interest of the public should develop,

> the greatest public interest must be the deciding factor. . . . Public good must ever balance private desire; but its acceptance leads to important and far-reaching practical effects, as to which there may not be the same unanimity, but from which, nevertheless, there is no practical escape.[6]

It is unclear whether Hoover intended to enunciate so eloquently a statement repeated in more legalistic terms by the Commission some years later, but it is clear that Hoover believed that the broadcaster had no right to present only his own views, denying the opportunity to others to voice conflicting views. Indeed, although Hoover saw broadcasting as a sort of public utility (a concept which later fell into disfavor), he observed that the people must maintain control over the airwaves as a sort of natural resource which were (and are) in limited supply, although the demand may be great.

With the public pressure continuing to mount, legislative action seemed an obvious solution, and a series of hearings was held to determine what form the needed legislation should take. Although this series of hearings is revealing, it is noteworthy that the House and Senate

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[6]FCC, "Network Programming Inquiry, Report and Statement of Policy," FCC 60-970 (July 29, 1960), p. 7294.

could not agree on a bill, and Hoover called another conference. The record of the initial hearings reveals that the Congress was even then aware that some broadcasters might limit the dissemination of some ideas, while spreading those with which they agreed.[7]

Although the second conference was at best a response to the inaction of the Congress, it alleviated some of the problems by recommending certain administrative procedures, which were later adopted by the Department of Commerce. But Hoover, still aware that the real problem had not been solved, called still another conference, which assembled on October 6, 1924. At this Third National Radio Conference, Hoover said that "we must have traffic rules, or the whole ether will be blocked with chaos, and we must have safeguards that will keep the ether free for full development."[8] (Emphasis supplied).

There was no positive result from either the Congress or the conference, so Hoover called a Fourth National Radio Conference, which met in November, 1925. At this meeting, he repeated his decision that more effective regulations were needed, and added,

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[7]Hearings before the House Committee on Merchant Marine and Fisheries, 68th. Cong., 1st. Sess., on H. R. 7357, pp. 82, 83, 179 (1924).

[8]Third National Radio Conference, Recommendations for Regulation of Radio (Washington, D. C., October 6-10, 1924), pp. 1-2.

> We hear a great deal about freedom of the air, but there are two parties to freedom of the air, and to freedom of speech, for that matter. Certainly in radio I believe in freedom for the listener. . . . Freedom cannot mean a license to every person or corporation who wishes to broadcast his name or his wares, and thus monopolize the listener's set.[9]

Finally, stating a philosophy which has become the cornerstone of the regulation of broadcasting in the United States until today, he said:

> The ether is a public medium, and its use must be for public benefit. . . . [The main] consideration in the radio field is, and always will be the great body of the listening public, millions in number, countrywide in distribution. There is no proper line of conflict between the broadcaster and the listener. . . . Their interests are mutual, for without the one, the other could not exist.[10]

The Federal Radio Act of 1927

Although the Fourth National Radio Conference recommended new legislation, and the pressure from other sources increased, action by Congress was sporadic and rather unproductive in that no bill could be agreed upon by both houses. Finally, in 1926, the House passed a bill which included a provision aimed at preventing broadcast licensees from failing to provide equal time and facilities to candidates for public office, authorizing license revocation if the licensee "has been guilty of any discrimination, either

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[9]Fourth National Radio Conference, Proceedings and Recommendations for Regulation of Radio (Washington, D. C., November 9-11, 1925), p. 7.

[10]Ibid.

as to charge or as to service . . ."[11] This provision, added as an amendment on the floor of the house, was similar to one proposed in the White Bill (an anti-monopoly measure) in the 1922-23 session.[12] The author of the amendment, Congressman Luther Johnson of Texas, was well aware of the power of the broadcast medium, stating that he felt that it could mold public sentiment as no medium had ever done in the past.[13] He favored a strong Radio Act, and apparently was aware of the difficulties which would later be faced:

> If the strong arm of the law does not prevent monopoly ownership and make discrimination by stations illegal, American thought and American politics will be largely at the mercy of those who operate these stations.[14] (Emphasis supplied).

Although he was clearly concerned about the possibility of monopoly in the broadcasting business (as were many other legislators of the time), his notions concerning fair treatment of important ideas are clear. He added, pointing out that radio must not reflect only one view:

> For publicity is the most powerful weapon that can be wielded in a Republic, and when such a weapon is placed in the hands of one, or a single selfish group is permitted to either tacitly or otherwise acquire ownership and dominate these broadcasting

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[11] H. R. 9971, In The Senate of the United States, March 15 (calendar day March 16), 1926, pp. 10-11.

[12] H. R. Report No. 1416, 67th. Congress, 4th. Session, p. 4, and 67 Cong. Rec. 2329.

[13] 67 Cong. Rec. 5558. [14] Ibid.

> stations throughout the country, then woe be to those who dare to differ with them. It will be impossible to compete with them in reaching the ears of the American people.[15]

Clearly worried about possible discrimination against political candidates, Rep. Johnson offered still another amendment which specified that all candidates, all political parties, and all spokesmen for the various sides of political questions or issues be offered equal facilities and equal rates without discrimination.[16] Peculiarly, the amendment was ruled out of order as not germane to the action then under debate, and it was not offered for later consideration in the House.[17] (These elements are to be found in the fairness doctrine and in the equal time provisions of the amended Communications Act of 1934.[18])

But the action of the Senate indicated that the long hearings on the bill had aroused some fears in the body, for the Senate Committee on Interstate and Foreign Commerce reported out a bill which would have forced stations to operate as common carriers for purposes of "the discussion of any question affecting the public."[19]

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[15] Ibid.

[16] 67 Cong. Rec. 5559.

[17] Ibid.

[18] 48 Stat. 1064, Sec. 315.

[19] Senate Report No. 772, 69th Congress, 1st Session, p. 4.

But broadcasters had strongly opposed the measure, and found sufficient support on the floor of the Senate to have the measure defeated.[20] Had the measure passed as reported out by the Committee, the fairness doctrine would have been law, for the effect of the measure would have been to require almost what the fairness doctrine of today demands (with certain exceptions). This is clear, for Senator Howell of Nebraska explained the view of the Committee and its purposes in using the language it had written into the bill:

> Mr. Howell: Mr. President, radio affords such a unique facility of publicity that one has to think very carefully lest he go astray, thinking of newspapers and reasoning by analogy. . . . We have tens of thousands of newspapers, magazines, and other publications, but there is now from necessity, and will be hereafter, only a limited number of radio stations. As the Senator from Washington stated yesterday, the total number of stations that are now authorized for broadcasting is about 500 . . . and there are certain great interests in this country that have radio stations which practically cover the United States.
>
> We are all familiar with the results of propaganda, its dangers and its advantages; and the question which we are called upon to settle now is how the public may enjoy the advantages of broadcasting and avoid the dangers that may result therefrom. It must be recognized that, so far as principles and policies are concerned, they are major in political life; candidates are merely subsidiary. We recognized that fact when this bill was formulated and provided that if a radio

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[20]Hearings before the Senate Committee on Interstate and Foreign Commerce, 71st Congress, 2nd Session (on S. 6, Part 13), (1930), (Testimony of former N.B.C. President Aylesworth), and 67 Cong. Rec. 12502 (1926).

station allowed the discussion of a public question it must afford, if requested, an opportunity to present the other side.

I think it was the view of the committee that if any subject was to be presented to the public by any of the limited number of stations, the other side should have the right to use the same forum; and if such privilege were not to be granted, then there should be no such forum whatever. . . .

Mr. President, to perpetuate in the hands of a comparatively few interests the opportunity of reaching the public by radio and allowing them alone to determine what the public shall and shall not hear is a tremendously dangerous course for Congress to pursue. . . . Are we to consent to the building up of a great publicity vehicle and allow it to be controlled by a few men, and empower those few men to determine what the public shall hear?

It may be urged that we do that with the newspapers. Yes, that is true; but anyone is at liberty to start a newspaper and reply. Not so with a broadcasting station. However, there are only about 500 who are allowed the privilege of conducting broadcasting stations, and there are not as many broadcasting stations as there are fingers on one of my hands--not more than that--that have the privilege of covering the entire United States. . . .

. . . . . .

The Senator from Washington has left in the bill a provision respecting candidates. It is important, but it has not anything like the importance of the provision he has stricken out--the discussion of public questions.[21]

But Senator Dill had determined to delete the mention of the discussion of public questions. He responded:

Mr. Dill: I sympathize with a great deal of what the Senator is saying, but I want to remind the Senator of the danger of having the words "public questions" in the bill.

That is such a general term that there is probably no question of any interest whatsoever that could be discussed but that the other side of it could demand time; and thus a radio station would be placed in the position that the Senator from Iowa mentions about candidates, namely, that they

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[21] 67 Cong. Rec. 12503-04 (1926).

> would have to give all their time to that kind of discussion, or no public question could be discussed.
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> As I say, I sympathize with the Senator's position; but the opposition to that was so strong in the minds of many that it seemed to me wise not to put it in the bill at this time, but to await developments, and get this organization to functioning, and the bill can be amended in the future.
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> I just wanted to leave that idea with the Senator as to my reasons for taking the view I do.[22]

But to make it more clear that the committee had envisioned some sort of fairness doctrine, he averred that his committee felt that "if a radio station allowed the discussion of a public question it must afford, if requested, an opportunity to present the other side."[23] (Emphasis supplied). Howell proposed, however, that the reply to a broadcast should be made by only one spokesman who would be chosen by lot if no better method were found, and that this would, in his opinion, not be a burden to the licensee. The remarks of Senator Howell reveal that other more complex schemes were under consideration by the committee, but were rejected because of the difficulty of implementation.

But, instead of the provision reported out of the Committee, the Senate agreed upon the amendment submitted by Senator Dill, Chairman of the Committee, who managed the Bill. The Dill amendment provided that:

> If any licensee shall permit a broadcasting station to be used by a candidate or candidates for

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[22] Ibid. [23] Ibid.

> any public office, he shall afford use of such broadcasting station: Provided that such licensee shall have no power to censor the material broadcast under the provisions of this paragraph, and shall not be liable to criminal or civil action by reason of any uncensored utterances thus broadcast.[24]

Thus, what might have been a fairness doctrine became an equal-time provision in the version of the law that was finally passed. Senator Dill was obviously aware that his substitute was a so-called "watered-down" amendment, for he said by way of explanation that:

> It seemed unwise to put the broadcaster under the hampering control of being a common carrier and compelled to accept anything and everything that was offered to him so long as the price was paid. . . . Under the House bill they can allow one man to speak and forbid everybody else to speak. I felt that was not the proper thing. If a station permitted a candidate for Congress to broadcast, then other candidates for Congress should have an equal right.[25]

Despite this stand, Dill had said in the hearings on the bill that the Commission could promulgate regulations which would, in effect, be a fairness doctrine (offering equal opportunities with regard to public questions) under the original Act of 1926:

> Commissioner Robinson: Let us go farther and say that one of the stations in Washington, WMAL, would to-night put on a forceful speech against labor, making a strong argument against labor, labor organizations. Ought not labor to have the opportunity to reply with equal facility? If denied, how about equal opportunity for freedom of speech? It is, after all, merely an enlargement

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[24] 67 Cong. Rec. 12502 (1926).

[25] 67 Cong. Rec. 12502 (1926).

of this natural transmitter. I am using a frequency from my transmitter to your receiving set now.

Senator Dill: Then you are suggesting that the provision of the statute that now requires a station to give equal opportunity to candidates for office shall be applied to all public questions?

Commissioner Robinson: Of course, I think in the legal concept the law requires it now. I do not see that there is any need to legislate about it. It will evolve one of these days. Somebody will go into court and say "I am entitled to this opportunity," and he will get it.

Senator Dill: Has the commission considered the question of making regulations requiring stations to do that?

Commissioner Robinson: Oh, no.

Senator Dill: It would be within the power of the commission, I think, to make regulations on that subject.[26]

Nevertheless, because, as Dill put it, "the opposition to that was so strong in the minds of many," he narrowed the bill when it came to the floor.[27] In any event, with the vote on the bill coming in the final minutes of the Session (and, indeed, with the possibility of any squabble delaying the legislation for months), Senator Howell's plea to check abuses at the beginning went unheeded, and the Dill amendment was passed.[28] When the bill later went to a conference committee, the wording of the Dill amendment was changed slightly, but, in essence, became Section 18 of the Federal Radio Act of 1927.

Who were the many who so strongly opposed the introduction of a fairness provision in the legislation?

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[26]Hearings before the Senate Committee on Interstate and Foreign Commerce, 71st Congress, 2nd Session, p. 1616.

[27]67 Cong. Rec. 12504. [28]67 Cong. Rec. 12505.

Generally speaking, there were those among the Congressmen who felt that any regulation of program content was an abridgement of the right of free speech, and there were broadcasters who assured the hearing committee that the industry could regulate itself, and that in this matter it keenly felt a sense of obligation to the public.[29]

Finally, after years of hearings, conferences, compromise, and chaos, the Federal Radio Commission was created by the Congress as an agent of the people of the United States, and was charged with the task of causing all broadcasting in this land to operate in the public interest, convenience, and necessity. The Federal Radio Act became the law of the land on February 23, 1927, bringing with it a host of problems undreamed of by those who had labored to give it birth.

The Commission Develops a Policy

Although the Federal Radio Commission's earliest tasks consisted primarily in unsnarling the problems of frequency assignments, licensing, and other primarily technical difficulties, certain policies formulated by the Commission in these earliest days became the basis for later development of the fairness doctrine. One of the first of these policy formulations was the decision

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[29]Hearings on H. R. 7357, 69th. Congress, 1st Session, pp. 82-83, 179 (1924)and Hearings on S. 1 and S. 1754, 69th Congress, 1st Session, Part III, p. 228, (1926).

by the Commission that it could review a station's past programming practices when renewal of the station's license was under consideration. Clearly, this step was vital to the development of the fairness doctrine, for if the Commission were to issue and renew licenses solely on the basis of technical considerations, it is difficult to see how the doctrine could have emerged. In an early and significant license-renewal case, WEVD, a New York station which was supported by the Debs Memorial Fund, was called to task for voicing the views of the far left to the exclusion of almost all other views.[30] The Commission, calling WEVD the "mouthpiece of the Socialist Party," cautioned that the views of others must be given due regard.[31] Schmidt, in his thesis relating to the subject of the fairness doctrine, mentions several other stations which had been operating under somewhat similar circumstances, notably WIBA, Madison, Wisconsin ("spokesman for the LaFollette progressive movement").[32] While the Commission apparently did not have the full force of either law or formal rule with which to deal with this situation, it committed

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[30]See Federal Radio Commission, Second Annual Report (1928), pp. 154-160.

[31]Ibid.

[32]Larry D. Schmidt, The Development of the Federal Communications Commission's Fairness Doctrine, Unpublished Masters Thesis, University of Kansas, 1965, p. 16, footnote 30.

itself, late in August of 1928, to the view that:

> . . . the constitutional guaranty of freedom of speech applies to the expression of political and religious opinions, to discussions, fair comments, and criticisms on matters of general public interest, of candidates, of men holding public office, and of political, social, and economic issues. . . .[33]

On the other hand, it was the opinion of the Commission that the First Amendment did not apply to the airing "of personal disputes and private matters," or to "entertainment programs as such."[34] This latter view is most interesting in view of the recent developments and extensions of the fairness doctrine into hitherto undreamed of areas. In any event, the Commission, having fashioned the principle by which to operate, thereupon denied the licenses of several stations whose owners had used them as personal instruments: WCOT was denied renewal because its owner had used it to campaign for public office and to attack his personal enemies, and within a short time the names of Schuler and Brinkley would become familiar to members of the Commission, as they had been to the general public for some time.[35] It is not surprising that the Commission should have taken this position, for the record of the preliminary hearings on the Radio Act is filled with the testimony of broadcasters who declared that licensees should not use their

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[33]Federal Radio Commission, Second Annual Report (1928), pp. 159-161 (In re: WRAK).

[34]Ibid. [35]Ibid., pp. 152-153.

stations as an instrument for spreading their own personal views (or, as Schmidt so nicely puts it, "should not inflict their views upon the listeners").[36] The Commission made it quite clear that it would not tolerate the use of a station for the purely private purposes of its licensee.

It is now clear that one of the most important cases leading to the formulation of a policy of fairness is frequently misunderstood, and that the issues upon which the case was litigated obscured an important statement of the Commission. The so-called Great Lakes Broadcasting case is widely understood to deal with the Commission's right to assign frequencies and the times of operation without depriving a licensee of property or due process--as indeed it does--and it is not surprising that the greater significance of the case is often overlooked, for the oft-cited court decision deals only with the issues presented to the court for review in the appeal of the Commission's decision. Examination of the annual reports of the Commission seems to support the conclusion that the Great Lakes case was the first occasion on which the Commission had stated that the public interest requires discussion of all sides of any controversial public issue.

The Great Lakes litigation was a complicated case in which the Commission sought to reassign frequencies and

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[36]Larry D. Schmidt, op. cit., p. 17.

fix hours of operation on shared channels for three licensees who had conflicting claims on both frequencies and times. Great Lakes Broadcasting Company operated WENR, Agricultural Broadcasting Company operated WLS, and Wilbur Glen Voliva operated WCBD.[37] The issue, as the Commission saw it, was whether every "school of thought" should have its own station, or whether it must find time on an already existing station to voice its views. The question which ultimately went to the courts was whether the Commission exceeded the authority it had been granted by Congress in making the frequency and time assignments which it ultimately decided upon. The courts supported the Commission's action. Fundamentally, however, the Commission's decision was based upon the nebulous question of "public interest" and what constitutes this public interest which the Commission had been charged by Congress with protecting. The response of the Commission is similar in tone to Hoover's earlier remarks to the series of radio conferences, for it said that:

> Again the emphasis is on the listening public, not on the sender of the message. It would not be fair, indeed, it would not be good service to the public to allow a one-sided presentation of the political issues of a campaign. In so far as a program consists of discussion of public questions, public interest requires ample play for

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[37] Great Lakes Broadcasting Company, FCC Docket No. 4900; Agricultural Broadcasting Company, Docket No. 4902; Wilbur Glen Voliva, Docket No. 4901. See also note 38 infra.

> the free and fair competition of opposing views, and the Commission believes that the principle applies not only to addresses by political candidates but to all discussions of issues of importance to the public.[38] (Emphasis supplied).

This clear statement of what was later to become the essence of the fairness doctrine is clearly not based upon the notion of equal time, but upon the construction of the term "public interest, convenience, and necessity." The Commission explicitly made this clear--that the above-quoted doctrine was to be the policy of the Commission and that it was based upon public-interest considerations--when it said, in the same report to Congress:

> Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals. The standard of public interest, convenience, or necessity means nothing if it does not mean this. The only exception to this rule has to do with advertising; the exception however, is only apparent because advertising furnishes the economic support for the service, and thus makes it possible. . . . The commission believes that . . . the emphasis should be on the receiving of service and the standard of public interest, convenience, or necessity should be construed accordingly.[39]

Thus, the Great Lakes Broadcasting case formed the basis for a standard of fairness based on the concept that the listener's interest and the public interest are synonomous, and that the public interest is paramount. It would seem that much of the controversy over the fairness doctrine has resulted from a questioning of the

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[38]Federal Radio Commission, Third Annual Report (1929), p. 33.

[39]Ibid., pp. 32-33.

Commission's basic assumptions, particularly the equation of the listener's interest with the public interest.

Placing the Great Lakes case in perspective is somewhat difficult, for there are several regulatory concepts involved. Because it based its decision in this case on the public interest clause of the law, the Commission was able to promulgate a very basic policy which would later serve in cases concerning the Commission's licensing authority, fairness problems, and, most immediately, public interest-private interest controversies. The fairness doctrine is linked directly to such famous cases as the KFKB-Brinkley litigation[40] and the Shuler[41] Trinity Methodist Church case. These cases, in turn, are directly related to a dogmatic statement of the Commission in support of its decision in the Great Lakes and similar cases:

> In such a scheme [as the American system of broadcasting] there is no room for the operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of the programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some it gives them an unfair advantage over

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[40] KFKB Broadcasting Association v. Federal Radio Commission (June 13, 1930), affirmed 60 App. D.C. 79, 47 F(2d) 670 (1931). To be discussed subsequently in this dissertation.

[41] Trinity Methodist Church South v. Federal Radio Commission, 61 App. D.C. 311, 62 F(2d) 850 (1932). To be subsequently discussed in this dissertation.

> others, and results in a corresponding cutting down of general public service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest. Propaganda stations (a term which is here used for the sake of convenience, and not in a derogatory sense) are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds, and beliefs must find their way into the market of ideas by the existing public service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the commission in its future action with reference to the station complained of.
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> The contention may be made that propaganda stations are as well able as other stations to accompany their messages with entertainment and other program features of interest to the public. Even if this were true, the fact remains that the station is used for what is essentially a private purpose for a substantial portion of the time, and in addition, is constantly subject to the very human temptation not to be fair to opposing schools of thought and their representatives.[42] (Emphasis is supplied).

If there could be any doubt that the commission had promulgated a policy of fairness, the commission, in discussing possible defects in this argument, says explicitly:

> A defect, if there is any, however, would not be remedied by a one-sided presentation of a controversial subject, no matter how serious.[43]

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[42] Federal Radio Commission, Third Annual Report (1929), p. 34. Note that the Commission herein established the procedure to be followed in fairness cases. Note also that the commission used many of the words and phrases which were later used in more formal promulgation of the fairness doctrine. Disregarding the emphasized passages, it is not difficult to ascertain the relationship between this statement and more recent cases such as those in Red Lion and Media, Penn. (which are subsequently discussed).

[43] Ibid., p. 35.

One might have expected the Commission's policy to evoke cries of dismay from broadcasters, but, in point of fact, there seems to be little evidence of any organized opposition. Nevertheless, the Commission deemed it necessary to defend itself, in the same policy statement, against charges of censorship. The group states that its standards do not transgress the provisions of section 29 of the radio act of 1927 (prohibiting censorship by the Commission), and adds:

> It [the Commission] does not, either by rule, regulation, or order, forbid or curtail the full scope of the free exchange of ideas on all matters of importance to the public; it simply is applying the standard of public interest, convenience, or necessity which, under the statute, must control its every action. It desires to eliminate matters of private interest only to make room for the already excessive demand of the public interest. It is not imposing any prior restriction on utterance (the usual concept of censorship), but is reserving the right to take into account a station's past conduct, measured by the legal standard, in its future actions.[44] (Emphasis supplied).

Thus the fairness doctrine was born, to be amplified by later decisions of the Commission and the courts, to be praised and to be damned, and to be the subject of extensive litigation.

The Policy is Tested

The Policy of the Commission had no sooner been published than several licensees came before the group (primarily in license renewal cases), only to discover that

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[44] Ibid.

the newly-stated policy would mean denial of their licenses. Three of these cases are sufficiently significant to merit detailed consideration herein: KFKB-Dr. John Brinkley, KGEF-Dr. Shuler, and KVEP-Schaeffer Radio Co.[45] These cases, all occurring in the period 1930-32, are generally held to be the support of the courts for the Commission's policies. In point of fact, all elements of the policies of the Commission were not reviewed by the courts, but the effect of these decisions was to approve the actions by which these policies were carried out administratively. Although the distinction is a fine one, it is important to note that the fairness policies per se were not reviewed; the courts simply found no error in the actions which carried these policies into practice.

The KFKB case (more properly, KFKB Broadcasting Association) is one of the most interesting pieces of litigation in the history of broadcast regulation--and, indeed, in the history of medical regulation.[46] KFKB

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[45]There are other cases which, although interesting and significant, do not appear to have had such broad implications. See particularly Chicago Federation of Labor v. Federal Radio Commission, Third Annual Report (1929), affirmed, 41 F(2d) 422 (1930). See also Federal Radio Commission v. Nelson Bros. Bond and Mortgage Co., et. al., 289 U.S. 266, 53 S. Ct. 627 (1933).

[46]KFKB Broadcasting Association v. Federal Radio Commission, 47 F(2d) 670 (1931). An interesting book about Dr. Brinkley and his whole career is Gerald Carson's The Roguish World of Dr. Brinkley (New York: Holt, Rinehart, & Winston, 1960).

(Kansas First, Kansas Best) was owned by one Dr. John R. Brinkley, a diamond-wearing medical quack who had other profitable businesses--the Brinkley Hospital, the Brinkley Pharmaceutical Co., and even the Brinkley Methodist Church (which he presumably did not operate for profit). KFKB was first licensed in 1923, and operated with a power of 5,000 watts. Programming consisted mostly of musical selections by the Brinkley orchestra and choir, and medical talks by Dr. Brinkley.

Dr. Brinkley soon discovered that he could make a great deal of money by prescribing by mail. He answered letters on the radio, and prescribed his own numbered prescriptions for castor oil, Epsom salts, aspirin, and other common remedies; the prescriptions were sent out from his own drug company upon receipt of the fee required:

> Here's one from Sunflower State, from Dresden, Kansas. Probably he has gall stones. No, I don't mean that, I mean Kidney stones. My advice to you is to put him on prescription No. 80 and 50 for men, also 64. I think that he will be a whole lot better. Also drink a lot of water.[47]

Soon, after protests from local pharmacists, Dr. Brinkley signed up more than 1,500 druggists from coast to coast, each of whom sent one dollar for each Brinkley prescription filled:

> Now here is a letter from a dear mother--a dear mother who holds to her breast a babe of nine months. She should take No. 2 and No. 16, and yes--No. 17, and she will be helped. Brinkley's 2, 16, and 17. If her druggist hasn't got them,

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[47] Ibid.

> she should write and order them from the Milford Drug Co., and they will be sent to you, Mother, collect. May the Lord guard and protect you, Mother. The postage will be prepaid.[48]

Brinkley netted more than $728,000 each year from the sale of his nostrums, and angered the American Medical Association, which was only one of the many groups complaining to the Commission to rid the airwaves of Dr. Brinkley. In 1931 the Commission denied Brinkley renewal of the KFKB license on the grounds that he used the station to further his own business, rather than to serve the public, and that he had prescribed over the air for patients he had never seen, thus endangering the public health, which is not in the public interest.[49] In any event, the basis for the Commission's decision was the public interest clause of the radio act. In appeal, Brinkley charged that the Commission had exceeded its authority in considering program content, and that it was, in effect, exercising the power of censorship. Upholding the Commission, Judge Robb, writing for the court, held that it was proper for the Commission to declare that broadcasting was public in character. He concluded his opinion with the statement (somewhat anathema to the fairness doctrine, it would seem) that, "obviously, there is no room in the broadcast band for every business or school of thought."[50] In light of his decision, however, we must assume that he meant to

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[48] Ibid. [49] Ibid. [50] Ibid.

uphold the Commission's position that although all schools of thought might not be denied access to the microphone, they might not all own their own broadcasting stations.

In the Schaffer Broadcasting case, KVEP (Portland, Oregon) was denied renewal because of what the Commission called "the nature of the broadcasts which have been emanating from this station."[51] The broadcasts referred to were made by one Robert G. Duncan, an unsuccessful political candidate, who denounced bitterly over the air those whom he believed to be responsible for his defeat. These personal attacks were phrased in highly abusive language. To the dismay of the station licensee, the Commission held that:

> Although the licensee . . . did not actually participate in these broadcasts, they were rendered with his knowledge under a contract previously made with the aforementioned Robert G. Duncan. The claim that he [the licensee] disapproved much of the language used is not sustained by the evidence since, as proprietor of the station, he had full authority over all programs broadcast.[52]

With that, the renewal was denied, and it was established that the licensee is responsible for not only what he personally says, but for the entire program content of the station. By extension, the licensee is also responsible for what is not broadcast.

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[51] Schaeffer Radio Co. v. Federal Radio Commission, Docket No. 5228 (June, 1930), and FRC Fourth Annual Report, p. 46.

[52] Ibid. See also Duncan v. U. S., 48 F(2d) 129.

The Trinity Methodist Church South case is almost as famous as the Brinkley case. In Trinity, the station licensee, the Reverend Dr. Shuler, was denied renewal because he had attacked Jews, Catholics, the courts, public officials, and private individuals. In some cases, he stated that he had certain damaging facts about a famous person in Los Angeles, and that unless this person indicated repentance for his sins by sending a donation, Dr. Shuler would disclose these indescretions. He received donations from more than one person who was sure he was the person referred to. The courts upheld the Commission when the case came to appeal. Said the Court, in a particularly eloquent (if syntactically obfuscating) statement:

> If it be considered that one in possession of a permit to broadcast in interstate commerce may, without let or hindrance from any source, use these facilities, reaching out, as they do, from one corner of the country to the other, to obstruct the administration of justice, offend the religious susceptibilities of thousands, inspire political distrust and civic discord, or offend youth and innocense by the use of words suggestive of sexual immorality, and be unanswerable for slander only at the instance of the one offended, then this great science, instead of a boon, will become a scourge, and the nation a theatre for the display of individual passions and the collision of personal interests. This is neither censorship nor previous restraint, nor is it a whittling away of the rights guaranteed by the First Amendment, or an impairment of their free exercise . . .[53]

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[53] Trinity Methodist Church South v. Federal Radio Commission, Docket No. 5561, 61 App. D.C. 311, 62 F(2d) 850 (1932) (cert. denied) 284 U.S. 685, 288 U.S. 599.

With these court decisions, we find the fairness doctrine already rather well developed. The Commission held, in discussing the Great Lakes Case, that public interest would be the controlling factor in future decisions, and furthermore, that fairness demanded opportunity for all schools of thought to have an opportunity to present their views on controversial public issues, although not necessarily over stations to be used exclusively for this purpose. Secondly, it was established that the Commission would entertain complaints against stations which did not follow this construction of the public interest provision. In addition, the courts held that broadcasting is to be public in character, rather than private, and that the Commission has the right to consider past performance in determining its future action toward a station. Furthermore, it was held that the Commission does not violate the censorship proscriptions by causing the broadcaster to live up to its standards of public interest. Clearly, then, after less than five years of radio regulation and court action, the administrative and judicial basis for the fairness doctrine was already evident.

Congress Tackles the Fairness Problem

At approximately the same time as the judicial tests of the Commission's policies--the period from 1929-1932--Congress began to take note of the fairness

problem. Those individuals and groups which desired to promulgate their views by means of radio had discovered that they could not obtain frequencies for operation of their own stations, and they could not readily arrange for use of existing "public service" stations. Claiming discrimination, some of these groups took their plight to the halls of Congress. Undoubtedly it also occurred to several legislators that they might themselves be denied use of a station at campaign time, or even for an informative broadcast to their constituants.[54] Thus arose several proposals for new legislation which would write the fairness doctrine into the law. Although the pressure for such a bill was not extreme in the earlier period, it was certainly felt by Congress. In 1929 and 1930, a group of so-called "Progressives"--Republicans revolting against the policies of the Hoover administration--openly proposed fairness legislation. It has been said that the Progressives feared that the broadcasters might favor the Hoover administration to the disadvantage of the more liberal wing of the party.[55]

Finally, in the 72nd. Congress (1931-32), the fairness doctrine became an important issue, and a bill was passed by both houses which amended section 18 of the

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[54]Elmer Smead, Freedom of Speech by Radio and Television, Public Affairs Press, Washington, D.C. (1959), p. 53.

[55]Ibid. See also Schmidt, op. cit., p. 20.

Radio Act of 1927. The amended section, as approved in conference and passed by both houses, said:

> Section 18 (a). If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such station; and if any licensee shall permit any person to use a broadcasting station in support of or in opposition to any candidate for public office, or in the presentation of views on a public question to be voted upon at any election, or by a government agency, he shall afford equal opportunity to an equal number of other persons to use such station in support of an opposing candidate for an opposing candidate for such public office, or in reply to a person who has used such broadcasting station in support of or in opposition to a candidate, or for the presentation of opposite views on such public question. (Emphasis supplied).
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> (b). The Commission shall make rules and regulations to carry this paragraph into effect. No such licensee shall exercise censorship over any material broadcast in accordance with the provisions of this Section. No obligation is imposed upon any licensee to allow the use of his station by any candidate, or in support of or in opposition to any candidate, or for the presentation of views on any side of the "public question."
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> (c). The rates charged for the use of any station for any of the purposes set forth in this Section shall not exceed the regular rates charged for the use of said station to advertisers furnishing regular programs, and shall not be discriminatory as between persons using the station for such purposes.[56]

Perhaps because the bill was largely the work of renegade members of his own party, President Hoover exercised a pocket veto, and the bill failed to become law. But the fairness issue was not dead, as the Congress soon discovered.

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[56]76 Cong. Rec. 3768.

The National Broadcasting Company had, after a series of undesirable experiences, denied the use of its facilities to the Jehovah's Witnesses sect. The group had attacked other religious groups with great fervor. Following NBC's action, the sect complained to the Federal Radio Commission, but did not receive satisfaction. Thereupon, the Witnesses appealed to Congress for legislative action to ameliorate their misfortune, and a bill was introduced in the House which added educational and religious speeches to the equal-opportunities section of the radio act.[57] An even broader bill was introduced at the same session (in the Senate) which would have forced broadcasters to give equal opportunities for the presentation of all points of view on all subjects "so far as possible."[58] Neither of these provisions was made law.

By this time (1934), the Congress had grown aware of the increasing complexity of the communications industry in the United States and the need for increased watchfulness on the part of government to safeguard the public interest. This new awareness, together with some public pressure, led to the consideration of an entirely new act which would encompass the entire spectrum of communications, including not only radio, but all interstate and international telecommunications. Again the fairness issue came

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[57] H. R. 7986, 73rd Congress, 2nd Session (1934).

[58] S. 2910, 73rd Congress, 2nd Session (1934).

to the attention of the Congress as hearings began on the proposed new Communications Act of 1934.

There was some strong feeling for enlarging the provisions of the old radio act to include a section on fairness. After lengthy hearings, the Senate Committee on Interstate Commerce recommended a Section 315 (of the Communications Act of 1934) which was substantially identical to the bill which had been previously passed by both houses, only to be the victim of Hoover's pocket veto.[59] Indeed, the bill was passed by the Senate in substantially this form. When the bill was sent to a conference, however, the new Section 315 was subjected to the knife, and finally emerged as an exact duplicate of Section 18 of the old Radio Act. Thus, the Communications Act of 1934--the act which still controls electronic communications in this land--was passed and signed into law without a fairness provision, despite the best efforts of Congress and many individuals.[60] But the attempt to get a fairness law on the books was not over. In 1935, Congressman Byron Scott introduced an ill-fated bill which would have required a period of uncensored discussion on each station at a desirable time of the day, provided by the licensee on a non-profit basis, and offering equal

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[59]Senate Report No. 781, 73rd Congress, 2nd Session (1934), p. 8.

[60]48 Stat. 1064, June 19, 1934.

facilities to at least one advocate of each of the opposing viewpoints.[61] The bill could not muster the required support, and failed to become law.

Thus, amid a tumult of opinion concerning the fairness doctrine, The Federal Communications Commission was born, and charged with the regulation of broadcasting in the public interest, convenience, or necessity.

Significant Cases

Much of the Commission's earliest work involved the consolidation of its efforts in facing the newly expanded work before it. With regard to the fairness doctrine, however, the Commission was to issue no major new policy until six years later, when the Mayflower case presented itself. During this six-year period, however, there were several cases whose significance is magnified by the later controversy over the fairness doctrine. Several of these cases did not involve radio regulation directly, but rather turned on constitutional issues (primarily freedom of speech and press) and the predictable tests of the Commission's authority. In some cases, it is obvious that the full import of the litigation was not felt in the field of radio regulation until almost our own times, when these forgotten cases have been dredged up to support pleadings attacking and defending the fairness doctrine.

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[61] H. R. 9230, 74th Congress, 1st Session (1935).

Although it is both unnecessary and unprofitable to review in detail all the fairness-related cases of the 1934-1940 period, some brief comments will adequately serve as a point of reference for later discussion; certain cases in the period before 1934 will also be considered chronologically.

It has often been said that the Commission does not have specific statutory authority for the adoption of the fairness doctrine. This argument is frequently supported by reference to Milwaukee Publishing Co. v. Burleson,[62] where the court says, in a dissenting opinion, that the power to regulate First Amendment freedoms cannot be founded in imprecisely worded statutes. The thrust of this argument is that there is no specifically stated intent of Congress in the statute to allow the Commission to abridge (if, indeed, it does) the rights of free speech of licensees by burdening them with the fairness doctrine.

In 1924, in the case of Commonwealth v. Boston Transcript Co.,[63] the court pointed out that although freedom of the press and freedom of speech are constitutionally guaranteed, it is not the province of government to secure for every individual or group of individuals

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[62] Milwaukee Publishing Co. v. Burleson, 255 U.S. 407, 437 (1921).

[63] Commonwealth v. Boston Transcript Co., 249 Mass. 477, 144 N.E. 400 (1924).

free and equal access to the press. Those who wish the fairness doctrine struck down point out that in effect, the Commission, as an agency of government, is attempting to guarantee free and equal access to the broadcast media, which are considered to be a part of the press.[64]

The case of Whitney v. California,[65] a criminal syndicalism prosecution, is interesting in that it can be used to both support and attack the Commission's actions with regard to fairness. Mr. Justice Brandeis, who, with Mr. Justice Holmes wrote the concurring opinion, said, with his customary eloquence,

> [The men who won our independence believed] that public discussion is a political duty; and that this should be a fundamental principle of the American government. . . . Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law--the argument of force in its worst form.[66]

Those who use the case to attack the fairness doctrine say that the doctrine stifles public discussion because it burdens the broadcaster, thus preventing the broadcaster from living up to his "political duty." On the other hand, supporters of the doctrine point out that its purpose is to encourage fair presentation of all issues, which is the essence of public discussion--thus it helps the broadcaster to do his "political duty."

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[64]This latter contention is supported by Lovell v. City of Griffin, note 73 infra, and several other cases.

[65]Whitney v. California, 274 U.S. 357, 375-6 (1927). See also Thornhill v. Alabama, 310 U.S. 88,95, where Mr. Justice Frankfurter says much the same thing.

[66]Ibid.

The case of Near v. Minnesota,[67] cited in many subsequent actions, provides one of the best bases for attack of the fairness doctrine, and has been widely used for this purpose. In this 1931 case, the court held that the right of a menber of the press to present its views on public issues cannot be made dependent on his publishing some other matter:

> It does not matter that the newspaper or periodical is found to be 'largely' or 'chiefly' devoted to the publication of such derelictions [defamation]. If the publisher has a right, without previous restraint, to publish them his right cannot be deemed to be dependent upon his publishing something else, more or less, with the matter to which objection is made.[68]

One of the most widely quoted and obviously important cases to emerge from the pre-Mayflower period is a freedom of the press case, Grosjean v. American Press Co.[69] This 1936 litigation was brought to a conclusion with the statement of the Court that,

> It is impossible to concede that by the words 'freedom of the press' the framers of the amendment intended to adopt merely the narrow view then reflected by the law of England that such freedom consisted only in immunity from previous censorship; for this abuse had then permanently disappeared from English practice.[70]

It should be noted that the usual notion of censorship includes the examination of material by a censor prior

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[67]Near v. Minnesota, 283 U.S. 697 (1931). See also Thornhill v. Alabama, 310 U.S. 88,95.

[68]Ibid., at 720.

[69]Grosjean v. American Press Co., 397 U.S. 233 (1936).

[70]Ibid., at 248.

to broadcast; it is just this narrow interpretation that opponents of the fairness doctrine seek to prove improper in citing Grosjean. It is then said that fear of Commission action constitutes censorship by threat.

In a case which is cited surprisingly often (in this writer's opinion, for it is a case that appears to say much less than one might be led to believe by attorneys seeking to overthrow the fairness doctrine) the Pulitzer Publishing Co. entered into litigation with the Federal Communications Commission.[71] The gist of the court's decision was that radio is not a utility, contrary to the urgings of Pulitzer's counsel. The court added that:

> The licensee of a radio station chooses its own advertisers and its own program, and generally speaking, the only requirement for the renewal of its license is that it has not failed and will not fail to function in the public interest.[72]

But as had been previously pointed out in this dissertation, the Commission has consistently based fairness decisions on the failure of the station to operate in the public interest by reason of its having ignored the tenets of the doctrine.

By 1938 there had, of course, been considerable litigation on freedom of the press, and a considerable

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[71] Pulitzer Publishing Co. v. FCC, 68 App. D.C. 124, 94 F(2d) 249 (1937).

[72] Ibid., at 251.

body of case law had thereby been developed. Thus, in Lovell v. City of Griffin,[73] it is not surprising to see the statement by the court that "the press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion."[74] While this case has been used to support the notion that radio falls within the protection of freedom of the press, it is also noteworthy that the court used the word "publication," although at that time radio was an active force in news gathering and reporting.

In an important case, which came before the Commission in 1938, the principles previously pointed out in Great Lakes and Chicago Federation of Labor, and amplified in Trinity and KFKB, were reiterated. With reference to Young People's Association for the Propagation of the Gospel, the Commission said,

> Where the facilities of a station are devoted primarily to one purpose and the station serves as the mouthpiece for a definite group or organization, it cannot be said to be serving the general public. That being the case, if one group or organization is entitled to a station facility for the dissemination of its principles, then other associations of equal magnitude would be entitled to licenses on the same grounds. Obviously, there are not a sufficient number of broadcasting channels to give each group a station license. The Commission has accordingly considered that the interests of the listening public are paramount to the interests of the

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[73] Lovell v. City of Griffin, 303 U.S. 444 (1938).

[74] Ibid., at 452.

> individual applicant in determining whether public interest would best be served by granting an application.[75] (Emphasis supplied).

The pre-Mayflower era came to a close with the Commission becoming involved in extensive litigation concerning the Pottsville Broadcasting Company. While the case did not directly concern the fairness issue, the decision of Mr. Justice Frankfurter has been widely quoted, inasmuch as it points out two important facts: that the Commission correctly bases its decisions on the public interest clause of the law, and that the procedure the Commission uses to determine the public interest in a given case is entirely up to the Commission, so long as it recognizes the fact that both public and private interests are involved:

> In granting or witholding permits for the construction of stations, and in granting, denying, modifying, or revoking licenses for the operation of stations, "public convenience, interest, or necessity" [sic] was the touchstone for the exercise of the Commission's authority. While this criterion is as concrete as the complicated factors for judgment in such a field of delegated authority permit, it serves as a supple instrument for the exercise of discretion by the expert body which Congress has charged to carry out its legislative policy. Necessarily, therefore, the subordinate questions of procedure in ascertaining the public interest, when the Commission's licensing authority is invoked . . . were explicitly left to the Commission's own devising, so long, of course, as it observes the basic requirements designed for the protection of private as well as public interest.[76]

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[75] Young People's Association for the Propagation of the Gospel, 6 FCC 178, 181 (1938).

[76] FCC v. Pottsville Broadcasting Co., 309 U.S. 134, 137, (1940).

> It is more than a little surprising that the broadcasters of the 1930's were not greatly concerned about the Commission's actions, particularly in light of the decisions of the courts and the changing intellectual climate of the time. Indeed, it is evident that the wave of liberalism which would crest with the New Deal and the policies thereof was already gathering force, and the decisions of the courts frequently upheld rather liberal constructions of the constitutional liberties. But it is also a fact that broadcasters were not greatly troubled by the earlier Trinity decision, KFKB Broadcasting Association, Chicago Federation of Labor, and others. Great Lakes caused hardly a ripple of protest.[77]

To the distant observer, the threads of fairness which began in the chaos of the early 1920's and in the inadequate legislation of the Act of 1912 are not impossibly tangled. Moreover, the development of the doctrine through Hoover's urgings of the primacy of public interest as a criterion and the legislation of 1927 and the policies of the Federal Radio Commission with their legacy to the Federal Communications Commission--all this development is clearly a part of the same fabric of thought, based as it is on the mandate to serve the public interest. The Mayflower decision of 1940 is a disturbing and mysterious knot in the otherwise straight thread of the history

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[77]An excellent report of the reactions of broadcasters is to be found in Schmidt's thesis, cited in note 32, supra.

of the fairness doctrine; it is a development which leaves the scholar of relatively great temporal distance as disturbed as the broadcasters of the 1940's must have been.

CHAPTER III

THE MAYFLOWER YEARS (1941-1949)

In Boston, Massachusetts, in the fall of 1939, there began a series of events which would lead to a new era in broadcast regulation. The events which began in Boston were duly noted in the official circles in Washington, and the relatively straight thread of the history of the fairness doctrine became tangled.

The Mayflower Broadcasting Corporation applied to the Federal Communications Commission for a construction permit to authorize a new radio station to operate on a frequency of 1410 kilocycles with a power of 500 watts night and 1000 watts day, unlimited time. This was unusual only because this frequency had already been assigned to station WAAB, Boston, owned by the Yankee Broadcasting Company. WAAB, noting that its license was about to expire, applied in due course for renewal, only to find that its application was to be the subject of a hearing--together with the application of the Mayflower Company for its frequency. The hearing was held in Boston in November, 1939, and therein much of the character of both applicants was revealed.

As the evidence was analyzed, the Commission determined that the Mayflower Broadcasting Company had mislead the Commission with respect to its financial qualifications. The Commission, after a hearing, denied the application for WAAB's frequency on that basis:

> Representations made to the Commission in the application, under oath, were not in fact true. Whenever an applicant, such as here, makes material representations in its application which are at variance with the true facts, serious question is presented and problems arise which affects and, in fact, substantially impede, the progress of the Commission in carrying out its mandate under the statute. Under no circumstances can the Commission excuse or condone action of this sort. A proposed licensee who acts in this manner cannot be entrusted with the burdens imposed by a broadcast license.
> . . . The granting of the application of the Mayflower Broadcasting Corporation will not serve the public interest, convenience, or necessity.[1]

The Significant Decision

Having thus disposed of the Mayflower Broadcasting Company, the Commission turned its attention to the Yankee Network, Incorporated, licensees of WAAB. The station presented its case for renewal in the November hearings, and the Commission issued proposed findings of fact at the end of the following May (1940). The hearings were reopened, and dragged on--largely due to the arguments of the Mayflower company, which took exception to the Commission's findings--until September, 1940. The

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[1] In the Matter of the Mayflower Broadcasting Co., 8 FCC 333, 338..

Commission's final decision was not issued until January 16, 1941, and came as a shock to the broadcast industry--not because it denied renewal of WAAB's license, but strangely enough, because of the Commission's reasons for granting renewal. The Commission announced the reason for the long deliberations:

> More difficult and less easily resolvable questions are, however, presented by the applications for renewal of the Yankee Network, Inc. The record shows without contradiction that beginning early in 1937 and continuing through September 1939, it was the policy of Station WAAB to broadcast so-called editorials from time to time urging the election of various candidates for political office or supporting one side or another of various questions in public controversy.[2]

Having stated the applicant's error, the Commission went on to accuse the station of willfulness:

> In these editorials, which were delivered by the editor-in-chief of the station's news service, no pretense was made at objective, impartial reporting. It is clear--indeed the station seems to have taken pride in the fact--that the purpose of these editorials was to win public support for some person or view favored by those in control of the station.[3]

It would seem from the Commission's accusation in this case that a licensee is prohibited from being an advocate, and that the causes he espouses must remain

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[2] Ibid., at 339.

[3] Ibid. The Commission also said (in another context) with reference to the fairness problem and the public interest: "In carrying out the obligation to render a public service, stations are required to furnish well-rounded rather than one-sided discussions of public questions." 6 FCC Annual Reports 55 (1940).

silent ones, for they may not use the voice of the licensee's own radio station. In fact, this is exactly what the Commission had in mind, for it continued in its landmark decision, saying,

> The material in the record has been carefully considered and compels the conclusion that this licensee during the period in question, has revealed a serious misconception of its duties and functions under the law. Under the American system of broadcasting it is clear that responsibility for the conduct of a broadcast station must rest initially with the broadcaster. It is equally clear that with the limitations in frequencies inherrent in the nature of radio, the public interest can never be served by a dedication of any broadcast facility to the support of his own partisan ends. Radio can serve as an instrument of democracy only when devoted to the communication of information and ideas fairly and objectively presented. A truly free radio cannot be used to advocate the causes of the licensee. It cannot be used to support the candidacies of his friends. It cannot be devoted to the support of principles he happens to regard most favorably. In brief, the broadcaster cannot be an advocate. (Emphasis supplied).[4]

With this, the Commission clearly prohibited editorializing by broadcast licensees. But, excepting the right of a licensee to advocate one side of an issue, the Commission went on to state a fairness policy:

> Freedom of speech on the radio must be broad enough to provide full and equal opportunity for the presentation to the public of all sides of public issues. Indeed, as one licensed to operate in a public domain the licensee has assumed the obligation of presenting all sides of important public questions fairly, objectively and without bias. The public interest--not the private--is paramount.[5] (Emphasis supplied).

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[4] Ibid., at 339-340. [5] Ibid.

The Yankee Network cried mea culpa, and filed affidavits stating that it had not recently editorialized, and that it would not do so in the future. Said counsel for Yankee, "There are absolutely no reservations whatsoever, or mental reservations of any sort, character, or kind with reference to those affidavits."[6] With the licensee properly penitent, the Commission granted the application for renewal, warning Yankee that it would not soon forget this case, particularly if the station should come to the Commission's attention in the future.[7] Thus, in January, 1941, the so-called Mayflower case came to an end.

The Mayflower decision had far-reaching effects. Although it did not substantially alter the already-established fairness doctrine--the fairness doctrine, it must be remembered, evolved from the Great Lakes case hereinbefore cited--it had the dramatic effect of banning editorialization. It should be noted that the Commission did not state that the broadcaster might editorialize if others were given the right to reply; the broadcaster, said the Commission, cannot be an advocate--under any circumstances. Furthermore, since the Commission's position was given in an order which granted the renewal sought by the licensee, it was not subject to court review. Had the Commission denied WAAB's license, the licensee might have petitioned for a court review of the Commission's

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[6] Ibid. [7] Ibid., at 341.

actions; since the license was granted, there was no cause for action.

There are certain important differences between the Mayflower case and the Brinkley-KFKB Broadcasting Association case which are worthy of comment. In the KFKB case, Brinkley devoted his station almost exclusively to the promotion of his own enterprises, and later, to his own candidacy for the office of governor of Kansas. In other cases decided at about the same time--Chicago Federation of Labor, for example--the Commission and the courts were much concerned that a station would become the mouthpiece of its owners. In Mayflower, however, there is little to suggest that more than a very small amount of the program time was devoted to the views of the licensee, a fact which the Commission's decision appears to overlook, for it speaks of "the dedication" of a broadcast facility to the support of the partisan ends of the licensee. The decision is further open to criticism on the ground that the Commission failed to establish that it is inherently against the public interest for the broadcaster to be an advocate under any conditions. In any event, it is clear that the Commission failed to distinguish between the broadcaster who used his station to air his own views, and the broadcaster who aired his own views but denied

others the right to use his facility for the same purpose.

The Chain Broadcasting Regulations

The Mayflower case, perhaps more clearly than any case before it, raised the issue of the Commission's interference with the rights of free speech of the licensees. But, as was heretofore pointed out, this decision was not subject to review, so the authority of the Commission in this case went unchallenged. By May of 1941, however, a new storm had begun. After a long series of hearings and a full scale inquiry, the Commission came to the conclusion that certain practices of the networks were not in the public interest, particularly those practices relating to contractual arrangements between the networks and their affiliated stations. Therefore, on May 2, 1941, the Commission promulgated certain regulations to curtail these practices.[8] Predictably, the networks protested these regulations, and carried their case to the federal courts, and ultimately to the Supreme Court. The case was fought on the issues of the authority of the Commission to interfere with the business practices of licensees, and upon the abridgment of First Amendment freedoms. On May 10, 1943, Mr. Justice Felix Frankfurter delivered his opinion which examined the basis of the

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[8] FCC Report on Chain Broadcasting, Commission Order No. 37, FCC Docket No. 5060, May, 1941.

Commission's authority, and which would later be cited in many fairness cases:

> In the context of the developing problems to which it was directed, the Act [the Communications Act of 1934] gave the Commission not niggardly but expansive powers.
> . . . While Congress did not give the Commission unfettered discretion to regulate all phases of the radio industry, it did not frustrate the purposes for which the Communications Act of 1934 was brought into being by attempting an itemized catalogue of the specific manifestations of the general problems for the solution of which it was establishing a regulatory agency. That would have stereotyped the powers of the Commission to specific details in regulating a field of entertainment the dominant characteristic of which was the rapid pace of its unfolding.[9]

Thus, it was clear that the Commission might enjoy the support of its authority in the courts on a broad basis, without rigid adherence to specific detail, so long as the intentions of the act were carried out in an orderly and legal fashion. Mr. Frankfurter went on to discuss the First Amendment problems specifically:

> We come, finally, to an appeal to the First Amendment. The Regulations, even if valid in all other respects, must fall because they abridge, say the appellants, their right of free speech. If that be so, it would follow that every person whose application for a license to operate a station is denied by the Commission is thereby denied his constitutional right of free speech. Freedom of utterance is abridged to many who wish to use the limited facilities of radio. Unlike other modes of expression, radio inherently is not available to all. That is its unique characteristic, and that is why, unlike other modes of expression, it is subject to governmental regulation. Because it cannot be used by all, some who wish to use it

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[9] N.B.C. v. United States, 319 U.S. 190, 219.

> must be denied. But Congress did not authorize the Commission to choose among applicants upon the basis of their political, economic or social views, or upon any other capricious basis. . . . The question here is simply whether the Commission, by announcing that it will refuse licenses to persons who engage in specified network practices (a basis for choice which we hold is comprehended within the statutory criterion of "public interest"), is thereby denying such persons the constitutional right of free speech. The right of free speech does not include, however, the right to use the facilities of radio without a license. The licensing system established by Congress in the Communications Act of 1934 was a proper exercise of its power over commerce. The standard it provided for the licensing of stations was the "public interest, convenience, or necessity." Denial of a station license on that ground, if valid under the Act, is not a denial of free speech.[10] (Emphasis supplied).

It was here established, then that so long as the Commission properly based its denial of a license on the public interest provision of the act, it would not be abridging the First Amendment right of free speech. That left only the problem of properly establishing what is in the public interest, and the more specific problem of determining whether editorializing is in the public interest (the Commission held that it was not), and whether it were in the public interest to require a licensee to make available time for the expression of opposing points of view.

But Mr. Justice Frankfurter's decision was not the opinion of all members of the court. Two justices took no part in the case, and two others, Justice Murphy and

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[10] Ibid., at 226.

Justice Roberts, dissented. Wrote Justice Murphy,

> The construction of the instant statute should be approached with more than ordinary restraint and caution, to avoid an interpretation that is not clearly justified by the conditions that brought about its enactment, or that would give the Commission greater powers than the Congress intended to confer.[11]

Here Mr. Murphy correctly points out that in understanding a law, one must consider the legislative background of the law, as well as the changing circumstances in which it is being interpreted.

If there was dissent in the courts concerning the network regulations, there was almost an equal amount within the Commission itself. Commissioner Tunis Augustus MacDonough Craven, then in his first term as a member of the Commission, wrote a nineteen page dissent to the adoption of these regulations--a dissent in which he was joined by Commissioner Norman Case. Said Craven,

> The type of regulation specified by Congress for broadcasting clearly envisioned that the Communications Commission should not regulate the programs, the business practices, or business policies of broadcast licensees.[12]

The network regulations caused a severe storm in Congress, and many bitter complaints were heard against the FCC, many of them coming from networks and from disgruntled businessmen who had failed to secure approval

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[11] Ibid.

[12] Report on Chain Broadcasting, op. cit., p. 117.

of their applications for radio licenses. There was a Congressional movement afoot to investigate the FCC, but that was not new--in the first seven years of the Commission's life, eleven resolutions were introduced in Congress to investigate it.[13]

In 1943, Congress attempted to amend Section 326 of the Communications Act of 1934--the section which prohibits censorship. The new amendment said, in part, that the Commission would have no control over the business practices of licensees.[14] The hearings on this bill were long and bitter, and, as had happened before, the controversial chairman of the Commission, James Lawrence Fly, was warmly grilled by the congressmen. When he was asked about the Mayflower decision, which was unpopular among many members of Congress, Fly said that any station which was used only for the promulgation of the views of the licensee--to the exclusion of other views--should be put off the air:

> I would assume that any station that is set up just to promote the ideas of the owner to the exclusion of other viewpoints, would not be operated in the public interest. And that would mean that it would be the Commission's duty to put it off the air; and I myself would be in favor of putting it off the air.[15]

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[13]Emery, op. cit., p. 296, Specific resolutions are cited on p. 302, note 11.

[14]S. 814, 78th Congress, 1st Session (1943).

[15]Hearings before the Senate Committee on Interstate Commerce, 78th Congress, 1st Session, on S. 814, p. 119 (1943).

Other Cases

That Commissioner Fly's notion of the diversity of opinion was an important one is attested to by the result of a 1943 court decision in the Associated Press monopoly case. In Associated Press, the news service was held to have formulated membership rules which effectively minimized competition for its members. The fairness principle that it is diversity of opinion which produces an enlightened and informed society was emphasized by Mr. Justice Learned Hand in his decision which said, of the First Amendment,

> That amendment rests upon the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public. . . . it presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.[16]

The freedom of speech problem has been ever-present in the history of broadcast regulation. One of the most interesting cases of this sort in the post-Mayflower era was the case of several ministers who complained to the Commission that radio station WPEN had decided to cancel their contracts to preach on the radio. Much discussion ensued about whether religious programs should be provided free of charge. Ultimately the case was brought to the courts. At that time, the Reverend Carl McIntire seemed

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[16] United States v. Associated Press, 326 U.S. 1, 52 F. Supp. 362, 372.

to assert a violation of the anti-trust laws, but did not mention either the Clayton Act or the Sherman Act in his pleading. This was held not to be true by the court, which than addressed itself to a further charge that McIntire was being deprived of his rights of free speech:

> The allegations seem to charge an "illegal discrimination" in that the defendant [William Penn Broadcasting Co.] insists on preferring other religious broadcasters to the plaintiffs. But there is no reason, the FCC permitting and no violation of the anti-trust laws being involved, why the defendant may not sell time to whomever it pleases. . . . Nor do we perceive how it may be said that because the defendant has cancelled broadcasting contracts in accordance with a written provision contained in them that the plaintiffs' rights to the freedom of speech and to the free exercise of religion have been abridged. True, if a man is to speak or preach he must have some place from which to do it. This does not mean, however, that he may seize a particular radio station for his forum. . . . For a radio station to refuse to sell time in which an individual may broadcast his views may be censorship but we know of no law which prohibits such a course.[17]

But despite this, the court affirmed that the Commission indeed had the authority to pass upon allegations of unfair treatment, and could even refuse license renewal if the licensee thereby failed to serve the public interest.[18]

In another significant case, the Mayflower opinion of the Commission was tested, for it had promised the

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[17] McIntire et. al. v. William Penn Broadcasting Company, 151 F(2d) 597 (1945), cert. denied, 327 U.S. 779, 66 S. Ct. 530 (1946).

[18] Ibid.

public a fair presentation of all sides of controversial issues. Robert Harold Scott, an avowed atheist, asked the Commission to refuse to renew the licenses of three California radio stations because they had refused him time in which he might express his atheistic viewpoint. Scott contended that the existence or non-existence of a God was a controversial issue, and that under the provisions of past Commission policy, he was entitled to time in which to refute the views of those who preached the existence of God. Not so, said the stations, for there were comparatively few atheists, and the matter was therefore not of sufficient public interest to justify discussion. This notion seems to hold that public interest is in some way tied to a certain number of people on each side of a controversy. It is also curious, however, to note that it has long been a Commission policy to favor religious programs as somehow desirable, along with educational and news programs. One wonders if by the same token, anti-religious programs should not also be held in favor. In any event, the Commission finally rendered a decision in the Scott case; Mr. Scott's petition was denied. The Commission's statement said, in part,

> We recognize that in passing upon requests for time, a station licensee is constantly confronted with the most difficult problems. Since the demands for time may far exceed the amount available for broadcasting a licensee must inevitably make a selection among those seeking it for the expression of their views. He may not even be able to grant time to all religious groups who might desire the

> use of his facilities, much less to all who might want to oppose religion. Admittedly, a very real opportunity exists for him to be arbitrary and unreasonable, to indulge his own preference, prejudices, or whims; to pursue his own private interest or to favor those who espouse his views, and discriminate against those of opposing views. The indulgence of that opportunity could not possibly by characterized as an exercise of the broadcaster's right of freedom of speech. Nor could it fairly be said to afford the listening audience that opportunity to hear a diversity and balance of views, which is an inseparable corollary of freedom of expression. In making a selection with fairness, the licensee must, of course, consider the extent of the interest of the people in his service area in a particular subject to be discussed, as well as the qualifications of the person selected to discuss it.[19]

Thus we find a basis for the current practice of allowing the licensee to select the spokesmen, and which ideas are of sufficient public interest to warrant discussion. The Commission continued,

> Every idea does not rise to the dignity of a 'public controversy,' and every organization regardless of membership or the seriousness of its purposes, is not per se entitled to time on the air. But an organization or idea may be projected into the realm of controversy by virtue of being attacked. The holders of a belief should not be denied the right to answer attacks upon them or their belief solely because they are few in number.[20]

It is but a short step from the idea of a very small organization under attack to the idea of an individual's honesty or integrity or like personal characteristics being under attack. It is not difficult to see the

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[19] Re Scott, FCC Mimeo. 96050, July 16, 1946, and 11 FCC 372.

[20] Ibid.

relationship between the historic Scott case and the language of the current fairness regulations (see appendix A). The Commission, elaborated, emphasizing the necessity of sound public policy:

> The fact that a licensee's duty to make time available for the presentation of opposing views on current controversial issues of public importance may not extend to all possible differences of opinion within the ambit of human contemplation cannot serve as the basis for any rigid policy that time shall be denied for the presentation of views which may have a high degree of unpopularity. The criterion of the public interest in the field of broadcasting clearly precludes a policy of making radio wholly unavailable as a medium for the expression of any view which falls within the scope of the constitutional guarantee of freedom of speech.[21]

While the Scott case was probably the most important case of the "Mayflower Years" in that it established precedents and clarified both the position of the Commission and the obligations of the licensee, it is certainly not the only significant case. In a case before the Commission in 1945 (In re United Broadcasting Company), station WHKC of Columbus, Ohio clashed with the powerful UAW-CIO. The case record speaks for itself:

> The background of this matter may be set forth as follows: On June 2, 1944, the UAW-CIO filed a petition directed against the Commission's action granting the application of the licensee for renewal of license for operation of Station WHKC. The petition alleged that the licensee was throttling free speech and was therefore not operating in the public interest for the following reasons:
> (a) The station had a policy not to permit sale

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[21] Ibid.

> of time for programs which solicit memberships, discuss controversial subjects, race, religion, and politics.
>
> (b) The station did not apply this practice uniformly, but on the contrary applied that policy "strictly to those with whom the management of station WHKC disagrees, including petitioners, and loosely or not at all with respect to others."
>
> (c) The station unfairly censored scripts submitted by petitioners.[22]

The Commission thereupon set a date for a hearing, at which time the licensee and the petitioner presented evidence. WHKC claimed that its policy was based upon the code of the National Association of Broadcasters, which did not allow the sale of time for the presentation of public controversial issues, with the exception of political broadcasts or forum-type presentations. Almost two months after the hearing ended, the UAW and WHKC petitioned the Commission to accept a joint statement--an agreement which the opposing parties had reached--concerning the future policies of the station. This new policy was one of "open-mindedness and impartiality."[23] The station agreed to consider each request for time without respect to the identity of the group requesting time, and that the station would "make time available . . . for the free and full discussion of issues of public importance, including controversial issues."[24]

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[22] In re United Broadcasting Co. (WHKC), Docket No. 6631, 10 FCC 515.

[23] 10 FCC 515, 516.

[24] Ibid.

The station further recognized that "The censorship of scripts is an evil repugnant to the American tradition of free speech and free press, whether enforced by a Government agency or by a private radio station licensee."[25] And the station vowed to maintain overall balance in its presentation of controversial issues.

Although it seems clear in retrospect that the station may have forseen that its chances of maintaining its license were considerably better if it voluntarily agreed to this policy, the Commission was not above rapping the station with a clear statement of the Commission's position. It reiterated the fact that the demands for time are heavy, and that a station, not being a common carrier, is not required to carry every program which is offered.

> These facts, however, in no way impinge upon the duty of each station licensee to be sensitive to the problems of public concern in the community and to make sufficient time available, on a nondiscriminatory basis, for full discussion thereof, without any type of censorship which would undertake to impose the views of the licensee upon the material to be broadcast. The spirit of the Communications Act of 1934 requires radio to be an instrument of free speech, subject only to the general statutory provisions imposing upon the licensee the responsibility of operating its station in the public interest.[26]

Thus the Commission spoke out against any form of censorship by the licensee, and tied this to the provisions of the law, and to the doctrine of the primacy of the

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[25] Ibid. [26] Ibid., at 517.

public interest. It is clear that the WHKC case has much in common with the Red Lion case of our own time, which will be subsequently discussed. In concluding its opinion on the WHKC matter, the Commission condemned the inflexible standards of the NAB code, and stated that it was "inconsistent with the concept of public interest established by the Communications Act as the criterion of radio regulations." The Commission then cited the Mayflower case as precedent. With this, at the request of both parties, the proceeding was dismissed by order of the Commission on June 26, 1945.[27]

It should be pointed out that the programming policies of WHKC were not unusual. In actual fact, they were considerably better than many. On some stations, fortunetellers still bilked the public. On others, there were suggestive programs which bordered on the obscene. Many stations were over-commercialized. In one case, a station programmed more than 2,000 commercials per week--and that was not an isolated case. The Commission received many letters of complaint, and, at last, decided to do something about the unfortunate programming situation that had developed. To this end, it retained Dr. Charles Siepmann, a distinguished author and scholar, formerly with the British Broadcasting Corporation. Dr. Siepmann was assigned the task of directing a study of

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[27] Ibid., at 518.

the programming situation, and of preparing a report for the Commission. Dr. Siepmann was asked to propose some criteria by which the Commission might evaluate the performance of licensees with respect to programming.[28]

In March, 1946, the Commission adopted the report, Public Service Responsibilities of Broadcast Licensees, which immediately became known in the broadcast industry as the Blue Book.[29] Essentially, the Blue Book sought to improve program balance. The Commission, among other things, stated that thereafter it would examine the amount of time devoted to the presentation of important controversial issues, and to this end, it developed a new renewal application form (No. 303) which asked licensees how much time they had devoted to entertainment, religious, agricultural, educational, news, discussion, talks, and miscellaneous programs. Perhaps equally as important, the form also asked how much time would be devoted to each of these program types in the future.

After the publication of the Blue Book, several licensees found that their licenses would not be renewed unless some changes were effected. One station, KMAC of San Antonio, Texas, had failed to broadcast any programs dealing with controversial issues in the community, while

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[28]Emery, op. cit., p. 237.

[29]Public Service Responsibility of Broadcast Licensees, FCC Report, March 7, 1946.

averaging more than 2,000 commercials per week.[30] In the case of WTOL, Toledo, Ohio, the owners of the station had a contract with the station manager which specified that he would receive as salary five percent of the first $6,000 in gross revenue per month, and ten percent of the revenue over $6,000. In 1942 his salary was $8,910, and three years later it was $32,428. This was accomplished through overcommercialization and the reduction of the amount of time devoted to public service programs. During a sample week of 1945, 91.8% of the station's time was commercial; one fifteen-minute program was interrupted with seven commercials, while a twenty-minute program was interrupted with ten commercials.[31] There are several similar cases which occurred in the period from 1947 to 1951, and it is noteworthy that the standards of the Blue Book have never been officially repudiated by the Commission, although subsequent regulations have made some of them less important.

A significant bit of policy was promulgated at the end of 1947--a policy which has not, in the opinion of this writer, been adequately explored on a scholarly basis, for it seems that the case, although often overlooked, should have said something to all subsequent

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[30] In re Walmac Co. 12 FCC 91, 3 RR 1371 (1947).

[31] Community Broadcasting Co. 12 FCC 85, 3 RR 1360 (1947).

license applicants. Two applicants had asked for a single frequency in Birmingham, Alabama, and it was the task of the Commission to determine which of them would best serve the public. In regard to this case, the Annual Report of the Commission explained that,

> In considering mutually exclusive applications, where other factors were essentially equal, the Commission preferred an applicant which had encouraged and proposed to encourage discussion of controversial issues . . . to an applicant which, although proposing to permit the discussion of public questions did not propose to make efforts toward encouraging the discussion of such questions.[32]

Undoubtedly broadcasters understood that one of the problems of encouraging the discussion of controversial issues was the difficulty presented when political speakers (or others) made remarks which might be considered libelous. If the broadcaster were to let his facility be used for dissemination of libelous statements, would he be inviting a suit for damages? If he wished to protect himself, could he censor the remarks of speakers? Certainly not, declared the Commission in the Port Huron Broadcasting Co. case. The decision was based on the premise that if a station were to become the sole arbiter of what is fact and what is not (what is libelous and what is not) the broadcaster would be guilty of "an exercise of power which may readily be

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[32] In re Application of Johnston Broadcasting Co., et al.; Quotation appears in digest index, 12 FCC 1105; case appears at 12 FCC 517, 524, (1947).

influenced by their own sympathies and allegiances."[33] In the same case, Commissioner Jones excoriated his fellow commissioners in a dissenting opinion:

> It is ironical that the Commission, the champion of fair play in the majority opinion enunciating "equal opportunity" under Section 315 of the Act, the publisher of the "Blue Book" guide to the industry to air both sides of controversial questions, should choose this proceeding to govern the industry without first offering every licensee his chance to be heard. This method of governing the entire broadcast industry without giving all licensees the right to express their views is in my opinion an evil as serious as any that the Commission is presuming to correct.[34]

Commissioner Jones dissented again in the WBNX case in which the Commission stated that in reviewing the past conduct of an applicant, it was not looking merely for the expression of views, as in the pages of an applicant-owned newspaper, but that it sought to determine whether the applicant had, for example, been guilty of "denial of an opportunity to reply to attacks under circumstances where fair play requires the granting of such an opportunity," or "repeated making of irresponsible charges against any group or viewpoint without regard for the truth of such charges." These things, said the majority, "plainly constitute acts of unfairness."[35]

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[33] In re Application of Port Huron Broadcasting Co., 12 FCC 1069 (1948).

[34] Ibid., at 1084.

[35] WBNX Broadcasting Co., Inc., 12 FCC 837, 841 (1948).

Although it might have appeared that the Scott case settled the problem of atheism on the air, quite the contrary was true. By 1948, amid charges of Commission unfairness, Congress mounted still another investigation of the Federal Communications Commission, much of which was taken up with an examination of the Commission's handling of atheists who wished to express themselves on the air.[36] Religious leaders were upset that atheists had an opportunity to speak, and Schmidt reports that many complained that religious programs were about to be driven off the air.[37] According to Representative Charles J. Kirsten, atheists have "no more standing to ask equal time with religious programs over the air than violators of the moral law would have the right to expound immoral ideas on an equal basis with time granted to those who defended the moral law."[38] And, in the wake of Congressional criticism, the Commission pointed out in an apparent reinterpretation of Scott that broadcasters were not obligated to program atheistic broadcasts if the denial of time was not a reflection of their own lack of faith. This brought Mr. Scott back into action, and he

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[36]Hearings before the Select Committee to Investigate the Federal Communications Commission, House of Representatives, 80th Congress, 2nd Session, re H.R. 691 (1948).

[37]Schmidt, op. cit., p. 68.

[38]Broadcasting, August 23, 1948, p. 25.

again asked for time to present his views. The Commission, pointing out that none of the religious programs had been directed against him personally, said there was no cause for action and denied his petition.[39]

Meanwhile, broadcasters had been urging the Commission to restudy the position it had taken in the Mayflower case. And, as had been previously pointed out, there was even dissent within the Commission itself. Further criticism of the Commission's Mayflower and Port Huron decisions came from the academic world, as discussions in law schools and even one doctoral dissertation revealed.[40] Editorials appeared in the trade press, and the illogic of the Mayflower decision was the subject of much comment in the industry. Finally, in March and April of 1948, the Commission held hearings to determine whether it should reconsider the Mayflower decision. The result of these hearings was the now-famous "Report on Editorializing," which will be subsequently examined in great detail.

Granted that Mayflower was restrictive in tone, and odious to the broadcaster, and in the end, repugnant to the notion of free speech, what was the real effect of Mayflower? This writer must come to the conclusion that

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[39]5 RR 859 (1949).

[40]Melvin R. White, "History of Radio Regulation Affecting Program Policy," Doctoral Dissertation, University of Wisconsin, 1948. See dissenting opinions in re Report on Editorializing.

the Mayflower decision was a thoroughly unsuccessful piece of regulation, and that it had approximately the same effect as the Volstead Act of 1919. It certainly intimidated broadcasters, and it would seem that there is little excuse for regulation by intimidation. The fact that the Commission granted WAAB's license obviated court review on that particular case, and it was clear that any other broadcaster who wished to test the Mayflower decision would have to deliberately violate Commission policy to do so, which would place his valuable license in serious jeopardy; this was a risk no licensee was willing to take, for in the entire Mayflower period, the decision was not challenged by a single broadcaster.[41] Instead, those broadcasters who wished to express their views were forced to "bootleg" their editorials. This was done by hiring commentators whose views were similar to those espoused by the broadcaster. While this subjected these views to the requirement of the fairness doctrine--opposing views had to be presented to some extent--it was a way of expressing the licensee's views in contravention of the Mayflower decision that a broadcaster could not be an advocate. In this sense, then, the Mayflower decision reaffirmed and strengthened the fairness doctrine. It is possible that the present battle

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[41] Ibid., see dissenting opinions in re Report on Editorializing.

against the fairness doctrine might have had considerably less force if the Mayflower decision had not tangled the otherwise straight thread connecting the Commission's fairness practices with Hoover's impassioned plea for fairness and the Federal Radio Commission's Great Lakes Broadcasting decision.

CHAPTER IV

THE FAIRNESS DOCTRINE IS ARTICULATED (1949)

On September 5, 1947, the Federal Communications Commission ordered that hearings be held on two issues which had for some time been of great concern to the Commission, to broadcasters, and to the public. The Commission carefully limited the issues which were to be the subject of the hearings:

> 1. To determine whether the expression of editorial opinions by broadcast station licensees on matters of public interest and controversy is consistent with their obligations to operate their stations in the public interest.
>
> 2. To determine the relationship between any such editorial expression and the affirmative obligation of the licensees to insure that a fair and equal presentation of all sides of controversial issues is made over their facilities.[1]

The hearings were not begun until nearly six months later. They began on March 1-5, 1948, and were continued on April 19-21. Forty-nine witnesses representing various elements of the broadcasting industry and other interested organizations gave testimony. Also included in the record were written statements from twenty-one other

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[1]Report on Editorializing by Broadcast Licensees, 13 FCC 1246, 25 RR 1901 (1949).

people who were unable to attend the Washington hearings. On the basis of the testimony received from these witnesses, the Commission reached conclusions which were explained in great detail in a report which was more than fourteen thousand words long and covered twenty-four printed pages.

This Report on Editorializing by Broadcast Licensees is one of the most significant documents ever published by the Commission, for it served two important functions: it repealed, in a sense, the Commission's earlier dictum (from the Mayflower case) that a broadcaster could not be an advocate, and it articulated for the first time the provisions of what has come to be known as the fairness doctrine. Although the principles of fairness had been decided many years before, and had found expression in isolated cases such as Great Lakes, KFKB, Trinity Methodist Church, WBNX, and others, the Report on Editorializing by Broadcast Licensees was the first statement of the doctrine as a unified and coherent whole. Furthermore, the document not only expressed the policy of the Commission, it explained the philosophical basis for the formulation of that policy. For these reasons, this Commission report is deserving of careful and detailed consideration--a consideration more complete than that given to some of the less significant decisions which have been heretofore discussed because of their

contribution to the development of the overall pattern of Commission fairness policy. And, although this discussion can attempt to discern and explicate the significant points of policy promulgated in the Report on Editorializing, it cannot, because of the necessary abstraction and fragmentation involved in such an explanation, convey the literary and philosophical quality of the document (which is considerable). The reader is therefore encouraged to consider the document as a whole; it is reproduced at 25 RR 1901 and 13 FCC 1246. (see Appendix A, Section II.)

The Majority Opinion

The Commission opened its report with an explanation of the premises on which its conclusions were based--essentially that the American system of broadcasting is based upon the principle that a large number of private licensees must be responsible for their selection of program material, and that the people, through Congress, have said that this responsibility was to be carried out in the public interest. Enlarging upon this, the Commission said,

> One important aspect of this . . . we believe, results from the fact that the needs and interests of the general public with respect to programs devoted to new [sic] commentary and opinion can only be satisfied by making available to them for their consideration and acceptance or rejection, of varying and conflicting views held by responsible elements of the community. And it is in the light of these basic concepts that the problems of insuring fairness in the presentation of news and

> opinion and the place in such a picture of any expression of the views of the station licensee as such must be considered.[2]

Then, citing Section 3 (h) of the Communications Act (which provides that licensees are not to be considered common carriers), the Commission reiterated that it is the broadcaster who must make decisions concerning programs--it is the broadcaster who decides whether public issues are to be discussed, for how long, and which issues shall be aired. Citing several cases to prove its point, the Commission pointed out that this process of decision is the responsibility of broadcasters, and pointed out that in such cases as National Broadcasting Co. v. United States (the chain broadcasting regulations test case), the Commission had freed broadcasters from "contractual arrangements restricting the licensee in his free exercise of his independent judgments."[3]

But, said the Commission, the fact that broadcasters made the program decisions did not give them the right to operate in their own interest, as opposed to the public interest. The Report emphasized the notion that broadcasting must be maintained "as a medium of free speech and freedom of expression for the people of the Nation as a whole."[4] Interestingly, it is this passage which has created much of the recent difficulty with the fairness doctrine, for many broadcasters feel that the

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[2]Ibid., at 1247. [3]Ibid., at 1248. [4]Ibid.

doctrine restricts their freedom of speech. In any event, it is pointed out that it is the purpose of the Act to maintain this freedom, and it would be inconsistent for licensees to make radio unavailable as a means of free speech by presenting only one side of a controversial issue. The Commission then cites both KFKB and Trinity in reminding broadcasters that they may not operate in their own interest only. The report then continues,

> It is axiomatic that one of the most vital questions of mass communications in a democracy is the development of an informed public opinion through the dissemination of news and ideas concerning the vital public issues of the day. . . . And we have recognized . . . the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community. It is this right of the public to be informed, rather than any right on the part of the Government, or any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting. (Emphasis supplied).[5]

With this, the Commission pointed out that the broadcaster has an "affirmative responsibility" to devote a reasonable amount of time to discussion of controversial issues of public importance, and cited as authority the WHKC and Scott cases, as well as several others. (See copy in appendix A).

Then, at the end of the seventh paragraph of the Report, the Commission came to grips with the heart of

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[5]Ibid., at 1249.

the fairness problem:

> And the Commission has made clear that in such presentation of news and comment the public interest requires that the licensee must operate on a basis of overall fairness, making his facilities available for the expression of the contrasting views of all responsible elements in the community on the various issues which arise. . . . Only where the licensee's discretion in the choice of the particular programs to be broadcast over his facilities is exercised so as to afford a reasonable opportunity for the presentation of all responsible positions on matters of sufficient importance to be afforded radio time can radio be maintained as a medium of free speech for the people as a whole.[6]

Then, in the final sentence of the paragraph, the Commission revealed that it was cognizant of the fact that the licensee was, by the doctrine therein promulgated, denied complete freedom. But, said the Commission, it is done so that the public may benefit:

> These concepts, of course, do restrict the licensee's freedom to utilize his station in whatever manner he chooses, but they do so in order to make possible the maintenance of radio as a medium of free speech for the general public.[7]

The eighth paragraph gave the licensee the power to decide what format the discussion of controversial issues should follow. For example, if the Commission declared that no viewpoint could be presented if all viewpoints were not presented, one party in a controversial issue could thereby veto all discussion of it on the air. But the broadcaster could not merely adopt the

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[6]Ibid., at 1250. [7]Ibid.

policy of not refusing to broadcast opposing views when a request for time is made. The ninth paragraph reiterated the policy that had been stated earlier in the Johnston Broadcasting Co. case--stations must affirmatively encourage and implement the broadcast of controversial issues "over and beyond their obligation to make available on demand opportunities for the expression of opposing views."[8] The tenth paragraph discussed the problem of achieving a balanced presentation of views. The Commission, recognizing that there was real difficulty, and recognizing moreover that licensees are human beings and are thus subject to errors of judgment, concluded with an observation that was later echoed in other Commission documents, and by individual Commissioners:[9]

> But there can be no doubt that any licensee honestly desiring to live up to its obligation to serve the public interest and making a reasonable effort to do so, will be able to achieve a fair and satisfactory resolution of these problems in the light of the specific facts.[10]

With all of the preceeding as "background," the Commission attacked the problem of editorializing. It was recognized initially that the question of whether or not editorializing was in the public interest is not

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[8] Ibid., at 1251.

[9] See particularly the many public speeches of Commissioner Ford.

[10] Report on Editorializing by Broadcast Licensees, 13 FCC 1252.

exactly the same as the problem of fairness as discussed above, "but is rather one specific facet of this larger problem."[11] The broadcaster, it was stated, had an opportunity to present his views, whether they were thus identified or not. And without regulation, he could use this opportunity to propagandize and exclude contradictory opinions. Thus, the question of editorializing is really a question, said the Commission, of whether the views of the licensee should be identified as such, or whether this would, because of the prestige of the station or for some other reason, make fairness impossible. The Commission thought that such would not likely be the case, and opted for identification of the licensee's views:

> We have therefore come to the conclusion that overt licensee editorialization, within reasonable limits and subject to the general requirements of fairness detailed above, is not contrary to the public interest.[12]

Thus fell the Mayflower decision that a broadcaster could not be an advocate.

In paragraph fourteen of the report, the Commission went into the several arguments against the right of licensees to editorialize. The conclusion of the group was that although there were ways in which the broadcaster might do a disservice to the public by broadcasting his own views,

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[11] Ibid. [12] Ibid., at 1253.

> Assurance of fairness must in the final analysis be achieved, not by the exclusion of particular views because of the source of the views, or the forcefulness with which the view is expressed, but by making the microphone available, for the presentation of contrary views without deliberate restrictions designed to impede equally forceful presentation.[13]

Paragraph fifteen notes that broadcasters have fine facilities for graphic presentation of their views, and that these same facilities must be afforded the opponents of the licensee's viewpoint. In paragraph sixteen, the Commission seemed to take note of the covert editorializing that had gone on for some time; licensees had hired commentators to mouth the views of the station. Said the Commission, "Certainly the public has less to fear from the open partisan than from the covert propagandist."[14] And, said the seventeenth paragraph, the licensee could not distort the news or withhold relative facts concerning a controversy.

It is evident that the Commission recognized that the fairness problem is a complicated one, and that broadcasters would greatly fear harsh or arbitrary action by the Commission which would deprive them of their licenses. In point of fact, the hearings preceding the report demonstrated the anxiety of licensees; many licensees feared that the Commission would have to take a stand on the merits of the particular issues concerned

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[13] Ibid.

[14] Ibid., at 1254.

in a fairness problem. Others feared that licensees might have their stations closed down because of honest mistakes. The Commission reassured broadcasters that this would not be the case, and termed these fears "wholly without justification."[15] Although a licensee could not use a general pattern of good operation to shield himself from penalties for fairness violations, the Commission made it clear that it was concerned primarily with the overall program service of the station:

> It is clear that the standard of public interest is not so rigid that an honest mistake or an error in judgment on the part of a licensee will be or should be condemned where his overall record demonstrates a reasonable effort to provide a balanced presentation of comment and opinion. . . . It does not require any appraisal of the merits of the particular issue to determine whether reasonable efforts have been made to present both sides of the question.[16]

Then, quoting Northern Corporation (WMEX), the Commission suggested this formula for operating in the public interest:

> The duty to operate in the public interest is no esoteric mystery, but is essentially a duty to operate a radio station with good judgment and good faith guided by a reasonable regard for the interests of the community to be served.[17]

Many of the witnesses at the hearings had expressed the opinion that any action by the Commission which would enforce a standard of fairness upon broadcasters would be

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[15] Ibid., at 1255. [16] Ibid.

[17] Ibid., at 1256. See also Northern Corporation (WMEX) 4 RR 333, 339.

abridgement of the right of free speech in violation of the first amendment of the United States Constitution. Said the Commission,

> We can see no sound basis for any such conclusion. The freedom of speech protected against government abridgement by the first amendment does not extend any privilege to government licensees of means of public communications to exclude the expression of opinions and ideas with which they are in disagreement. We believe, on the contrary, that a requirement that broadcast licensees utilize their franchises in a manner in which the listening public may be assured of hearing varying opinions on the paramount issues facing the American people is within both the spirit and letter of the first amendment.[18]

Then, recognizing that freedom of the radio is one of the freedoms protected by the first amendment (see United States v. Paramount Pictures, et. al., 334 U.S. 131, 166), the Commission concluded its statement on the freedom of speech issue by saying,

> The most significant meaning of freedom of the radio is the right of the American people to listen to this great medium of communications free from any government dictation as to what they can or cannot hear and free alike from similar restraints by private licensees.[19]

Interestingly, it is on the grounds of abridgement of freedom of speech that the fairness doctrine is now about to be fought in the Supreme Court of the United States, with a significant decision to be rendered in 1969 or 1970. Attorneys who are attempting to strike the fairness doctrine from the books cite substantially the

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[18] Report on Editorializing by Broadcast Licensees, 13 FCC 1258.

[19] Ibid., at 1257.

same cases as those used by the Commission in supporting and documenting its position of freedom of speech.[20]

With the consideration of this most basic of all issues, the Commission summed up its report with a restatement of the requirements of the fairness doctrine:

> Licensee editorialization is but one aspect of freedom of expression by means of radio. Only insofar as it is exercised in conformity with the paramount right of the public to hear a reasonably balanced presentation of all responsible viewpoints on particular issues can such editorialization be considered to be consistent with the licensee's duty to operate in the public interest. For the licensee is a trustee impressed with the duty of preserving for the public generally radio as a medium of free expression and fair presentation.[21]

Other Opinions

Commissioner Edward M. Webster agreed with the majority opinion expressed in the report, but felt that the broadcaster might be "left in a quandary" because he must interpret "an involved academic legal treatise" to determine what he could and could not do in day-to-day operation. In six simple paragraphs, Commissioner Webster then answered the question, "Can a licensee of a broadcasting station be

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[20]See especially the briefs in Radio and Television News Directors Association, et. al., v. United States of America and Federal Communications Commission., pending in U.S. Court of Appeals (7th Circuit), Nos. 16369, 16498, 16499. The briefs filed in behalf of National Broadcasting Company and Columbia Broadcasting Company (which, together with a brief for Amicus Curiae KING Broadcasting Co., were filed as a consolidated suit) are most instructive on this particular issue.

[21]Report on Editorializing by Broadcast Licensees, 13 FCC 1258.

an advocate over his own station?" His answer was a simplification of the Report.[22]

Commissioner Robert F. Jones, having read the majority opinion and the views of Commissioner Webster, then prepared a statement of his views which was almost as long as the Report proper. He castigated the Commission for failing, in its report, to tackle the real issues presented by the Mayflower case, saying that this "either indicates a reluctance to admit the error of the earlier decision or a desire to perpetuate its evil effect."[23] Commissioner Webster's views were rapped for their "oversimplification" of the issues, saying that in Webster's statement, "the ceiling of oversimplification is unlimited to reach almost any unconstitutional conclusion."[24] Jones made clear that his disagreement with the majority report was also not just a disagreement about the route by which the majority reached its conclusions, but was rather due to "a fundamental difference of approach to the Commission's regulatory powers with respect to the programming policies of licensees."[25] In essence, he--like many of the attorneys who have fought the doctrine in more recent times--felt that the proscriptive conditions of the fairness doctrine were not the proper way to proceed. He preferred that fairness should be considered *a posteriori* on a case-by-case basis. (It would

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[22] *Ibid.* [23] *Ibid.*, at 1261.

[24] *Ibid.*, at 1260. [25] *Ibid.*, at 1262.

seem to this writer that the Commission's fairness policy as stated in the report is exactly that--the result of a case-by-case approach over a number of years--and that the application of the doctrine following the publication of the Report followed the same pattern in elaborating the operation of the doctrine as policy).

Commissioner Jones also objected to the form in which the Commission's decision was cast. He termed the doctrine ambiguous and called the duty to be fair a "vague" concept. Furthermore, he urged that fairness not be a doctrine or policy if it were to be the basis for future Commission action, but that it be cast as an official rule, and codified in the form prescribed for rules of governmental regulating agencies.[26] This was not done at the time of the adoption of the doctrine via the Report on Editorializing by Broadcast Licensees. But, to the great concern of many broadcasters, the Commission adopted fairness as official rule in the Summer of 1967. This rulemaking immediately became the subject of a court test, which will be discussed subsequently in some detail.

The Dissent

The Report was subject to still further criticism from within the Commission, as Commissioner Frieda Hennock dissented from the majority report. She agreed with the

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[26] Ibid., at 1264.

ideal of fairness, but doubted that the decision of the Commission could bring about the desired end. She pointed out that the Commission was sadly lacking in policing methods, and that the only sanction which the Commission could impose was the deprivation of license--a very harsh step indeed--which would occur long after the violation of the fairness policy. Said Commissioner Hennock:

> In the absence of some method of policing and enforcing the requirement that the public trust granted a licensee must be exercised in an impartial manner, it seems foolhardy to permit editorialization by licensees themselves. I believe that we should have such a prohibition, unless we can substitute for it some more effective method of insuring fairness. There would be no inherent evil in the presentation of a licensee's viewpoint if fairness could be guaranteed. In the present circumstances, prohibiting it is our only instrument for insuring the proper use of radio in the public interest.[27]

Thus, although it appears that she endorsed fairness in principle, Commissioner Hennock filed the only true dissent. But the Report was not adopted easily: two Commissioners (Cox and Walker) did not participate in the decision; Jones filed a separate opinion; Webster filed "additional views;" Hennock dissented. Only Commissioners Rosel Hyde and George Sterling accepted the "majority report" unamplified.

The reaction of broadcasters to the Report was strangely cautious. Broadcasting, the trade journal, cautioned broadcasters not to "rush to their microphones on every national

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[27]Ibid., at 1270.

or international issue. That would be folly indeed."[28]

The reaction of the academic community was cautious, if not enthusiastic. The Columbia Law Review, a prestegious journal indeed, said that "a total relaxation of control over so great a medium . . . may be detrimental to the well being of the Community."[29] The Yale Law Journal called the concern over the fairness doctrine "a tempest in a teapot," and added that the adoption of the Report did not significantly change the broadcaster's ability to express his views, or the extent to which the public is able to hear all sides of a controversial issue.[30] The Cornell Law Quarterly correctly predicted that the Mayflower controversy might "rage indefinitely."[31]

In retrospect, it seems fair to say that so far as most broadcasters were concerned, the Report on Editorializing by Broadcast Licensees had little effect with regard to fairness. Indeed, they were given the right (a right which, we might conclude, they always had despite the Commission's naysaying in Mayflower) to editorialize. But the vast majority of broadcasters had even at that time

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[28]"ETAOIN SHRDLU," Broadcasting, June 13, 1949, p. 48.

[29]"Radio Editorials and the Mayflower Doctrine," Columbia Law Review, Vol. 48, p. 793.

[30]"The Mayflower Doctrine Scuttled," Yale Law Journal, Vol. 59, p. 760.

[31]"The Mayflower Rule--Gone But Not Forgotten," Cornell Law Quarterly, Vol. 35, p. 589.

accepted the obligation of fairness, and governed their operations accordingly. Whether this was a matter of financial expediency or a matter of moral conviction is immaterial; for those broadcasters who had accepted fairness, the Report offered no new restriction.

Despite the promulgation of fairness as an obligation, there are now--and there have been since the advent of broadcasting--broadcasters who use the airways for the accomplishment of their own ends, and as an outlet for their own views and the views of commentators, preachers, and politicians who share their limited view of the social responsibility of a broadcaster. But it is for this type of broadcaster that the fairness doctrine was proposed as a remedy, and we must say that the doctrine has had far-reaching effects--not only on the broadcaster who would deliberately restrict the free flow of views, but on the whole course of broadcasting and broadcast regulation in America.

CHAPTER V

FREEDOM, FAIRNESS, AND FRUSTRATION (1950-1960)

The decade which followed the promulgation of the Report on Editorializing was one of significant change in the broadcasting industry. The development of television as a national medium during this period left many questions about how the problem of fairness could best be solved in a medium which had different technical and artistic standards, and an unknown psychological impact on the hundreds of thousands of new viewers who were purchasing receivers. Even as television grew to the status of a national communications medium, debates raged over technical standards for color, the allocation of stations to all areas of the country, and the possibility of television on two bands, VHF and UHF. FM radio, which had failed to bloom because of the demands of World War II, and which found its growth throttled a second time by the impact of television, showed signs of attaining the promise which many people in the industry had hoped for it. With these problems (among others) to occupy it, the Commission found itself faced by a chronic shortage of staff in both legal and technical areas, coupled with a shortage of funds which has been its lot since its creation by Congress. The problem

of how to apply the fairness doctrine was faced in this context. It was only natural that the Commission chose a cautious case-by-case approach.

The fact that the Commission chose not to adopt fairness as formal rule is significant. While the course advocated by Commissioner Jones might have had philosophical merit--the course of holding a formal rule-making proceeding--it was obvious that the Commission desired further experience with fairness cases on a relatively informal, flexible basis. The promulgation of fairness as a doctrine gave the Commission considerable freedom in its interpretation and application of the basic principles articulated in its Report on Editorializing. As will be subsequently shown, there were many changes in the Commission's application of the doctrine and in its handling of problems with licensees. By adopting the case-by-case approach, the Commission could, within the course of its normal activities, assess the scope of the fairness problem, determine the difficulties involved in fairness regulation, and determine what new rules or legislation might be necessary or desirable. Certainly in the decade which followed the issuing of the Report on Editorializing, numerous opportunities were presented for broadcasters and for the Commission to test the fairness doctrine administratively and judicially. In addition, during this decade the Congress took new steps to amend the Communications Act's provisions regarding political broadcasting.

Significant Cases

One of the most significant cases of the 1950's was that of WLIB (the New Broadcasting Company) of New York. This case is significant because of a subtle change in language which the Commission therein adopted, and which enlarged the impact of the Doctrine as articulated in the 1949 report. In paragraph nine of the Report on Editorializing, the Commission set as the standard of fairness and as the duty of the broadcaster "an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities."[1] (Emphasis supplied). The Commission, on April 12, 1950, addressed a letter to WLIB which said, in part,

> This is in further reference to the editorial broadcasts by station WLIB in support of a National Fair Employment Practices Commission and your reply of March 6, 1950 to the Commission's letter of inquiry dated January 27, 1950.
>
> It is our view that you have erroneously interpreted the Commission's report in the Matter of Editorializing by Broadcast Licensees with respect to the duties and responsibilities of a broadcast licensee to make time available for the presentation of opposing positions on public issues of interest and importance in the community.
>
> It is stated by you in your letter of March 6, 1950 that station WLIB broadcast editorial programs in support of a National Fair Employment Practices Commission on January 15-17, 1950, and that the station did not take affirmative steps to seek out and present points of view with respect to these matters which differed from the point of view expressed by the station.
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> In our report in the Matter of Editorializing by Broadcast Licensees it was made clear that the

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[1]New Broadcasting Co. (WLIB), 6 RR 258 (April 12, 1950).

> licensee has an affirmative duty to seek out, aid and encourage the broadcast of opposing views on controversial questions of public importance.[2] (Emphasis supplied).

WLIB's defense to the Commission's inquiry illustrates one of the difficulties presented in fairness cases: the station claimed that creation of a national Fair Employment Practices Commission was not a controversial issue, since the New York Legislature had already passed such a law creating a New York FEPC. The station ultimately promised that when it editorialized in the future, it would "seek out" viewpoints differing from its own.

This promise was to come to light nine years later when three applicants sought a construction permit for a single FM station in New York City. By 1959 the era of very specialized programming had already begun. One of the applicants proposed to devote his entire broadcast service to news programs. A second applicant proposed to serve small businessmen primarily. The third (which operated AM station WLIB) proposed to serve the Negro audience. During the hearings on these competing applications, it was brought out that WLIB's earlier promises had not been entirely fulfilled. During the intervening years, WLIB had given much time to the views of the NAACP when issues concerning racial problems had been of concern, while giving very little time to opposing views. Jewish issues

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[2] Ibid.

were frequently the subject of WLIB broadcasts (particularly matters concerning the state of Israel), and such broadcasts always reflected the Zionist point of view. Indeed, the WLIB spokesman admitted at these hearings that he had never taken any affirmative action to secure the anti-Zionist viewpoint. The Commission concluded that WLIB had made an "occasional" effort to fairly present issues, although this was by no means a consistent pattern. Despite the record of WLIB's broken promises and lack of compliance with the fairness doctrine, the Commission granted WLIB's application because the proposed programming would serve the "real and worthy need" of the large Negro population of New York City which was inadequately served by other stations.[3] It is clear that this grant may very well have been the best possible way to serve the interests of fairness however, for it offered the hope that voices which would not be heard on other stations might find access to WLIB's microphones. In any event, the "seek out" extension of the fairness doctrine was a significant one which would be applied in other cases.[4]

The above discussion raises the entire question of "specialized" program service. In this type of programming,

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[3] In re Applications of Herbert Muschel, et. al., 18 RR 8 (October 13, 1958).

[4] See also Johnson Broadcasting Co. v. FCC, 12 FCC 517, 175 F(2d) 351, and Key Broadcasting System, 13 RR 159.

the broadcaster makes no effort to provide "balanced" service in the traditional sense (that is, programs of religious, agricultural, musical, news, public affairs, and other types) but concentrates his efforts on a particular type of program or on a particular segment of the listening audience. The Commission took the position that this concept of specialization could not be extended to controversial issues of public importance. In other words, if a station took a position on one side of a controversial issue, it could not defend any violation of fairness by pointing out that other stations or other newspapers in the same area had taken an opposite viewpoint. Any broadcaster who took a position was required to provide time for opposing views.[5]

Another interesting and often-cited case is that of Evening News Association (WWJ), better known as the Detroit News. In this case, a labor leader complained to the FCC that WWJ had refused to sell or to grant time for the union to present its side of the issues involved in a strike at the Chrysler Corporation. Although admitting that the issue was of great importance to the community, the station offered time only if the union and management officials agreed to a joint program. The Commission, in a letter to WWJ, pointed out that it had anticipated such

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[5]Letter to WSOC Broadcasting Co., FCC File No. 58-686, 17 RR 548, 550 (July 16, 1958).

a situation in paragraph eight of its Report on Editorializing which stated that it would not be fair for one side to be able to effectively veto a presentation by refusing to cooperate. The Commission's letter concluded with a frequently used and very meaningful sentence: "You are requested to review your action in this case and provide the Commission with a further statement regarding it."[6]

A case involving WTTG and yet another labor dispute is of interest because it illustrates the problem of sub silentio editorializing, which also must be subject to the fairness doctrine. In 1958 WTTG entered into a contract with the National Association of Manufacturers to produce (with NAM funds) daily kinescopes of the Senate hearings on the strike at the Kohler plumbingware factory in Kohler, Wisconsin. The NAM said that it wished to make thise kinescopes, which were really one-hour summaries of the hearings, available to other communities throughout the country. WTTG offered the programs to stations throughout the country at varying rates, but without any acceptances. Subsequently, NAM resolved to make the programs available free of charge to interested stations. No mention was made of NAM funding of the program, nor were stations informed that the programs were supplied by the National Association of Manufacturers, despite the fact that the programs were edited, and that they involved a very controversial and

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[6]Evening News Association (WWJ), 6 RR 283 (1950).

lengthy labor dispute of national consequence. The Commission informed WTTG that the fairness doctrine and Section 317 of the Communications Act[7] had been violated, but took no action.[8]

Two other administratively-handled cases of this decade are worthy of note--both of them named for the political figures which sought Commission action: Paul E. Fitzpatrick (Chairman of the New York State Democratic Committee) and John J. Dempsey (former Governor of New Mexico).

On May 2, 1949, Governor Thomas E. Dewey of New York made a broadcast over certain stations affiliated with the CBS network. The broadcast was entitled "A Report to the People of New York State." By the middle of May, Mr. Fitzpatrick had written to the Commission, charging that the broadcast "was political in nature and contained statements of a controversial nature."[9] CBS replied that there is a basic difference between the reports of elected officials to their constituents and the partisan political activities of office holders. The Commission considered the problem, then addressed a letter to both Mr. Fitzpatrick and to CBS. The letter said, in part,

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[7]74 Stat. 895 (1960), 47 U.S.C. sec. 317.

[8]Metropolitan Broadcasting Co., 19 RR 602 (1960).

[9]Paul E. Fitzpatrick, 6 RR 543 (July 21, 1949).

> The Commission recognizes that public officials may be permitted to utilize radio facilities to report on their stewardship to the people and that the mere claim that the subject is political does not automatically require that the opposite political party be given equal facilities for a reply. On the other hand, it is apparent that so-called reports to the people may constitute attacks on the opposite political party or may be a discussion of a public controversial issue.[10]

The Commission then referred to the Report on Editorializing, and said by way of explaining its view,

> Consistent with the views expressed by us in that report, it is clear that the characterization of a particular program as a non-political address or the characterization of a particular program as a report to the people does not necessarily establish such a program as non-controversial in nature so as to avoid the requirement of affording time for the expression of opposing views.[11]

The judgment of CBS was upheld, and the Commission refused to order a hearing on the renewal of licenses for the stations involved.

The complaint of John J. Dempsey against station KOB (Albuquerque Broadcasting Co.) alleged that KOB had been "one-sided" in its presentation of controversial political issues. As is usual in this sort of case, the Commission forwarded Mr. Dempsey's complaint to the station, asking for comment or reply. Following this, the Commission reviewed the whole history of complaints against the station, together with the station's replies, and attempted to reach a conclusion. No doubt this was made easier by the fact that Mr. Dempsey withdrew his complaint, but the

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[10] Ibid. [11] Ibid.

Commission sent a letter to KOB which again used the phrase "seek out" which had not appeared in the Report on Editorializing:

> Although we are at this time resolving in your favor the questions raised in the various complaints, we are taking this occasion to urge you to reread the Commission's Report in the matter of Editorializing by Broadcast Licensees. You have on several occasions affirmed your intent to be fair and diligent in discharging your public trust, but your apparent disposition to rest on the KOB policy of making time available for "the other side" does not fully probe the recesses of licensee responsibility. We pointed out in our Editorialization Report that a licensee's obligation to serve the public interest cannot be met merely through adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. A licensee as [sic] an affirmative duty to seek out, aid and encourage the broadcast of views on the other side. . . . For your information we are enclosing copies of recent letters which the Commission has sent to the licensees of Stations WLIB and WWJ concerning this general problem.[12]

The phrase "seek out" appeared in Commission letters for almost a decade, until this interpretation of the Report on Editorializing was changed in a letter from the Commission to KNOE-TV on July 29, 1959:

> The licensee must follow a reasonable standard of fairness in the presentation of the issues in the controversy and . . . he has an affirmative duty to aid and encourage the broadcast of opposing views by responsible persons. (Emphasis supplied).[13]

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[12] Albuquerque Broadbasting Co., 6 RR 615, 616.

[13] See the speech of Commissioner Frederick Ford before the Radio-Television News Directors Association, Montreal, October 6, 1960.

Court Decisions

Most of the cases which came before the courts in the decade following the Report on Editorializing were not directly concerned with the fairness doctrine per se, but were important because of the constitutional questions which were resolved.

It had already been established in several cases--notably the 1948 case of United States v. Paramount Pictures[14] (which has been previously discussed)--that the rights of freedom of speech and freedom of the press apply to the electronic media. This opinion was further strengthened by the 1953 decision in American Broadcasting Co. v. United States.[15] As the court had pointed out in an exceedingly important decision two years earlier, freedom of speech is not absolute, but relative; this freedom "is subject to prohibition of those abuses of expression which a civilized society may forbid."[16] Indeed, said Mr. Justice Frankfurter, a majority of the Supreme Court had in "no case . . . held that a legislative judgment, even as to freedom of utterance," should be overturned merely because the court, if it had had to

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[14] United States v. Paramount Pictures, Inc., 334 U.S. 131 (1948).

[15] American Broadcasting Co. v. United States, 110 F. Supp. 374, affirmed on other grounds, 347 U.S. 284 (1954). But also see Superior Films, Inc. v. Department of Education of the State of Ohio, 346 U.S. 587, 74 S.Ct. 286 (January 18, 1954) which many scholars consider to be the definitive case on this point. In American Broadcasting, the court relied on the case of Dennis v. U.S., discussed hereinafter (see note 16 infra).

[16] Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857 (1951).

make the initial decision, "would have made a different choice between the competing interests."[17] What ought to be the course of action in public controversy? In deciding whether the electronic media would enjoy protection of the First Amendment, "candid and informed weighing of the competing interests," rather than "dogmas too inflexible for the . . . problems to be solved," should be the rule.[18] With regard to the burdens imposed by the fairness doctrine, the decision said that

> the basis of the First Amendment is the hypothesis that speech can rebut speech, propaganda will answer propaganda, free debate of ideas will result in the wisest possible governmental policies. . . . This is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations.[19]

The most important question--a question which has still to be properly resolved--was whether the Commission in adopting and applying the fairness doctrine exceeds its authority. Those who feel that the Commission is thus exceeding its authority point to a case settled near the end of the decade following the Report: Greene v. McElroy.[20] This was a case in which an aeronautical engineer was fired from his position with a defense contractor because his security clearance was revoked. The plaintiff's counsel pointed out that there had been no expressed intention of Congress to set up the entire security-clearance and investigative system; they said, in essence, that the engineer was unjustly deprived of his rights and property because of the allegations of

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[17] Ibid. [18] Ibid. [19] Ibid.

[20] Greene v. McElroy, 360 U.S. 470 (1952).

unnamed witnesses and the secret testimony at an administrative hearing. Was this what Congress had intended? If so, why was the decision not spelled out in the law? Said the court,

> Such decisions cannot be assumed by acquiescence or non-action. . . . They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized . . . but also because explicit action, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws. Without explicit action by lawmakers, decisions of great constitutional import and effect would be relegated by default to administrators who, under our system of government, are not endowed with authority to decide them.[21]

The court then cited a number of cases in which relevant decisions had been given,[22] then continued:

> These cases reflect the court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even in areas where it is possible that the constitution presents no inhibition.[23]

Many legal scholars accept this as the court's warning that in serious cases, particularly where freedoms are being abridged (even if it may be for the benefit of the public) the court will interpret the will of Congress narrowly. It

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[21] Ibid.

[22] Ibid. See also Peters v. Hobby, 349 U.S. 331 (1955); Ex. Parte Endo, 323 U.S. 283, 301-302; Hannegan v. Esquire, 327 U.S. 146, 156; Wong Yang Sung v. McGrath, 339 U.S. 33, 49; Anniston Manufacturing Co. v. Davis, 301 U.S. 337; United States v. Rumely, 345 U.S. 41.

[23] Greene v. McElroy, 360 U.S. 474.

must be remembered that the fairness doctrine proceeds from the Commission's interpretation of the sections of the Communications Act of 1934 (as amended) which prescribe that broadcasting should be in the public interest, convenience, and necessity, and that the Commission should provide for the larger and more effective use of radio. Even those who cite later amendments to Section 315 of the act as a basis for fairness cannot find anywhere in the act the type of explicit statement the court seems to require in Greene v. McElroy. Those who observe that there was considerable legislative sentiment in favor of a piece of fairness legislation (as, for example, during the Hoover administration when such a measure actually passed, and in numerous other cases where amendments to the Communications Act failed) are countered by others who cite the Federal Trade Commission suit of 1952 (FTC v. Ruberoid Co.) in which the court said, of an action of the FTC, "We will not now achieve the same result by reinterpretation in the face of Congress' failure to pass the bills thus brought before it."[24]

Recent opponents of the fairness doctrine claim that by imposing the obligation to be fair upon the broadcaster, the Commission is inhibiting his activities and is thus abridging his right of free speech. Such opponents often cite the case of American Communications Association v.

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[24]F.T.C. v. Ruberoid Co., 343 U.S. 470 (1952).

Douds, a case which came before the courts in 1950. The court's opinion said,

> But as we have noted, the fact that no direct restraint or punishment is imposed upon speech or assembly does not determine the free speech question. Under some circumstances, indirect "discouragements" undoubtedly have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes.[25]

In other cases which came before the courts in the same decade, the same ideas were expressed, and in some cases expanded upon. In Speiser v. Randall,[26] it was made clear (as it had been in the 1946 case of Hannegan v. Esquire[27]) that the government could not abridge freedom of expression by placing conditions upon the grant of a benefit or a privilege. In still other cases, it was reiterated that the First Amendment was designed as a limitation upon the actions of government, particularly upon Congress and the federal government. In this sense, Massachusetts Universalists' Convention v. Hildreth & Rogers Co.[28] was in accord with the earlier case of McIntire v. William Penn Broadcasting Co.,[29] which has been heretofore discussed.

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[25]American Communications Association v. Douds, 339 U.S. 382 (1950).

[26]Speiser v. Randall, 357 U.S. 513 (1958).

[27]Hannegan v. Esquire, 327 U.S. 146 (1946).

[28]Massachusetts Universalists' Convention v. Hildreth & Rogers Co., 183 F(2d) 497 (1950).

[29]McIntire v. William Penn Broadcasting Co., 151 F(2d) 597, 327 U.S. 799 (1946).

One of the most important cases to be decided since 1949 has become important only in light of the lengthy procedings involved, and in view of the explosive incidents which prompted action. The case of Lamar Life Insurance Co. combines the problems of sub silentio editorializing with unique fairness issues which have not been fully resolved.[30] In Lamar, the National Association for the Advancement of Colored People (hereinafter NAACP) complained to the Commission about the programming practices of the Lamar-owned station in Jackson, Mississippi (WLBT). The initial incident occurred in 1955 when WLBT was showing the NBC program "Home" on which Mr. Thurgood Marshall, General Counsel of the NAACP was being interviewed. WLBT is reported to have cut off the program and substituted a slide saying: "Sorry, Cable Trouble." Many people believe the Commission's rather subdued response to this and other elements of the Lamar case was inadequate. Says one fairness authority,

> The Lamar case is merely one of the more recent indications that the Commission's editorializing rule (that licensees may editorialize only if they comply with the fairness principle's balanced presentation approach) is more a theorem of moral advice to be invoked only occasionally rather than an effective, meaningful, and constant regulatory standard.[31]

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[30] Lamar Life Insurance Co., 18 RR 683 (1959). See also Lamar Life Broadcasting Corp., 5 RR 2d 205 (1965), Reversed & Remanded Sub Nomine United Church of Christ v. FCC, 359 F(2d) 994 (1966).

[31] Jerome A. Barron, "The Federal Communications Commission's Fairness Doctrine: An Evaluation," The George Washington Law Review, Vol. 30, No. 1, October, 1961, p. 19.

In an important case decided near the end of the decade with which we are here concerned, the whole problem of licensee liability for statements of political candidates was resolved. The case of Farmers Union v. WDAY[32] began when WDAY allowed one A. C. Townley, a legally qualified candidate in the U.S. Senatorial race in North Dakota, to use WDAY's radio and television facilities. Because it felt compelled to do so by the requirements of Section 315 of the Communications Act, it permitted him to speak without censorship of any kind in response to speeches made previously by two other legally qualified candidates. Townley's speech accused his opponents and the Farmers Educational and Cooperative Union of America of conspiring to "establish a Communist Farmers Soviet Union right here in North Dakota."[33] The station was then sued by Farmers Union for its publication of a libelous statement. The broadcaster was admittedly in a predicament, for Section 315 provided that he was required to provide time to Townley, but that he could have "no power of censorship over the material broadcast under the provisions of this section."[34] Mr. Justice Black, in his decision, held that the station was not subject to damages, but,

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[32]Farmers Union v. WDAY, 360 U.S. 525 (1959).

[33]Ibid.

[34]47 U.S.C. Sec. 315.

> More important, it is obvious that permitting a broadcasting station to censor allegedly libelous remarks would undermine the basic purpose for which section 315 was passed--full and unrestricted discussion of political issues by legally qualified candidates.[35]

Although the decisions of the courts in the years between 1949 and 1960 were generally supportive of Commission action, there was one notable exception: the case of Felix v. Westinghouse Radio Stations.[36] In Felix, the court held that the statute prohibiting censorship of political speeches applied only to speeches made by the candidates themselves, and not to speeches made on their behalf. In thus doing, the court made it abundantly clear that only those persons who were legally qualified candidates could invoke the equal time provisions of Section 315. The court added that it was manifestly clear that this narrower interpretation was the one favored by Congress, as the whole legislative history of the law pointed out. But if the court's strong stand rejecting application of the law to non-candidates reduced the Commission's ability to insure reasonable treatment of the issues via this route, it almost certainly strengthened the Commission's reliance on the non-statutory fairness doctrine as enunciated only two years earlier in the Report on Editorializing.

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[35]Farmers Union v. WDAY, 360 U.S. 525 (1959).

[36]Felix v. Westinghouse Radio Stations, 186 F(2d) 1 (December 20, 1950). Rehearing denied January 25, 1951.

Although this dissertation is not primarily concerned with Section 315, it is worthy of note that it is in the amendments to this section that many proponents of the fairness doctrine see legislative sanction and support for the doctrine. Thus it may be profitable to examine the 1959 amendments to that section.

The 1959 Amendments to Section 315

The 1959 amendments were a response of the Congress to the FCC's handling of the Lar Daly case.[37] Daly, who is a colorful and perennial candidate for elective office in Illinois, complained to the Commission that WBBM-TV in Chicago had allowed Mayor Richard Daley to use its facilities without affording him equal time. (Both Lar Daly and Mayor Richard Daley were legally qualified candidates for the Democratic party's nomination for the office of Mayor of Chicago). One of the alleged "uses" of the station by Mayor Daley was a newsfilm showing the Mayor welcoming the President of Argentina at the Chicago airport. The Commission held that this was a "use" of the station as provided by Section 315, and that Daly was entitled to equal time. Indeed, many legal scholars found this a surprising decision--not only because of the dramatic impact it would have on news coverage of elections and the candidates who were already officeholders, but because only two years earlier, in a decision again

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[37] Lar Daly, 18 RR 238 (1959).

involving the Detroit News' station WWJ, the Commission had made a seemingly opposite decision. WWJ had shown a parade in which a number of judges participated, and had shown the swearing-in ceremonies for a number of judges, one of whom was a candidate for public office. The Commission, in a letter to an opposing candidate who had requested equal time, said:

> There is no evidence before us that Mr. Davenport in any manner or form directly or indirectly initiated or requested either filming of the ceremony or its presentation by the station, or that the broadcast was more than a routine news broadcast by Station WWJ-TV in the exercise of its judgment as to newsworthy events. . . . In our opinion, on the basis of all the facts and circumstances detailed above, WWJ-TV did not 'permit . . . a legally qualified candidate for . . . public office to use a broadcasting station' by showing and referring to Mr. Davenport in its routine newscasts in the manner indicated. Therefore it is under no obligation to '. . . afford equal opportunities to all other' candidates for the office for which Mr. Davenport has filed.[38]

With the opposite decision of the Commission in the Lar Daly case, it seemed as though stations and networks might be seriously impeded in normal news coverage. In an attempt to solve some of the problems created by the Daly case, the Senate Commerce Committee reported out S. 2424[39] as an amendment to Section 315. The new language would have been added at the end of the previous law, and would have said simply:

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[38]Allen H. Blondy, FCC Public Notice No. 41600, 14 RR 1199.

[39]Report No. 562, 86th Congress, 1st Session (1959).

> Appearance by a legally qualified candidate on any newscast, news interview, news documentary, on-the-spot coverage of news events or panel discussion, shall not be deemed to be use of a broadcasting station within the meaning of this subsection.[40]

Despite the fact that the stated purpose of the bill was very limited in scope, much of the debate in both houses of Congress may be read to assume sub silentio that the Communications Act, as it then read, already imposed a standard of impartiality, or fair treatment, with regard to all public issues.[41] The manager of the bill, Senator Pastore, said,

> Fear has also been expressed that the adoption of legislation creating special categories of exemptions from section 315 would tend to weaken the present requirements of fair treatment of public issues. The committee desires to make it crystal clear that the descretion provided by this legislation shall not exempt licensees who broadcast such news, news interviews, news documentaries, on-the-spot coverage of news events, or panel discussion programs from objective presentations thereof in the public interest.
>
> In recommending this legislation, the committee does not diminish or affect in any way Federal Communications Commission policy or existing law which holds that a licensee's statutory obligation to serve the public interest is to include the broad encompassing duty of providing a fair cross-section of opinion in the station's coverage of public affairs and matters of public controversy. This standard of fairness applies to political broadcasts not coming within the coverage of section 315 such as speeches by spokesmen for candidates as distinguished from the

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[40] Ibid., p. 2.

[41] See "Legislative History of the Fairness Doctrine," Staff Study for the Committee on Interstate and Foreign Commerce (House of Representatives) Ninetieth Congress, Second Session, February 1968.

candidates themselves.

. . . . . .

Under existing law and policy it is absolutely manditory that [licensees] shall serve the public interest because these media are in the public domain, and therefore they should be fair in their treatment in all events.[42]

But on the floor of the Senate, two changes were attempted: the words "or panel discussion" which appeared in S. 2424 were stricken, and the following language was added:

> . . . but nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this Act, which recognizes that television and radio frequencies are in the public domain, and that the license to operate in such frequencies requires operation in the public interest, and that in newscasts, news interviews, news documentaries, on-the-spot coverage of news events, all sides of public controversies shall be given as fair an opportunity to be heard as is practically possible.[43]

The amendment, offered by Senator Proxmire, was the subject of considerable discussion:

> Mr. Pastore: I think I know the intent of the amendment of the Senator from Wisconsin. He is merely reiterating what we are trying to do by section 2 and also what we have done in the report, namely, that we abide by the philosophy, so far as standard of fairness is concerned.
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> But I do not like the use of the words "as equal an opportunity" in the last part of the Senator's amendment. I am afraid that that might be considered a repudiation of what we are trying to do by the exemptions. If the Senator will change the wording to "as fair an opportunity," with a clear understanding that this does not substantially defeat the purpose of the exemption, but merely expresses the philosophy that the media of radio and television are in the public domain and that

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[42] 105 Cong. Rec. 14439-14441 (1959).

[43] Ibid., at 14462.

> they must render under the law public service and that wherever it is practical and possible the situations must bring to light all sides of a controversy in the public interest, I will accept the Senator's amendment and take it to conference.
>
> In my opinion, the amendment is surplusage. I think we have already accomplished the purpose of the Senator's amendment. We have expressed it in the report. But if it will make the Senator happy to have the language in the bill, I will accept the amendment and take it to conference.
>
> Mr. Proxmire: I appreciate the Senator's support in saying that he will accept the amendment under the circumstances. I am trying to protect all viewpoints in public controversies by providing them an equal opportunity.
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> Mr. Pastore: A fair opportunity.

In response to a question from Senator Hartke, Senator Proxmire further explained the purpose behind his amendment to S. 2424:

> The whole purpose of the bill is aimed at the situation which arose with the case of Lar Daly. If lines 5 to 9 in the bill have any meaning at all, they mean that a broadcaster is not required to give an opportunity to each legally qualified candidate. What the broadcaster should do is to consider all sides of public controversies, and make certain that not only the conservative, or not only the liberal viewpoints or ideas are expressed, but that the public has a chance to hear both sides, in fact all sides, and to be more specific so that this bill cannot be construed in any way to limit the responsibility of broadcasters to present all viewpoints, including the responsibility upon the appearances of qualified candidates on TV or radio.[44]

The final version of S. 2424 contained the Proxmire amendment. In the House of Representatives, however, the provisions of H.R. 7985 were substituted for the Senate bill. The House Interstate and Foreign Commerce Committee reported out a bill which was later passed by the House,

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[44] Ibid., at 14457.

and which added the following new sentence at the end of Section 315 (a):

> Appearance by a legally qualified candidate on any bona fide newscast (including news interviews) or on any on-the-spot coverage of news events (including but not limited to political conventions and activities incidental thereto), where the appearance of the candidate on such newscast, interview, or in connection with such coverage is incidental to the presentation of news, shall not be deemed to be use of a broadcasting station within the meaning of this subsection.[45]

In stating the purpose of the change in the House report, the committee did not rule out "public issues" from coverage by Section 315. Said the report,

> It seems to the committee that the principle of substantial (as distinguished from absolute) equality of opportunity for qualified political candidates, with respect to appearances on radio and television broadcasts, is a sound principle bearing in mind (1) the importance of radio and television in connection with our political processes and (2) the fact that broadcasting facilities, and particularly television broadcasting facilities, are limited in number and subject to Government licensing. Therefore, in the opinion of this committee, an outright repeal of section 315 would not be in the public interest.
>
> However, the committee recognizes that there is another principle which is important to the proper functioning of our political processes, namely, that the public interest is served if the people of our country are well informed with respect to political events and public issues, particularly in order to make an informed choice among competing political candidates.[46]

But, according to a recent study of the legislative history of the fairness doctrine by attorney Daniel J. Manelli, a member of the staff of the House Interstate

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[45]House Report No. 802, 86th Congress, 1st Session (1959).

[46]Ibid., p. 4.

and Foreign Commerce Committee, the ensuing discussion on the floor of the House indicated that most members thought the bill related solely to the appearances of political candidates.[47]

Because the House and Senate versions of the amendment to Section 315 differed, the bill went to a Conference Committee, which recommended the language of the section as it now reads. It will be remembered that the essential difference between the two versions of the bill with which we are here concerned is the so-called "Proxmire amendment." The Senate bill contained this language which was not contained in the House version. The conference report explained its intent with regard to this difference:

> With certain modifications this language has been included in the conference substitute as a sentence reading as follows:
> "Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."
> The conferees felt that there is nothing in this language which is inconsistent with the House substitute. It is a restatement of the basic policy of the "standard of fairness" which is imposed on broadcasters under the Communication Act of 1934.[48]

But, as Mr. Manelli has pointed out, it seems evident that the "standard of fairness" mentioned in the conference report referred to the Commission's fairness doctrine. But with careful study of the debates on the bill and the

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[47]See note 41, supra.

[48]Ibid.

reports of the committees in both houses of Congress, it seems clear that one cannot surely establish the intention of Congress to ratify the fairness doctrine in all its applications.[49]

There remains for consideration the statement of Mr. Oren Harris as he presented the conference report to the House:

> Now, just in case anybody in the broadcasting industry or in the Federal Communications Commission, or even a candidate himself, should get the idea that "the reins are off; you can do what you want to," we have accepted in the conference substitute a provision similar to what was referred to as the Proxmire amendment in the other body.
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> . . . . . .
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> Furthermore, in the statement of managers on page 4 you will find that it is the intention of the conferees that in order to be considered bona fide, a news interview must be a regularly scheduled program. . . . The great problem is that on the local level a broadcaster might set up a panel discussion or news interviews that are not regularly scheduled programs but which constitute an effort of some political candidate. This is not intended to be exempted. . . . Then we went further than that to be sure that there was no advantage taken by the broadcasting industry or anyone else and reaffirmed the "standard of fairness" established under the Communications Act. Anyone trying to take advantage will be held accountable to the Federal Communications Commission for his action.
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> . . . . . .
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> Mr. Avery: . . . I wondered, while the gentleman was in the well . . . if he would not address himself to the proposition that the test of the standard of fairness still prevails in the basic act irrespective of any changes that we have made in section 315; and it applies not noly to political candidates, but issues and editorializing by licensees as well.

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[49]"Legislative History of the Fairness Doctrine," op. cit. (See note 41, supra.).

> Mr. Harris: The gentleman is eminently correct. He will remember as he was one of the conferees, that we discussed this particular item and everyone agreed that the standard of fairness must prevail, and applies to the programs which will be exempted from the equal-time requirement of section 315.[50]

But what was the real meaning of the new bill? Senators Pastore and Scott made statements which diverge in their consideration of the fairness doctrine per se, but which are instructive in their interpretation of the will of Congress. Said Senator Pastore,

> Mr. Pastore: While the House conferees found some fault with the so-called Proxmire amendment, we insisted it be retained in the bill, if with some slight modifications, because it was the one condition we could write into the law to make sure the Federal Communications Commission would give the matter the right interpretation.
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> . . . . . .
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> We insisted that the provision remain in the bill, to be a continuing reminder and admonition to the Federal Communications Commission and to the broadcasters alike, that we were not abandoning the philosophy that gave birth to section 315, in giving the people the right to have a full and complete disclosure of conflicting views on news of interest to the people of the country.
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> . . . . . .
>
> I wish to say to all Members of the Senate that section 315 was written in the law not to promote any one candidate nor for the benefit of one candidate as against another, or for candidates themselves generally, but was written into the law to give the public the advantage of a full, complete and exhaustive discussion, on a fair opportunity basis, to all legally qualified candidates but for the benefit of the public at large.[51]

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[50] 105 Congressional Record, 17778-17779 (1959).

[51] Ibid., at 17830-31.

Senator Scott made a statement which appears to have expanded the previously stated intentions of Congress slightly:

> Mr. Scott: . . . I am very much concerned that in this limited area of the airwaves if we in Congress attempt to restrict too closely the freedom of the press, which already is more limited in that area than in any other of the media . . . In my judgment, the time will come when the Supreme Court will strike down whatever we have done in an attempt to bail out the Federal Communications Commission for some future unfortunate decision. Therefore, I think we ought to be exceptionally careful to provide as much freedom of expression on radio and television as we possibly can.
>
> If the decision were left to me alone . . . I should repeal section 315 entirely, but that is a minority point of view, and it arises entirely from my respect for the right of the people to be absolutely free in the expression of their point of view, subject only to the protection of the criminal and the civil statutes against misuse and abuse of privileges.
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> . . . . . .
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> We have maintained very carefully the spirit of the Proxmire amendment, and I ought to point out what I do not think has yet been explained, that the phrase "To afford reasonable opportunity for the discussion of conflicting views on issues of public importance" does not refer merely to political discussions as such or to opposing views of political parties or of candidates. It is intended to encompass all legitimate areas of public importance which are controversial, and there are many, as we know, which pertain to medicine, to education, and to other areas than political discussion, and it is intended that no one point of view shall gain control over the airwaves to the exclusion of another legitimate point of view.
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> . . . . . .
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> In other words, this amendment is designed to establish for future reference certain criteria as to equal time and a fair discussion of controversy . . . I believe that we have not in any sense dangerously or critically expanded the law. On the contrary, I think we have expanded the freedom of individuals and the freedom of this particular medium as contemplated in the first amendment to the constitution.[52]

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[52] Ibid., at 17830-31.

The Commission's Interpretation

The effect of a broad interpretation of Section 315 is to commingle the separate concepts of equal time for candidates and fairness in dealing with controversial issues of public importance. In any event, it is this broad interpretation which has been the basis for the recent extension of the fairness doctrine; it has been this peg upon which supporters have hung their contention that they have congressional sanction. The Commission, for its part, has interpreted Section 315 to include sanction for the fairness doctrine, although it usually refers to the public interest mandate in the Act as additional grounds for its action. In a 1963 letter to Chairman Harris, the Commission stated:

> Since 1959 the Communications Act imposes the specific obligation of fairness upon the broadcast licensee who permits use of his facilities for the presentation of programming dealing with controversial issues of public importance.
>
> . . . . . .
>
> In short, just as there is a specific statutory obligation upon the licensee to afford "equal opportunities" to legally qualified candidates, so also there is one "to afford reasonable opportunity for the discussion of conflicting views on issues of public importance"--to be fair in treating controversial issues.[53]

With ten full years of experience in regulation of fairness as a background, the Commission now had what it considered legislative support for its policies. The Commission continued, in the years between 1959 and 1968

[53]Letter to Oren Harris, 3 RR 2d 163 (1963).

to administer fairness on an *ad hoc* basis, with the exceptions noted in the chapter which follows. It is noteworthy that the Commission, in concluding a decade of administering the fairness doctrine, did not feel that the basic policy it had enunciated in its Report on Editorializing was unsound. On the contrary, it continued to refer to the Report in almost every fairness case. The second decade under the fairness policy of the Report was to bring only further development of this basic policy.

CHAPTER VI

RECENT DEVELOPMENTS (1960-1968)

There can be no doubt that the fairness doctrine has been of more concern to more people during the decade of the 1960's than at any other time since its genesis. It is possible that the fairness doctrine became more important because of the greater reliance placed upon it following the 1959 amendments to Section 315 which had the effect of relaxing some of that section's requirements. The Commission had, since 1949, followed a policy of deciding fairness questions on an ad hoc basis, and while this policy had allowed the Commission to gain experience in fairness regulation without the strictures imposed by formal rules, it also had the tendency to obfuscate the total fairness picture and to confuse broadcasters who did not follow the involved legal battles which marked the course of fairness development. But if there was a confusion in the ranks of broadcasters, the same can be said of congressmen, many of whom disagreed about the applicability of the doctrine, the legislative foundations of the doctrine, and the ability of the Commission to enforce a standard of fairness with no weapon save the ultimate one of license revocation. For its part, the

Commission steadfastly held to the position that the fairness doctrine as stated in the Report on Editorializing carried out the wish of Congress as expressed in the "public interest" clause of the Communications Act, and in certain sentences of the 1959 amendments to Section 315 of that act.[1] But because of what the Commission called "workload necessities," it adopted the policy of delaying final action on fairness complaints until license renewal time. That is, aside from a routine inquiry directed to the station upon receipt of a fairness complaint--and an attempt to urge the station to reassess its position, the Commission almost invariably filed the complaint together with any responses from the broadcasters, and waited to consider the problem more seriously when the three-year license of the station was to be renewed. Broadcasters felt uneasy about this, for it was likely to make their future uncertain for some time. In point of fact, there is no evidence that a single license was ever revoked on the basis of a fairness complaint in the entire history of broadcast regulation in the United States.[2] But even those who claimed that a station had been unfair often

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[1]See the discussion of the 1959 amendments contained in the previous chapter.

[2]Testimony of FCC Chairman Rosel Hyde at the "Fairness Panel" hearings before the House Interstate and Foreign Commerce Committee, (March, 1968). The record of these hearings had not been printed as of this writing.

disliked the delay and the fact that the Commission seldom took any positive action save asking the broadcaster to "comment" on the complaint and review his previous decisions.[3]

The 1960 Suspension of Equal-Time Requirements

With the prospect of a hotly contested election and a campaign of great interest to many Americans, there was general agreement between many broadcasters, candidates, and scholars that the equal time requirements of Section 315 should be suspended for the 1960 Presidential and Vice-Presidential elections. One major purpose of this suspension was to allow the now-famous Kennedy-Nixon debates to be broadcast without obligating the broadcasters to give equal time to the twenty-two minority parties which had nominated candidates for the offices of President and Vice-President of the United States.[4]

The bill authorizing suspension of Section 315 (a) made its way through Congress with considerable speed.

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[3]See the discussion of this point in the thesis of Larry D. Schmidt, op. cit.

[4]Aside from the Republican and Democratic parties, the following parties also offered candidates in the 1960 presidential election: American Beat Consensus, American Third, American Vegetarian, Church of God, Conservative (C. Benton Coiner for President), Conservative (J. Bracken Lee for President), Constitution (Merritt B. Curtis for President), Constitution (Charles L. Sullivan for President), Farmer Labor Party of Iowa, Greenback, Independent Afro-American Unity, Independent American, Industrial Government, Liberal, National States Rights, Prohibition, Socialist Labor, Socialist Workers, Socialist Workers and Farmers, Tax Cut, Theocratic, Unpledged Democrats for Harry Byrd.

It said, in part:

> That part of Section 315 (a) of the Communications Act of 1934, as amended, which requires any licensee of a broadcast station who permits any person who is a legally qualified candidate for any public office to use a broadcasting station to afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, is suspended for the period of the 1960 presidential and vice-presidential campaigns with respect to nominees for the offices of President and Vice-President of the United States. Nothing in the foregoing shall be construed as relieving broadcasters from the obligations imposed upon them under this Act to operate in the public interest. (Emphasis supplied).
>
> (2) The Federal Communications Commission shall make a report to the Congress, not later than March 1, 1961, with respect to the effect of the provisions of this joint resolution and any recommendations the Commission may have for amendments to the Communications Act of 1934 as a result of experience under the provision of this joint resolution.[5]

It was understood that the emphasized clause was a restatement of the warning to this same effect provided by the 1959 amendment to Section 315, and indeed, as an affirmation of the fairness doctrine.[6]

Many broadcasters who had argued for the permanent repeal of Section 315 saw the 1960 campaign as an opportunity to demonstrate their ability to operate with fairness in the absence of any specific regulation requiring equal time. Indeed, they had been warned by Congress (in

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[5]74 Stat. 554, Public Law 86-677, (August 24, 1960).

[6]This fact is particularly clear in the context of the report on the bill, although much of the report must be read to gain an insight regarding the consensus to this effect. See Senate Report No. 1539, 86th Congress, 2nd Session (1960), particularly pp. 5-6.

the opinion of the FCC's outspoken chairman, Newton Minow) that they were obligated to "provide full--and scrupulously fair--coverage of political candidates, even without a rigid equal opportunities requirement in the law."[7] To determine how well they met that obligation, the Senate created a three-man Subcommittee on Freedom of Communications to oversee the new amendments.[8] Again showing that the line between the "equal time" provisions of Section 315 and the notion of "fairness" had been blurred, the Congress noted (in establishing the new subcommittee) that it had "established a national policy of fairness and impartiality in the use by political candidates of communications media operating under government license."[9] Members of the subcommittee were Senators Gale McGee of Wyoming, Hugh Scott of Pennsylvania, and Ralph Yarborough of Texas as Chairman.[10] Immediately letters were written to all congressional candidates, to all candidates for state offices, and to all broadcasting stations throughout the country. Candidates were asked to report to the Subcommittee any acts of unfairness by broadcasters, and broadcasters were

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[7]Senate Report No. 994, 87th Congress, 1st Session, Part V (January 9, 1962), pp. 6-7.

[8]Senate Resolution No. 305, 86th Congress, 2nd Session (1960).

[9]Ibid.

[10]Senator Yarborough was the only dissenter from the Committee Report which urged temporary suspension of equal time provisions of Section 315.

told to report within twenty-four hours any complaint that was made directly to them. This applied not only to the endorsement of candidates by stations, but to complaints resulting from "the handling of political opinions, news, advertising and the presentation of political candidates" which occurred during the final three weeks of the campaign. In addition to keeping attuned to the situation by these direct communications lines, the Subcommittee received daily reports of complaints and inquiries about political broadcasting handled by the FCC. To round out the record, the Subcommittee held three days of hearings in March, 1961, to review representative fairness cases which had been brought to their attention in the preceding campaign. The report of the Subcommittee was a six-volume compendium which is probably the most complete study of the matter ever to be undertaken. It included the speeches of both candidates, reports of press conferences and incidental remarks of the candidates, transcripts of radio and television appearances, and study papers of both Nixon and Kennedy. Indeed, the report even contained the scripts of the network newscasts during the campaign period.[11]

In retrospect it seems that fairness complaints concerning editorial support for political candidates have been very few indeed. From 1949 until September, 1955, the FCC had not received even one complaint. Between

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[11]Senate Report No. 994, 87th Congress, 1st Session (1962).

September of 1955 and May of 1960, the Commission received only two complaints concerning fairness in the editorial endorsement of political candidates.[12] Although there have been more numerous complaints in recent years, the record has been rather good. When testifying before the Subcommittee, one FCC official emphasized that licensees are given a great deal of freedom. In the case where a candidate uses station facilities under the equal time law, he may use his time as he deems appropriate. On the other hand, if he were granted time under the provisions of the fairness doctrine, he must adhere to the issues, for the sole reason for this type of appearance is to balance the station's presentation on a particular controversial issue.[13]

At the conclusion of the hearings by the special Subcommittee, Senator McGee voiced some of the problems of fairness as they had been brought out in the record:

> The fairness doctrine still carries with it, as this record has been bringing out these past three days, no action that the Commission itself can take to bring redress of the grievance in short order; it is only in the ultimate judgment in the renewal of the license that they can find the facts; and the fact that the Commission in clarifying what its policy is . . . puts the station on notice so that there is always the element of willfulness later on, where the station had not been put on notice and claims surprise or, "We didn't know that is what you meant by your editorializing report." That is another story.[14]

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[12] Ibid. Testimony of Joseph R. Nelson, Chief of the Renewal and Transfer Division, Broadcast Bureau, Federal Communications Commission, pp. 625-626.

[13] Ibid., p. 71. [14] Ibid., p. 150.

Senator McGee seemed concerned that fairness cases should be handled as expeditiously as possible, but the Commission's work-load did not allow much beyond the query-and-reply procedure previously outlined.

The proposals contained in the final report of the Subcommittee were indicative that these three senators, at least, felt the need to strengthen the Commission's position in dealing with fairness offenders. Among other things, the Subcommittee recommended that the provisions of the Report on Editorializing be codified and made formal rule so that the FCC might then revoke the license of any station failing to comply with the rules. Further, it recommended that "absolute fairness" be the standard for broadcasters to follow in the treatment of editorial comment and reply thereto, and it recommended that in certain circumstances FCC examiners should hold "immediate" hearings in the field so that they might "perpetuate" the record of complaints, both under Section 315 and under the fairness doctrine. It was proposed that licensees should be required to "set in motion an effort to schedule the opposing viewpoint prior to the presentation of the original editorial discussion, rather than awaiting complaint or relying upon a blanket offer to anyone wishing to take issue" with the views.[15] The report of the Subcommittee then urged that the Commission be empowered to

[15]Senate Report 994 (Part VI).

directly intervene in programming decisions in editorial fairness cases.[16] Concluding its findings, the report urged that the suspension of Section 315 should not be made permanent, as many broadcasters had urged (and still urge). Reaching the heart of the problem of fairness and licensee responsibility, the report pointed out that the potential for grave abuse existed in many communities, and that this possibility existed primarily at the local level. Said the report,

> Grave questions arise as to whether licensees who exercise their editorial judgment, to the point of censorship of news of candidates and issues of which they disapprove, should continue to enjoy the privilege of a public franchise.[17]

Interestingly, some of the suggestions offered by Senator Yarborough's Subcommittee, although they may have seemed radical in 1961, have become reality in more recent years. One example of this is the codification of specific fairness rules by the Commission, particularly those involving personal attacks and the endorsement of candidates editorially.

There have been persistent efforts by broadcasters and others to repeal all or part of Section 315, and further efforts to strike down the fairness doctrine. With regard to Section 315, for example, in 1962 alone six bills were offered in the Senate which would have modified or repealed Section 315. Thus, in 1962 the Congress was again the

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[16] Ibid. [17] Ibid.

location of heated debate on equal time, the whole problem of editorializing, and the fairness doctrine. Although there was a general feeling that the 1960 experiment with the suspension of Section 315 had been a qualified success (for it appeared that presentations had been quantitatively balanced, at least) there was a general sense of uneasiness over giving broadcasters more freedom in this area. Senator Pastore, for example, pointed out that many people felt certain protections should be included in the law because "broadcasters in time could dominate the field and make personal selections of candidates if they were given the right to be too selective."[18] With this considerable conflict looming, the Communications Subcommittee of the Senate Commerce Committee held hearing on July 10-12, 1962 to again consider the possibility of amending the Communications Act. Senator John Pastore of Rhode Island was the chairman of the Subcommittee.

The major problem, it is clear, was what protection ought to be afforded to the minority ("third") parties in the event of repeal of the equal time requirements. Were they then to rely upon the fairness doctrine to give them voice on the airwaves? If past history had any lesson to

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[18]Hearings before the Communications Subcommittee of the Committee on Commerce, United States Senate, 87th Congress, 2nd Session, on S. 2034, S. 2035, S. 3434, S. J. Res. 193, S. J. Res. 196, and S. J. Res. 209 (July 10-12, 1962). Hereinafter cited as "Hearings on Political Broadcasting, 1962.").

offer, the fairness doctrine was too slow, too cumbersome, and in some cases, too much open to broadcaster abuse to be trusted as the sole protection for the individual with diverging views.

Again showing the commingling of the concept of Section 315's requirements and the requirements of the fairness doctrine, Senator Keating proposed that if Section 315 were to be repealed--which should be done only on a trial basis--that,

> I would hope that some kind of special committee and staff could be set up and should be set up by the FCC to follow the political broadcasts, and to deal swiftly and decisively with complaints about violations of the basic rule that requires fair treatment in the handling of political issues and news.[19]

Senator Joseph Clark of Pennsylvania pointed out that application of the equal time rule made stations reluctant to provide free time. In fact, he said, many stations seriously considered whether they wanted to sell time to candidates and then be required to provide time within their schedules for all the other candidates. And, since time is exceedingly expensive--particularly television time--the effect of Section 315 is to place more emphasis on the financial resources of a candidate than upon his views.[20]

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[19]Hearings on Political Broadcasting, (1962), p. 3.

[20]Ibid., pp. 7-8.

To protect the public (and individuals) in the event of the suspension of Section 315, many people, including Senator Clark, advocated stronger reliance on the Commission's fairness doctrine:

> I would rely, if that equal time requirement were suspended, on the fairness doctrine first promulgated in the Commission's report of editorializing by broadcast licensees in 1949, which is a general, broad, equitable principle of fairness, and I think this would be enough . . .
> . . . . . .
> From discussions with several of my colleagues who are running for reelection, I have gathered the point of view that some of them would oppose a blanket suspension of the equal time requirements for fear that they would not be given a fair break by broadcasters in their State. I don't share that fear. I am quite happy to leave this matter to the unilateral decision of the Pennsylvania Broadcasters, subject only to the fairness doctrine.[21]

But it was never intended by the Commission (or, for that matter by the Congress) that the fairness doctrine could or would replace Section 315's equal time requirements. Many of the Senators failed to perceive--and their misunderstanding persists to this day--that the fairness doctrine deals with issues, not candidates, and that under the provisions of the doctrine, it is the station which selects the spokesmen for the various points of view. It is quite possible under these circumstances that a candidate for office might not be chosen to present one side of a controversial issue, even if his opponent had presented the other side of the issue.

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[21] Ibid., pp. 10-11.

Broadcasters generally supported abolition or suspension of the equal time requirements of Section 315, but not if they were to be burdened with fairness as a law (rather than Commission policy). The main force of their argument in 1962 (and even in more recent hearings) was that public opinion is the best policeman for the broadcaster. Said Robert W. Sarnoff, Chairman of the Board of NBC:

> Mr. Sarnoff: Against any prospect of unfairness is not only the sense of responsibility of the broadcasters themselves, but the weight of public opinion which is so quickly and vigorously expressed. The same tradition of fairness and the same safeguard of public opinion would continue to operate in political campaigns in the absence of the arbitrary requirement of equal time.
>
> Senator Pastore: On this point, Mr. Sarnoff, what would be your opinion with reference to writing into the law a strong rule of fairness and at the same time an exemption with reference to the equal-time provision?
>
> In other words, eliminate the equal-time compulsion but write in a strong rule of fairness.
>
> Mr. Sarnoff: My offhand reaction, Mr. Chairman, is that I would prefer not to see a detailed fairness provision written into the act because I think it is likely to involve you in a great degree of administrative judgment. I think that the phrase "in the public interest" which in effect represents fairness, is adequate as it has been in the past.[22]

Mr. Sarnoff did not make it clear in what respect the public interest clause of the Act requires less administrative judgment than a proposed fairness law.

When FCC Chairman Newton Minow testified, he pointed out that the Commission did not favor any permanent repeal

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[22] Ibid., p. 64.

of Section 315, and that it did not relish the possibility of policing the problems of all the candidates on all the stations in the country. As things stood there were 409 complaints during 1961 concerning the fairness doctrine. These complaints involved such subjects as biased news programs, fluoridation of water, communism, medicare, and others. But in only the first six months of 1962 there were 418 matters involving fairness which came before the Commission's staff--a staff of two to handle all these complaints. Mr. Minow predicted that the total for 1962 would be double that of 1961. Thus the fairness doctrine had become an important regulatory provision indeed.[23]

What would be the effect of repealing the equal time clause and attempting to make the fairness doctrine a substitute? Said Chairman Minow:

> We think the fairness doctrine has proved to be satisfactory in handling the complaints which have arisen up to the present time in connection with broadcasting controversial issues.
> . . . . . .
> The uncertainty which the fairness doctrine would introduce [if Section 315 were to be repealed and the fairness doctrine made to substitute for it] would probably result in more complaints and disputes. Whereas the relatively precise standards of the equal opportunities provision have resulted in candidates knowing their rights and licensees their responsibilities, the more general standard of fairness will almost inevitably leave matters in doubt and lead to disputes and complaints.
> . . . . . .

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[23] Ibid., p. 155.

> We therefore believe there may be a question whether the "fairness doctrine," however salutary it might be in dealing with other controversial issues, is adequate to protect the rights of candidates and to assure that the public is fully informed as to candidates and issues through the widest possible radio and television coverage of primary and general election campaigns.[24]

The 1962 and 1964 Elections

Despite the continued pressure of broadcasters, particularly through the National Association of Broadcasters, Section 315 was not suspended for the 1962 elections. The parent Commerce Committee, meeting near the end of May, 1963, approved the same rules for the 1964 elections as had been in effect in 1960.[25] Despite the fact that the measure was passed by the House, there was substantial opposition. When the Senate Subcommittee on Communications conducted hearings in June, 1963, there was general agreement that if Section 315 were to be changed in any way, the fairness doctrine should receive a clearer restatement and reaffirmation from Congress. The new Chairman of the FCC, E. William Henry, expressed his idea that the Commission, possibly with Congressional guidance, should prepare and issue "in the form either of a primer or rules" a clarification of the Commission's fairness doctrine.[26]

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[24] Ibid., pp. 157-158.

[25] House Report No. 359, 88th Congress, 1st Session (1963).

[26] Hearings before the Subcommittee on Communications of the Senate Commerce Committee, 88th Congress, 1st Session, on Equal Time (1963), pp. 68-70.

It was in these Senate hearings that a death was reported and attributed to the fairness doctrine, no doubt the first and last death ever caused by the Commission's policies. It seems that WQXI, Atlanta, Georgia found itself involved in an incredibly complicated primary election. The station endorsed several candidates in 32 editorials, and broadcast 61 rebuttals. The "confusion and uncertainties" of the fairness doctrine allegedly caused "pressures and tensions" to rise at the station until the news director "suddenly dropped dead of a heart attack."[27]

Ultimately the Senate Commerce Committee voted to approve the narrowest of the equal-time bills which it had considered. The bill approved was only slightly different from the one passed by the House. Shortly the Senate passed the bill, but a Conference Committee was unable to reach agreement concerning the differences between the two approved versions of the bill. After a long delay, a compromise was effected, but the Conference Committee's report was rejected by the Senate in a 44-41 vote, and Section 315 was not suspended for the 1964 elections. Aside from the action of the Senate, it was evident that there was little enthusiasm on the part of the President to push the bill through, and it may be for this reason that it failed to gain the necessary support. Senator Goldwater, the Republican candidate

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[27]Ibid., pp. 124-129.

had been in favor of debating President Johnson, but Johnson had not made his views on the legislation known publicly.[28]

The very fact of the Congressional refusal to suspend Section 315 in the 1964 election brought about numerous fairness and equal-time complaints. In one case which had national impact, the Commission held that the networks were correct in refusing time to Senator Goldwater or to other candidates to offset the time used by President Johnson, who spoke on national television concerning several current news events. Johnson's speech was considered a bona fide news event, and was thus excluded from equal time requirements. The courts agreed with the Commission's finding, and the Supreme Court refused to review the decision.[29]

Hearings on Broadcast Editorializing

But despite the numerous Congressional hearings on Section 315, there were still more hearings in prospect. By July, 1963, it had become increasingly certain that Section 315 would not be suspended in time for the 1964 elections, and there was an increasing awareness that

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[28]See "No Relief from Equal Time in this Campaign," Broadcasting, August 24, 1964, pp. 70-72, and "Long, Hot Autumn," Broadcasting, August 24, 1964, p. 102 (Editorial).

[29]Goldwater v. FCC, cert. denied, 85 S. Ct. 169 (October 28, 1964).

nothing had really been done about the fairness problem. It seemed that Congress was somewhat uneasy about the problems of fairness with regard to the editorial endorsement of political candidates in the up-coming campaign, and it became clear that the issues of the campaign were likely to be the subject of a large number of editorials as well. It was thus almost inevitable that the fairness doctrine and the whole problem of political editorializing would become the subject of still more hearings. Broadcasters saw these new investigations as a threat to their editorial freedom--as many of them have always seen the fairness doctrine.[30] On July 15, 1963 the hearings began, conducted by Representative Walter Rogers of Texas, Chairman of the Subcommittee on Communications and Power of the House Interstate and Foreign Commerce Committee. Mr. Rogers pointed out at the outset that the purpose of the hearings was to determine whether additional legislation was needed; he showed his awareness of the scope of the problem and the thorny constitutional questions which might arise:

> The full protection of the constitutional rights of the public and the broadcasters will, of course, be primary in the mind of the Chair at all times as it will be in the minds of the members of the subcommittee.
>
> The question of editorializing has been discussed pro and con since the inception of radio and subsequently of television. The matter was brought into focus in the recent past in the actions of a

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[30]See "Broadcast Editorializing Under Attack," Broadcasting, (July 1, 1963), p. 48.

> Chairman of the Federal Communications Commission advocating editorializing by radio and television stations. Some station owners felt that this was a good policy and one that should be followed. Others, I am advised, felt that it was an infringement upon their freedom of action, that they and they alone should make the determination as to the editorial policies, and that their failure to editorialize should not be considered in the renewal of their licenses.[31]

Representative Robert Hemphill of South Carolina opened the hearings with a view which undoubtedly startled many broadcasters. He first stated his own position, then read a letter from a broadcaster which was decidedly not a typical view:

> I am against editorializing because it cannot but work a hardship either on the station, the Federal Communications Commission, the candidate, or the public. I quote from a letter from a broadcaster who is a friend of mine, though not in my district, which I think is significant. I have such confidence in the integrity of this man that I am sure that he speaks in the best interest of the industry:
>
> "You know, I mentioned to you when we had dinner together that the broadcaster who really editorialized would end up in trouble. The Federal Communications Commission has encouraged broadcasters to express opinions. At the same time, when someone raises objections, they start an investigation, and, as I told you, if you are going to be a successful editor, you have got to have opinions, you have got to express opinions, and, sometimes, must be for or against a given subject. Consequently, if it is desirable to have editorials on broadcast stations, then the broadcaster must be free to say what he likes, and not have either the Congress or the Federal Communications Commission on his back if he happens to take off on somebody's pet project.

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[31]Hearings before the Subcommittee on Communications and Power of the House Interstate and Foreign Commerce Committee, 88th Congress, 1st Session, on Broadcast Editorializing Practices, p. 2.

> So far as I am concerned, Bob, a law prohibiting broadcasters to editorialize would, generally, be a great relief to me, with the Federal Communications Commission saying that unless you editorialize you are not discharging the conditions of your licenses, and some Members of Congress who have been stepped on say, 'We don't like it.' My question is, where does the broadcaster stand? And I think you will agree it is not a particularly happy position."
>
> I have had numerous complaints in my office, most of them from people complaining of slanted editorials. If industry will not clean up the mess, it is up to us to clean it up, and I would endorse strong legislation to do away with broadcast editorializing for the benefit of all concerned.[32]

In contrast with this was the view of Congressman Durward G. Hall from Missouri, who said that "stations should have the right to editorialize, and . . . this right is basic to freedom of speech and freedom of the press."[33] He pointed out that if we hear an editorial with which we disagree, "The policy suddenly seems wrong. Perhaps in truth it depends on 'whose ox is being gored.'"[34]

But in a subsequent statement, Representative W. J. Bryan Dorn of South Carolina made it quite clear what his position was, and for whom he was speaking:

> Mr. Chairman, I am in favor of editorializing by the broadcasters of this country, both radio and television. I want the record to clearly show that I am unalterably opposed to censorship.
>
> Speaking in behalf of the broadcasters of my own congressional district and, I believe, the State of South Carolina, I feel that they have done a magnificent job. The broadcasters are usually small businessmen. They belong to the local civic organizations. They participate in local civic affairs. They have a stake in the local community and its progress. They belong to the church. They are patriotic. Most of them are veterans. As public-spirited American

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[32] Ibid., p. 4. [33] Ibid., p. 14. [34] Ibid.

> citizens, they are just as concerned about freedom of speech and the abuse of that privilege as any group in the United States.
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> As small businessmen in a very competitive field, they fear, more than anything else, arbitrary rules and regulations promulgated by the Federal Government, especially, the Federal Communications Commission. These broadcasters are looking to Congress as their representatives to save them from censorship, excessive harassment, and intimidation with reference to license renewals. They look to the Congress to preserve for them the right to editorialize.[35]

Representative Ralph Rivers of Alaska summed up the thoughts of many when he summed up his presentation:

> In conclusion, Mr. Chairman, it seems to me that the equal-time provisions regarding political candidates should be retained; that the reasonable opportunity concept or fairness doctrine needs strengthening and better enforcement by the FCC; and that clarified guidelines need to be enunciated and muscles provided to put those guidelines into effect.[36]

Later, Congressman Lionel Van Deerlin of California, who was himself once a broadcaster, requested that a constituent be given time to be heard. The witness was one Sherwood Gordon, of the Gordon Broadcasting Company of San Diego. He revealed himself as being almost totally unaware of his obligations under the fairness doctrine, but totally opposed to further regulation. He spoke of government censorship:

> The very fact that a hearing such as this is being undertaken is in itself a form of implied censorship that is bound to have a debilitating effect on the policies of certain stations now editorializing and a discouraging effect on those who have contemplated but have not yet begun to editorialize.[37]

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[35] Ibid., p. 15. [36] Ibid., p. 35. [37] Ibid., p.66.

Then, picking up a phrase first used by former FCC Chairman Newton Minow to describe television to a group of broadcasters, Gordon said:

> Gentlemen, if we are to scatter seeds upon the vast wasteland let us not begin by plucking what blossoms are beginning to appear. There are increasing numbers of us who, entrusted with an instrument for stimulating thought and molding minds, do, indeed, look beyond the narrow confines of our balance sheets. If you turn us back in our work, you will have succeeded in transforming the wasteland into a waste-of-time land.[38]

Questioning revealed that Gordon had not allowed others to express their views opposing his editorials unless they requested time. That is, he had not made an affirmative effort to balance the presentation because, as he put it, "I do not believe that I should water down my editorial content for someone who is the target of an editorial with equal time, unless they request it."[39] He characterized his editorials as "free-swinging," and the fairness doctrine as vague: "That is a very vague phrase, the fairness doctrine. What is fair to you may not be fair to me."[40]

After the tempest aroused by Mr. Gordon's sharp exchanges with the members of the Subcommittee, the testimony of FCC Chairman E. William Henry seemed quite restrained. Mr. Henry pointed out that the Commission's policy on editorializing rested not only on the statutory provisions of the Communications Act which gave the Commission general authority to regulate broadcasting, but

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[38] Ibid., p. 69. [39] Ibid., p. 71. [40] Ibid.

upon the Report on Editorializing issued in 1949 and the more recent report resulting from a 1960 en banc Commission hearing on programming practices:

> Mr. Bennett: So that you have no policy in this matter to go by as far as Congress is concerned, the policy that has been established for editorializing is one that has been established by the members of the Federal Communications Commission without any guidelines, without any authority, from Congress, itself. Is that not true?
> Mr. Henry: We have had no specific statutory enactment pertaining to this, that is true, but, as I pointed out, it goes back, in my view, to our 1960 programming statement which is a summary of our views which everyone, I think, in the broadcasting industry is fully aware of, that the basic duty of the broadcaster is to meet the needs and interests of his community.
> Generally speaking, one of those needs is usually the need to have controversial issues dealt with over the air and the right to editorialize is simply part of this overall question of dealing appropriately with issues of a controversial nature of public importance, and when you ask me if a broadcaster has a right to editorialize--
> Mr. Bennett: Right under the law is what I meant.
> Mr. Henry (continuing): Yes. I simply say that it raises a question and the Commission takes this position: Certainly that without regard to whether he does or not, he certainly has no right to editorialize unless he abides by our fairness doctrine and puts on contrasting viewpoints. He has no right, we are thoroughly in agreement, to take one position and then let all the other positions go by the board. Of that we are sure.[41]

Mr. Henry had earlier hinted at the possibility that it might be necessary in the very near future to issue a "primer" or some other guidelines for broadcasters concerning fairness, and that it might be necessary to adopt rules "perhaps with respect to limited aspects of the

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[41] Ibid., pp. 126-127.

fairness doctrine."[42] Although the primer was to be published in a relatively short time, the rules were not adopted until nearly four years later.

Later, Congressman John E. Moss of California was questioning Mr. Henry about why the Commission preferred not to have the Congress pass H.R. 7072, which Moss had introduced. The bill would have legislated fairness to a certain extent, and coupled fairness to equal time in some circumstances:

> Mr. Moss: What is your reluctance to have the Congress deal with this? It is a very important public question and this is the legislative body.
> Mr. Henry: Our only reluctance is, and I think Commissioner Ford wants to add his thoughts, and I will speak personally--my only reluctance is that it has connected with it such inherent difficulties that the likely outcome is to stifle programs dealing with controversial issues.
> Mr. Moss: Mr. Chairman, I think that is about as farfetched a reason as you could dig up.
> You would have to do a masterful job of excavating to find anything to match that. I think your policy would have as much chance of stifling as that which I propose. But I think one would insure there a degree of fairness the other one could not achieve.[43]

Others also felt that the FCC should police the problem of fairness, rather than Congress. This view was expressed by Daniel W. Kops of the National Association of Broadcasters.[44]

Representative J. Arthur Younger of California, in greeting Dr. Frank Stanton of CBS, harkened back to the testimony of Sherwood Gordon, the California broadcaster

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[42] Ibid., p. 125. [43] Ibid., p. 169.

[44] Ibid., pp. 209-210.

who had been heard previously. It was in this welcome that he admitted that fairness is not a problem for the majority of broadcasters:

> Mr. Younger: I am delighted of course, to welcome you, Mr. Stanton, back before the committee. As usual, you have delivered a very well phrased and well argued statement of your beliefs, and I find very little to differ with and I think, if all the broadcasters were Stantons, we would not need an FCC or any new laws; but unfortunately, that is not the case as evidenced by this hearing, because we had one of the broadcasters before us the other day who admitted on the stand that he had violated everything that you say the broadcaster ought to do. In other words, he editorialized and he took positions against candidates, and would not allow anyone to take the opposite view; he openly admitted.
>
> So it is not a question of the 90 percent of the broadcasters that do a good job and carry out all of these fine, ethical statements which you make, but there are broadcasters who do not want to conform, just the same as there are other members of our society who do not like to conform to the law that you should not steal and other crimes that we have to legislate and pass laws against. That is the problem which confronts us, and I am glad to notice your statement here, about the absolute free play and the expressions of opinions and the admonition not to condemn opinions. I would judge you don't have a great deal of sympathy with these people who complain about the lunatic fringes and fright peddlers, and so forth, because that doesn't add much to the general understanding of the problem.[45]

The hearings continued until Friday, July 19, 1963, at which time they were suspended until the middle of September.

During the long recess, the First National Broadcast Editorial Conference was held at Athens, Georgia, with Chairman Oren Harris delivering the Keynote address.

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[45] Ibid., p. 276.

His speech (later printed in the Congressional Record) indicated that he felt it necessary for Congress to legislate some fairness rules, despite the fact that it might be hard to reach agreement on what they might be. He envisioned rules which would cover all types of editorials, rather than the mere political editorializing which had been under consideration at the House hearings.[46]

Advice from the Commission

In the meantime, however, there had been considerable action at the offices of the Federal Communications Commission, for on July 26, 1963, the Commission issued a public notice which "advised" licensees concerning their responsibilities under the fairness doctrine as to programming concerning controversial issues. The document, which touched off a remarkable stir among members of Congress and broadcasters, explained the application of the fairness doctrine to three situations: 1) personal attacks, 2) broadcasts supporting or opposing political candidates when a spokesman for the candidate is involved, and 3) use of a broadcast station for presenting views "regarding an issue of current importance such as racial segregation, integration, or discrimination, or any other issue of public importance.[47]

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[46]109 Cong. Rec. 13849-13851 (July 31, 1963).

[47]Broadcast Licensees Advised Concerning Stations' Responsibilities Under the Fairness Doctrine as to Controversial Issue Programming, FCC Public Notice, FCC 63-734, 38372, 28 Fed. Reg. 7962 (1963).

The document is significant because it outlines procedures which were to become more or less standard in later years as subsequent cases developed the need for clearer guidelines concerning fairness. In the case of personal attacks, for example, the licensee was required to notify the person attacked and supply him with a text of the attack, and offer time for an "adequate response." In the case of political candidates who were opposed or endorsed, the broadcaster was required to send a transcript of the broadcast to the candidates concerned, and offer a comparable opportunity for a spokesman to present an opposing view. The station was required to offer similar opportunities to all responsible groups in the community when it editorialized concerning a controversial issue.[48] The intention of the Commission, said the document, was to prevent the suppression of viewpoints by licensees, not to restrict the freedom of the broadcasters to editorialize. This protection of the public's right to hear all sides was required in the public interest, said the Commission.

The requirements immediately drew fire from the National Association of Broadcasters, which prompted the FCC to modify its position: henceforth "other" groups, rather than "all other" groups would be offered time to present contrasting (rather than merely opposing)

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[48] Ibid.

viewpoints.[49] Why had the Commission issued such a controversial document? The real answer was not made clear until early September when FCC Chairman E. William Henry explained that it was a response to pressure from members of the House Subcommittee which urged the Commission to supply licensees with clearer guidelines with regard to the fairness doctrine. At the same time, the issue of whether a person or group which is attacked on the air should have to pay for time to reply came up. In still more Congressional hearings, this time in the Senate, Mr. Henry engaged in this colloquy with Senator Pastore:

> Senator Pastore: If a group is able to come up with the cash and buy time to saturate the public airways . . . I think that under the fairness doctrine, the opposing side ought to be given some time to at least bring to the attention of that same public, the other side of the issue.
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> . . . . . .
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> Mr. Henry: I would agree with you, and I think this is the approach the Commission has usually taken. The only thing I am unable to do is say that there will be a majority of Commissioners that will agree.
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> Senator Pastore: I am saying whether you agree with the proposition or not, I think the American public is entitled to both sides of the issue and whether one side is rich or the other side is poor has nothing to do with it.[50]

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[49]See NAB Letter to the FCC (August 29, 1964), (mimeo), and FCC Letter to the NAB (September 18, 1963), FCC 63-850, 39636.

[50]Hearings before the Subcommittee on Communications of the Senate Commerce Committee, 88th Congress, 1st Session, on Alien Amateur Radio Operators and Change in FCC Procedure (1963), pp. 132-138.

This was similar to the issue that was later to be raised in the now-famous Red Lion case.[51] The issue received more immediate clarification in a Commission letter to the Cullman Broadcasting Co., Inc. If a controversial issue is first raised in a sponsored program, the Commission said, a licensee is not relieved of his responsibility to present contrasting viewpoints by virtue of the fact that he cannot find a sponsor willing to pay for their presentation. The selection of a spokesman for opposing viewpoints was still up to the station, so long as the broadcaster had been able to reach the honest conclusion that his audience had been offered a spectrum of contrasting opinions.[52]

But these clarifications of the Commission's position of fairness raised even more dust on Capital Hill: House Commerce Committee Chairman Oren Harris wrote to the Commission and took issue with the FCC's interpretation of the Communications Act, and reminded the Commission that its authority was limited to periodic review of licensee performance, not meddling with the program policies. The Commission replied that unless fairness complaints were handled at the time they were made, licensees might feel "ambushed" when they were called

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[51] Red Lion Broadcasting Company, 1 FCC 2d 1587 (1965) 381 F(2d) 908 (1967).

[52] Letter to Cullman Broadcasting Co., Inc., FCC 63-849, 25 RR 895 (1963).

upon to account for their actions at renewal time. Furthermore, said the Commission's letter, the public interest required timely viewpoints on controversial issues. And, said the letter, the history of the application of the fairness doctrine had amply proven that it did not result in "improper intrusion into the area of programming judgment reserved for the licensee."[53]

As this exchange of correspondence was taking place, the hearings on the Moss Bill (which had been recessed between July 19 and September 18) reconvened. The first day's hearings produced a new exchange of views which foreshadowed the subsequent controversies about the application of the fairness doctrine to sponsored programs. One Gerald Sanders, owner of KZZN in Littlefield, Texas said:

> Let me give you a specific example of what I mean: My station carries, on a commercial basis, the program called "Lifeline." This program does not necessarily express the editorial opinion of KZZN. We clearly identify the program as commercial each time it is run.
>
> Recently, this program urged that the pending nuclear test ban treaty not be approved by the Senate. Other licensees who carry this program and myself received a letter from an organization known as the Citizens Committee for a Limited Nuclear Test Ban Treaty, demanding equal time for a reply to this program.
>
> I called the National Association of Broadcasters office and asked their advice on this matter. I was advised that, as a practical judgment, I should grant this request.
>
> Since the letter from the Committee for a Limited Nuclear Test Ban Treaty quoted the recent FCC fairness decree, and since the present national administration was definitely pushing for the passage of

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[53]FCC Letter to Oren Harris (September 20, 1963) 3 RR 2d 163.

> this treaty, I granted the request and broadcast the program.
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> I shall admit that a certain amount of fear precipitated this decision on my part. It seems that we are urged to editorialize and present controversial programs, but, when we are in disagreement with the administration, we must submit to a fairness doctrine which says that we must give free time on our broadcast stations to reply to persons who paid to express their opinions.[54]

All this apparently took Mr. Younger of California aback, for he drew a broad conclusion which seems not entirely warranted:

> Mr. Sanders, I was quite taken back and surprised at your statement about the National Association of Broadcasters advising you to give free time to answer a paid advertiser. I have never heard the fairness doctrine applied to commercial business. If that is going to be followed to its logical conclusion, if you put on Ipana toothpaste, you would have to give Pepsodent toothpaste free time.[55]

Apparently Congressman Younger felt strongly about this subject, for he later introduced a bill which would have legislatively nullified the Commission's decision in the Cullman case.[56]

The feeling emerged from the final days of hearings that the fairness rules were not sufficiently clear to broadcasters, despite the July fairness statement by the Commission. The requirements of the doctrine were seen as foggy and imprecise, and it was hinted that Congress might indeed write a fairness law. But the hearings

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[54]Hearings on Broadcast Editorializing, op. cit., pp. 340-341.

[55]Ibid., p. 350.

[56]H.R. 9158.

ground to a conclusion on September 20, 1963 without any legislation resulting, although plans were made to hold still more hearings during the 89th Congress, exclusively on the fairness doctrine.

Commission Action on Fairness

Meanwhile, at the offices of the Commission, considerable implementation of the fairness doctrine had been going on. Some of the administrative actions of the Commission merely reaffirmed what had transpired in previous decades. For example, the decision in the Paul E. Fitzpatrick case of 1949 was reaffirmed and re-explained in the case of the California Democratic State Central Committee.[57] But in other cases in the decade of the 1960's, the Commission broke new ground. One broadcaster was told, for example, that he could not simply declare an issue non-controversial in his service area if one side of the issue had been presented on a network program. Public opinion develops, said the Commission, from a fair presentation of all facts and arguments on a particular question.[58]

One of the most complicated and significant cases dealt with by the FCC in this period was the case concerning

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[57] California Democratic State Central Committee, Public Notice 95873, 20 RR 867, 869 (October 31, 1960).

[58] In Re The Spartan Radiocasting Co., 33 FCC 765, 771, 794-795, 802-803 (November 21, 1962).

"Living Should Be Fun," a sort of health and nutrition program broadcast by Dr. Carlton Fredericks (Ph.D.) on many stations. The program was syndicated (distributed on tape to many stations for commercial sale to local sponsors), and frequently dealt with controversial issues such as fluoridation of water supplies, the value of Krebiozen in the treatment of cancer, the value of vitamin supplements, and others--yet Fredericks often said that those with opposing views could appear with him on the program. Could licensees depend on this offer as a discharge of their obligations under the fairness doctrine? No, said the Commission:

> Likewise, those licensees who relied solely upon the assumed built-in fairness of the program itself, or upon Fredericks' invitation to those with opposing viewpoints, cannot be said to have properly discharged their responsibilities. Neither alternative is likely to produce the fairness which the public interest demands. There could be many valid reasons why the advocate of an opposing viewpoint would be unwilling to appear upon such a program. In short, the licensee may not delegate his responsibilities to others, and particularly to an advocate of one particular viewpoint. As we said in our "Report in the Matter of Editorializing [sic] by Broadcast Licensees," "It is clear that any approximation of fairness in the presentation of any controversy plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints." Even the taking of a positive role will not always insure that all viewpoints opposed to Fredericks would present such views on his station, but that these individuals refused to participate when threatened with litigation if they did so.[59]

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[59] Report on "Living Should Be Fun," 33 FCC 101, 107, 23 RR 1599, 1606 (July 18, 1962).

Another case which came to the Commission's attention concerned a program called "Communist Encirclement," which, among other things, alleged that the government was infiltrated by communists, and that the moral weakening in our schools, homes, and churches has contributed to the advance of international communism. The station said that it could not present any opposing views, since it did not know of any Communists or communist organizations in its community to which it could offer time. The Commission held that although it did not intend to require licensees to make time available to "communists or the communist viewpoint," people other than communists might hold contrasting views which should be presented.[60]

Three 1962 cases formed the basis for the Commission's policy on personal attacks in general form. These decisions (Billings Broadcasting Co., Clayton W. Maypoles, and Times-Mirror Broadcasting Company)[61] established that the licensee is required to supply copies of the attacks to the person who is the target, and must make available time for an adequate response. The commission pointed out in the Times-Mirror case that the ruling was rather limited in nature: "The Commission's ruling, however,

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[60] FCC Staff Letter to Tri-State Broadcasting Co., (April 26, 1962).

[61] Billings Broadcasting Co., 23 RR 951 (1962); Clayton W. Maypoles, 23 RR 586 (1962); Times-Mirror Broadcasting Co., 24 RR 404 (1962).

must be construed in the context of the facts giving rise thereto."[62] In the years between 1962 and 1966, however, subsequent public notices[63] and declaratory rulings[64] passed upon particular questions which developed.

The Fairness Primer

With the rapid development of the fairness doctrine and the relatively large number of declatory rulings--as well as continuing pressure from Congress and from broadcasters--the Commission felt obligated to more fully inform licensees and members of the public at large about the fairness doctrine. Thus, on July 1, 1964, the Commission issued a public notice entitled Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,[65] which soon became known as the

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[62] Times-Mirror Broadcasting Co., 24 RR 404, 406.

[63] Stations' Responsibilities Under Fairness Doctrine as to Controversial Issue Programming, 28 Fed. Reg. 7962 (1963); Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10416 (1964).

[64] Red Lion Broadcasting Co., 1 FCC 2d 1587 (1965) (a station cannot condition the right to reply upon willingness or ability of the individual attacked to pay for time) Springfield Television Broadcasting Corp., 4 RR 2d 681 (1965) (licensee must make a specific offer of reply time to the person or group attacked); George E. Borst, 4 RR 2d 697, 700 (1965); Capitol Broadcasting Co., 2 RR 2d 1104 (1964) (a station cannot rely on network programming to afford reply time for personal attacks broadcast by the station); Letter to Douglas A. Anello, 25 RR 1900b (1963) (the personal attack principle applies even if the licensee is not "personally involved").

[65] Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, FCC 64-611, 53162 (B), 29 Fed. Reg., pp. 10415-10427 (1964).

"fairness primer." This document was a summary of the Commission's philosophy concerning the fairness doctrine, and a compilation of representative rulings on many types of fairness problems. The important ramifications of the Cullman case, the Billings case, "Living Should Be Fun," Paul E. Fitzpatrick, Times-Mirror, and others were discussed and explained. Significantly, in its introductory section, the Commission cited the legislative basis for the fairness policies of the FCC. While pointing out that the basic administrative action concerning fairness was the 1949 Report on Editorializing, the Commission saw Congressional sanction:

> Congress recognized this policy in 1959. In amending Section 315 so as to exempt appearances by legally qualified candidates on certain news-type programs from the "equal opportunities" provision, it was stated in the statute that such action should not be construed as relieving broadcasters ". . . from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." . . . The legislative history establishes that this provision "is a restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934."[66]

While many broadcasters saw the fairness primer as a helpful clarification, there were, no doubt, others who felt that the Commission was thus formalizing a doctrine which was of doubtful constitutionality at best, and certainly an incorrect interpretation of the will of Congress.

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[66] Ibid., at 10416, Part I.

These two points have been the thrust of anti-fairness arguments since the doctrine was first promulgated.

Aside from the continuing conflict concerning the fairness doctrine itself, it became evident soon after the publication of the fairness primer that the document would not solve all the problems of the industry. Fairness complaints multiplied, but it is unclear whether this was because of increased public awareness of the doctrine or because more broadcasters were using their right to editorialize. For its part, the Commission continued to encourage editorializing. It will be recalled that the 1949 Report on Editorializing (which reversed the prohibition against editorials) merely allowed that such use of a broadcaster's facilities, within limits and subject to the requirements of fairness, "is not contrary to the public interest."[67] But the 1960 Network Program Inquiry Report indicated that this was one type of programming which the Commission looked favorably upon.[68] And in 1962, broadcasters heard the Chairman of the FCC say,

> While the Federal Communications Commission wants to encourage editorializing, we do not say you must editorialize. Nor, since 1949, do we say you must not editorialize.

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[67] Report on Editorializing, op. cit., 13 FCC at 1253.

[68] Network Programming Inquiry, Report and Statement of Policy, 25 Fed. Reg. 7291, 7295 (1960).

> But the day is coming when the broadcaster who aspires to stature and influence in his community will have to see, hear and speak about evil. He will not be able to plead that he does not have the staff to find out what's going on in front of his microphone and his lens.[69]

Cases

Many of the cases which came before the Commission in the early 1960's were relatively unimportant in that they broke no new ground. Others were more important because they served to clarify the Commission's views rather than because of any new development of the fairness doctrine itself. One such case was initiated by the complaint of avowed atheist Mrs. Madalyn Murray. She had asked the Commission to require numerous stations in Hawaii to allow her to broadcast programs about "free-thought" which she described as the "anthesis" of religion. She asked the Commission to require stations to give her free time or to sell her time at the "preferential rate" given to religious speakers, and based her petition on the provisions of the fairness doctrine. Of course, the FCC had long since disposed of the religion-atheism conflict in the famous Scott decision (which was discussed in a previous chapter). The Commission took the position that "mere carrying of a religious broadcast does not, in and of itself, mean that one side of a "controversial issue

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[69]Speech before the National Association of Broadcasters Conference on Public Affairs and Editorializing, (March 1, 1962), p. 5.

of public importance was presented."[70] This was not new, for there had been other cases which affirmed the principle.[71] But the local stations of which Mrs. Murray had complained had replied mainly that they had not found among their listeners any great desire to have "free-thought" programs presented. With this, one Commissioner pointed out that Mrs. Murray's complaint fell not within the province of the fairness doctrine, but within the province contemplated by the 1960 Programming Statement, which said that program judgments must be made by the licensee after an effort to determine the needs and desires of his community.[72]

Religion entered into another decision in this decade--a decision which has, at this writing, not been entirely resolved. The initial action came upon a request for transfer of control in station WXUR in Media, Pennsylvania (near Philadelphia) from George E. Borst, et. al. to Faith Theological Seminary, a conservative organization headed by Dr. Carl McIntire (see McIntire v. William Penn Broadcasting Co., op. cit.). Numerous civic and religious groups protested the transfer, claiming that the previous actions of Dr. McIntire made him unfit to be a licensee.

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[70]Mrs. Madalyn Murray, 5 RR 2d 263 (1965).

[71]See the Scott Decision, op. cit., as well as Zorach v. Clauson, 343 U.S. 306, 313. Letter to Edward J. Heffron, 3 RR 264a (1948), Letter to Robert H. Scott, 25 RR 349 (1962).

[72]Mrs. Madalyn Murray, op. cit.

Many people assured the Commission that he would likely be unfair in his treatment of religious issues because of his strong and militant beliefs. He was characterized by one of the objecting parties as "manifestly irresponsible, vitriolic, abusive, divisive, prone to distortion of the truth, and actively antagonistic to every reasonable effort towards civic harmony."[73] But the Commission did not deny him a license, for it felt that what he was "likely" to do with the problem of fairness could not be judged in advance. It cautioned that his license would be treated as all others were, and that his performance as a licensee would be examined at the normal three-year renewal interval. Accordingly, a license was granted to Faith Theological Seminary to operate WXUR in 1965. As this is written in 1968, the license renewal of WXUR has been the subject of lengthy hearings, based primarily upon alleged violations of the fairness doctrine. The hearings continue both in Washington and in Media, and it is unclear when or if WXUR's license will be renewed.

Three Important Cases

There remain but three cases to be discussed, but these cases, which are all from relatively recent years, distill the issues concerning the fairness doctrine and combine in rare measure those conflicts between the

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[73] In re Application of George E. Borst, et. al., FCC 65-207, 64420, 4 RR 2d 697, 704 (April 7, 1965).

rights of an individual in a free society and the governing body of that society which are the essence of modern man's search for a workable combination of freedom and civilization. It is thus prudent that these cases be discussed in some detail. The cases in point are Red Lion Broadcasting Company (WGCB), Radio and Television News Directors Association, and WCBS-TV (application of the fairness doctrine to cigarette advertising).

Red Lion is a quiet town near York, Pennsylvania. One of the more famous citizens of Red Lion is the Reverend John M. Norris, a white-haired Bible Presbyterian minister who also owns the majority of the stock in the Red Lion Broadcasting Company (WGCB). Much of his station's programming is religious, and frequently of a very conservative bent. Several ministers purchase time on the station to broadcast their widely syndicated taped programs. It was on one of these taped religious broadcasts that Red Lion's long legal battle began. As a part of the "Christian Crusade" program, the Reverend Billy James Hargis on November 27, 1964 made certain remarks concerning one Fred J. Cook, author of a book entitled Goldwater--Extremist on the Right:

> Now who is Cook? Cook was fired from the New York World-Telegram after he made a false charge publicly on television against an unnamed official of the New York City government. New York publishers and Newsweek magazine for December 7, 1959, showed that Fred Cook and his pal Eugene Gleason had made up the whole story and this confession was made to the District Attorney, Frank

> Hogan. After losing his job, Cook went to work for the left-wing publication, The Nation. . . . Now among other things, Fred Cook wrote, for The Nation was an article absolving Alger Hiss of any wrong doing . . . there was a 208 page attack on the FBI and J. Edgar Hoover; another attack by Mr. Cook was on the Central Intelligence agency [sic] . . . now this is the man who wrote the book to smear and destroy Barry Goldwater called Barry Goldwater--Extremist of the Right [sic].[74]

The program was carried by a number of stations, many of which received a letter from Mr. Cook inquiring about the program, and requesting time for reply.[75] On December 19, 1964, WGCB received Mr. Cook's letter asking if the program had, in fact, carried remarks against him, and requesting time for reply at WGCB's expense if the remarks had been broadcast. Nine days later, WGCB replied, sending Mr. Cook its rate card so that he could arrange to purchase time for his response. On December 31, Mr. Cook wrote a second letter to the station, saying that he would not pay for time to reply, and on January 7, 1965, WGCB responded, inquiring whether Mr. Cook was unable to pay for the time, and offering time on an unpaid basis if Mr. Cook would declare himself unable to afford the few dollars required to sponsor his own response. It was at this point that the conflict escalated considerably, for Mr. Cook complained to the Federal Communications Commission. This began a flurry of

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[74] Red Lion Broadcasting Co. v. FCC, 381 f(2d) 908, 910.

[75] See letters from the Commission to several of these licensees, 1 FCC 2d 929-937.

correspondence between the Commission and WGCB, which is included in Appendix B both for its relevance to this particular case and because it is illustrative of the procedure followed by the FCC in cases of this sort. Some readers may find it helpful to review this correspondence before proceeding further.[76]

Despite the considerable protests of WGCB, the Commission ruled that the station was required, under the terms of the fairness doctrine, to provide free time for Mr. Cook's response. Red Lion then decided to appeal the Commission's decision in the courts, and the case of Red Lion Broadcasting Co., et. al. v. Federal Communications Commission and United States of America was filed in the United States Court of Appeals in the District of Columbia. At the outset, the parties stipulated the issues to be presented to the court. The issues thus carved out faced the constitutional questions concerning the fairness doctrine squarely:

> 1. Whether Section 315 of the Communications Act of 1934, as amended in 1959, adopted the Commission's "Fairness Doctrine" as set forth in the Commission's 1949 Report, Editorializing by Broadcast Licensees, and if so, whether Section 315 constitutes an unconstitutional delegation of Congress' legislative function.
> 2. Whether the Fairness Doctrine, as set forth above, is unconstitutionally vague, indefinite, uncertain and lacks the precision required when legislation which affects the basic freedoms guaranteed by the Bill of Rights is adopted.
> 3. Whether Section 315, as stated in (1) above, violates the ninth and tenth amendments to the Constitution.

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[76]See page 275.

> 4. Whether the Fairness Doctrine violates the first and fifth amendments to the Constitution and, particularly, whether under the facts of this case the requirement that a broadcaster may not insist upon financial payment by a party responding to a personal attack violates the first and fifth amendments to the Constitution.[77]

The case was argued on September 26, 1966, and a decision was not handed down until June 13, 1967. Judge Tamm wrote the opinion, with Judge Fahy concurring, and Judge Miller of the three-judge court not participating. Judge Tamm began his opinion with a lengthy consideration of the fairness doctrine, tracing it from Great Lakes through Trinity Methodist Church South, KFKB, Young Peoples Association for the Propagation of the Gospel, WBNX, Scott, and Mayflower--all hereinbefore cited and discussed. He then traced the doctrine from the 1949 Report on Editorializing through Lar Daly, Clayton Maypoles, Billings Broadcasting Company, and the fairness primer, also discussed at some length herein. Tamm's opinion then addresses itself to the issues at bar: Did Section 315 adopt the fairness doctrine via the 1959 amendments? Did Section 315 constitute an unconstitutional delegation of powers of Congress? The Court said:

> Within the framework of 47 U.S.C. 151-319 (1962), I find a full and complete determination of the legislative policy and its formulation and promulgation as a defined and binding rule of conduct. Relating these specifically to the provisions of Section 315, I find in this portion of the statute a permissible delegation to the Commission of the

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[77] Red Lion Broadcasting Co. v. FCC, 381 F(2d) 908, 910.

> "determination of facts and the inferences to be drawn from them in the light of the statutory standards and declarations of policy" properly and legally empowering "the exercise of judgment." This allowable assignment of authority and responsibility, Fairness Primer, 29 Fed. Reg. 10415, constitutes a valid and proper formation of subsidiary administrative policy within the prescribed statutory framework.
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> . . . . . .
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> Since the "public interest" is by statute and court decision a valid standard for the Commission's guidance, I find the necessary precision required . . . in the situation arising in the present case. I conclude that the adoption by Congress of the Commission's Fairness Doctrine in its 1959 amendment of section 315 of the Communications Act of 1934 does not constitute an unconstitutional delegation of Congress' legislative function.[78]

But is the fairness doctrine unconstitutionally vague, indefinite, uncertain and/or lacking the precision which legislation affecting the basic freedoms guaranteed by the Bill of Rights requires? Judge Tamm summed up Red Lion's argument:

> Claiming violation of their constitutional rights under the first and fifth amendments to the Constitution, petitioners argue that in applying the Fairness Doctrine to them, the Commission, having failed first to ascertain the truth of Cook's charges against them but requiring them, nevertheless, to afford Cook free time to reply to the Hargis broadcast, is abrogating their right to free speech in the dissemination of truth, if the Hargis charges against Cook are, in fact, true. Continuing their argument to the allegation of a due process infringement, petitioners contend that the vagueness in the Fairness Doctrine, as it is herein invoked against them, violates the first essential of due process of law in violation of the fifth amendment.[79]

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[78] Ibid., at 922.

[79] Ibid., at 923.

The Court then cited a principle and applied it to the specific problem here involved, the fairness doctrine:

> It appears to be well documented, then, that because of its unique characteristics the courts have consistently held that regulatory action by the Commission acting within the framework and provisions of the statutes embraced in Title 47 U.S.C., does not per se violate the first amendment.
>
> Looking specifically to the actual operation of the Fairness Doctrine as applied to these petitioners in this present case, I observe, first of all, that petitioners are not prohibited from broadcasting any program which petitioners think suitable. Moreover, petitioners are not furnished with a mandatory program format, nor does the Doctrine define which if any, controversial issues are to be the subject of broadcasting. The latitude of petitioners' operation of their station insofar as programming is concerned is limited only by petitioners' discretion and good faith judgment. See Commission's Policy on Programming, 20 P & F Radio Reg. 1901 (1960) and the Report, supra.
>
> The Fairness Doctrine impact arises, then, when in petitioners' exercise of their own judgment, they broadcast a program dealing with controversial issues of public importance. After having independently selected the controversial issue and having selected the spokesman for the presentation of the issue in accord with their unrestricted programming, the Doctrine, rather than limiting the petitioners' right of free speech, recognizes and enforces the free speech right of the victim of any personal attack made during the broadcast. Such an attack, the Doctrine directs, necessitates the petitioners' affording the maligned victim an opportunity to respond. Does such an obligation arising under these conditions deprive petitioners of any right guaranteed by the first amendment? I think not.[80]

Judge Tamm was not influenced by Red Lion's contention that the Commission must rule on the truth or falsity of Cook's claim. He cited a case in which the court

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[80] Ibid., at 923-924.

discussed the problem of freedom of speech and censorship:

> My conclusion in this regard is uninfluenced by petitioners' contention that the Commission in some manner has an obligation to first ascertain whether the complaint made to the Commission by Cook was "in fact true or false." There is, of course, no statutoty requirement for such a finding. Additionally, it is my view that any attempt by the Commission to make factual determinations of truth or falsity in controversial issues of public interest would constitute an illegal exercise of a nonexistent authority. The basic concept of free speech is unfettered by any requirement that it be exercised only by those with a "right" viewpoint:
>
> "Accordingly a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. New Hampshire, supra, pp. 571-572 [315 U.S. 568, 62 S. Ct. 766, at page 769, 86 L. Ed. 1031], is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminiello v. City of Chicago, 337 U.S. 1, 4, 69 S. Ct. 894, 896, 93 L. Ed. 1131 (1948).
>
> I reject the suggestion that the Commission has either the obligation, or even the authority, to make determinations of the right or wrong in factual disputes involving controversial issues of public interest.[81]

In passing, it is interesting to note that Judge Tamm perceived the fairness doctrine as "affording the maligned victim an opportunity to respond."[82] But the

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[81] Ibid., at 924-925.

[82] Ibid., at 924.

Commission has consistently added to this interpretation another premise, perhaps equally important: It is the right of the public to be informed of all sides which has as its consequence the right of the victim of an attack to give his views.

The Court found it difficult to specifically articulate the thrust of the Red Lion argument concerning the fifth amendment. It found the statutes and the doctrine specific enough, and found that men of "common intelligence" would not have to guess at their meaning and interpretation. Finally, said the decision, "The petitioners are not deprived of due process by the operation of the Fairness Doctrine." The right of court appeal of Commission decisions was specifically pointed out by the decision.[83]

But does the fairness doctrine not restrict the broadcaster in his political activity? Judge Tamm had difficulty in understanding Red Lion's claim on this point. He cited the Commission's brief on this matter:

> The Commission, in supporting its action in this case, construes petitioners' challenge under this point as being addressed to its requirements imposed on the licensees after the personal attack, with special reference to the mandated granting of cost-free time to the victim to respond as his financial circumstances require. If this is the thrust of petitioners' charge, I readily agree that the compulsory granting of free time may, and probably does, impose a burden on the licensees. This burden, however, is not an unreasonable one. The

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[83] Ibid., at 925.

> broadcasters' licenses are issued upon a finding by the Commission that the public interest will be served thereby, and thus, the licensees accept the responsibility of discharging what is in actuality their public trust. There remains to the licensee the right, in the exercise of good faith discretion, of utilizing a paying spokesman to respond to a personal attack if one is available. But:
>
> . . . Where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, has not presented (and does not plan to present) contrasting viewpoints in other programming, and has been unable to obtain paid sponsorship for the appropriate presentation of the contrasting viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the licensee--and thus leave the public uninformed--on the ground that he cannot obtain paid sponsorship for that presentation. (Emphasis in original). Cullman Broadcasting Co., Inc., 25 P & F Radio Reg. 895, 896 (1963).
>
> I conclude that there is no abridgement of petitioners' rights in the application of the Fairness Doctrine to their activities in this case.[84]

Judge Tamm saw little merit in the notion that the Fairness Doctrine somehow abridged Ninth Amendment freedoms. He quoted Mr. Justice Stewart who said in an earlier case, "but to say that the Ninth Amendment has anything to do with this case is to turn somersaults with history."[85]

One of the main arguments against the fairness doctrine in Red Lion (and in subsequent cases, for that matter) is that it abridges First Amendment Freedoms. Red Lion claimed that the doctrine places a condition on the broadcaster's right to editorialize and speak out: he must grant free time to others to express opposing views.

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[84] Ibid., at 926.

[85] Ibid., at 927; quoting Griswold v. State of Connecticut, 381 U.S. 479, 529.

And, as many cases already cited herein have pointed out, the government cannot attach conditions to the free exercise of a constitutionally guaranteed freedom. Further, said Red Lion, the fairness doctrine creates "previous restraint [and the] fear of subsequent punishment" through danger or threat of forfeiture of the license.[86] But Judge Tamm did not agree. He found no prior or previous restraint, and no scrutiny of editorials or other material prior to broadcast--the test of whether censorship exists.[87] Said the judge,

> I conclude that there is no abrogation of the petitioners' free speech right. On the contrary, I find that the conduct of the petitioners absent the remedial procedures afforded the complainant Cook would, in fact, constitute a serious abridgement of his free speech rights. I find in the Fairness Doctrine a vehicle completely legal in its origin which implements by the use of modern technology the "free and general discussion of public matters [which] seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens," Grosjean v. American Press, supra, 927 U.S. at 249, 56 S. Ct. at 449, 80 L. Ed. 660. Having found no violation de jure or de facto of petitioners' rights, I am absolved from further consideration, at least in this case, of the reasons advanced by the Commission for the existence of the doctrine . . .[88]

Thus ended the first phase of the Red Lion case, which (for the first time) faced the constitutional problems of fairness squarely. The Commission was found to be quite correct in its formulation, interpretation, and administration of the doctrine so far as the facts of

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[86] Ibid. [87] Ibid., at 929.

[88] Ibid., at pp. 929-930.

this case were concerned. Red Lion has indicated that it will appeal to the Supreme Court, and certiorari has been granted. The Supreme Court, however, has declined to hear the case immediately. It has been deferred until one other case is resolved in the Seventh Circuit Court of Appeals in Chicago--the case of Radio and Television News Directors Association v. Federal Communications Commission, which is about to be argued as this is written. (This case is hereafter referred to as RTDNA).

The RTDNA conflict began in 1966 when, on April 6, the Commission issued a notice of proposed rulemaking looking toward adoption of certain personal-attack and political editorial rules which would define the obligations of broadcast licensees.[89] As is usual in this sort of proceeding, licensees and other interested parties submitted comments on the proposed rules, which the Commission duly considered. More than a year after the notice of proposed rulemaking, the Commission on July 5, 1967, issued a memorandum opinion and order adopting the rules in substantially the same form as they were proposed.[90] The personal attack rules provided that:

> When, during the presentation of views on a controversial issue of public importance, an

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[89]Notice of Proposed Rule-Making (FCC 66-291) 31 Fed. Reg. 5710.

[90]This was over considerable objections. The vast majority of broadcasters who submitted comments were against the proposed rules.

> attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than 1 week after the attack, transmit to the person or group attacked (i) notification of the date, time and identification of the broadcast; (ii) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (iii) an offer of a reasonable opportunity to respond over the licensee's facilities.[91]

The new political editorial rules, like the personal attack rule given above, also provides that licensees must afford notice and opportunity for reply--an obligation which arises whenever a broadcaster editorialized in opposition to or in favor of any candidate for public office. The rule states:

> Where a licensee, in an editorial, (i) endorses or (ii) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial (1) notification of the date and the time of the editorial; (2) a script or tape of the editorial; and (3) an offer of a reasonable opportunity for a candidate or a spokesman of the candidate to respond over the licensee's facilities: Provided, however, that where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this subsection sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.[92] (Emphasis in original).

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[91]FCC Rules and Regulations, Part 73, Sections 73.123, 73.300 73.598, and 73.679. 32 Fed. Reg. 10303 FCC Docket No. 16574, 10 RR 2d 1901, Amended at 10 RR 2d 1911.

[92]Ibid.

The significance of these rules cannot be underestimated, for they represent the first attempt of the Commission to adopt formal rules concerning the provisions of the fairness doctrine: until 1967 fairness had been only a doctrine or a body of policy, which the Commission claimed (and Judge Tamm in the Red Lion case affirmed) had been adopted by the Congress within the meaning of Section 315's 1959 amendments. The Commission, in its notice of proposed rulemaking pointed out that it was merely codifying an existing policy, rather than creating a new one for broadcasters to follow:

> Two important purposes will be served by such codification. First, it will emphasize and make more precise licensee obligation in this important area. Second, it will assist the Commission in taking effective action in appropriate circumstances when the procedures are not followed.[93]

What did the Commission mean by "effective action in appropriate circumstances?" Previous to the adoption of the new rules, the Commission could enforce its personal attack requirement only at the time of license renewal, and only with the ultimate penalty--refusal of license. Admittedly, the Commission wrote many letters to licensees asking them to "reevaluate" their previous course of action and explain forthwith what they planned to do to comply with the requirements of the fairness doctrine. Although some may claim that this is "enforcement by letter," it

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[93]Notice of Proposed Rule Making, op. cit.

should be pointed out that the Commission could actually do nothing at the time of an alleged violation of the doctrine. Furthermore, because the licensee's "good deeds" would be reviewed at renewal time, as well as his failure to comply, he was placed in a somewhat better position. Most importantly, however, the Commission was certainly reluctant to take such a drastic step as denial of a license for one or even a few complaints concerning fairness. With the adoption of these personal attack and political editorial rules, the Commission was given a whole new arsenal, and the sanction imposed by the rules is (in the words of one Washington law firm) "buttressed by the threat of immediate cease and desist proceedings, money forfeiture proceedings [fines], license revocation proceedings, criminal penalties, or some combination of these sanctions."[94] Equally as important, the Commission is able to begin these actions within a relatively short time, rather than waiting three years (as might have been possible under the previous conditions).

Only 22 days after the Commission adopted the rules, on July 27, 1967 the Radio and Television News Directors Association (RTDNA) and eight broadcasters filed suit in the United States Court of Appeals for the Seventh Circuit in Chicago, asking the court to review the rules recently

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[94]Brief for Columbia Broadcasting System, Inc., prepared by the firm of Wilmer, Cutler, and Pickering.

adopted.[95] On the same day, other petitions for review were filed with the appeals courts in other circuits.

The hue and cry concerning the new rules was considerable, and broadcasters protested that they could no longer do an effective job of reporting the news. What would happen, for example, if a member of Congress should, in the course of a newsworthy event, launch into an attack on a person or group? Would not the stations carrying this attack have to provide time for response? It was agreed by almost all broadcasters that broadcast journalism could not operate with this hindrance and the fear of the unexpected remark. On August 2, the Commission issued another Memorandum Opinion and Order amending the rules to exclude bona fide newscasts and news interviews from the provisions of the rules, but retaining the requirements so far as documentaries and news commentaries were concerned. The amendment to the rule did not stop the outcries of the broadcasters. Instead, it precipitated a flurry of pointed letters to the Commission from Congress (see appendix for copies of this previously unpublished correspondence).

On October 24, 1967, it was ordered that the several appeals be consolidated and heard as a single case

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[95] Radio and Television News Directors Association, et. al. v. United States of America and Federal Communications Commission, United States Court of Appeals, Seventh Circuit, No. 16369.

in the Seventh Circuit.[96] Thus suits filed by CBS, NBC, and RTDNA had, in effect, become one case, and an enormous battery of legal talent was loosed on the battle against the Commission's new rules. The Commission, although it did not have the scores of lawyers which staff the major Washington and New York law firms which had entered the battle in behalf of the broadcasters and the news directors, had the services of its own competent legal staff and the aid of the Justice Department.[97]

There was an attempt by RTDNA and the networks to consolidate their cases with the Red Lion case at the Supreme Court without a ruling by the Court of Appeals. The Commission opposed this move. (It was felt by some lawyers that the Commission preferred to have its fairness doctrine tested in the Red Lion case rather than in the RTDNA case because of a supposed better chance of success with the former case).[98] The Supreme Court finally granted RTDNA and the networks the right to intervene as amicus curiae in the Red Lion case, but decided to defer hearing that case until the RTDNA case was ruled upon by the lower court. Until March, 1968, it appeared that RTDNA would be heard as scheduled,

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[96]Consolidated cases were Nos. 16369, 16498, and 16499.

[97]The writer is indebted to the counsel for the parties to these suits for providing him with their briefs, to which he has frequently referred.

[98]See "New Move in High Court Fairness Test," Broadcasting, January 15, 1968, p. 44.

but in a surprise move, the Justice Department (in a February 28, 1968 letter to the Commission) suggested that the new personal attack and editorial rules might better withstand the court battle ahead if they were slightly revised. With this, the Commission asked the Court to delay hearing the case until the rules could be revised. This would have required another rulemaking proceeding, which might have taken a year or more. RTDNA and the networks opposed this. The Court ordered that the case be heard promptly, and allowed the FCC to amend its rules as necessary in the meantime. On March 27, 1968, the Commission adopted a memorandum opinion and order which again revised the rules issued only the previous summer. (The full text of the order is published at 33 Fed. Reg. 5362). The effect of this revision was to exempt news interviews and certain commentary or analysis from coverage under the personal attack rules, but not from coverage under the general fairness doctrine. Section (b), which was the section revised by the Commission now reads (with the changes underlined for emphasis by this writer):

> (b) The provisions of paragraph (a) of this section shall not be applicable to attacks on foreign groups or foreign public figures; to personal attacks which are made by legally qualified candidates, their spokesmen, or those associated with them in the campaign, on other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and to bona fide newscasts, bona fide news interviews, and on on-the-spot coverage of a bona fide news event (including commentary or

analysis contained in the foregoing programs, but the provisions of paragraph (a) shall be applicable to editorials of the licensee.

It would seem that the above changes take much of the force from some of the arguments against the rules, but the petitioners' reply briefs do not indicate any sense of satisfaction; rather, they continue to press for elimination of the fairness doctrine in its entirety. It now seems likely that there will be a decision in this case by the end of the summer in 1968, with a ruling by the Supreme Court in 1969 or 1970.

The issues presented by the RTDNA suit are of vital importance. If anything, they bring the constitutional questions into even sharper focus than was the case in Red Lion. In addition, certain practical journalistic questions have been brought out (especially in the brief for Columbia Broadcasting System)[99] which make it difficult to determine whether the rules as adopted could ever be readily enforced. There were two issues specifically enumerated in the briefs: "1. Whether the rule adopted by the Commission and here under attack contravenes the First Amendment to the Constitution. 2. Whether the adoption of the rule was within the authority of the Commission under the Communications Act of 1934."[100]

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[99]Brief for Columbia Broadcasting System (No. 16, 498).

[100]Brief for National Broadcasting Company (No. 16, 499), p. 13.

The thrust of the argument is that (a) broadcasting is a part of the press; (b) the Supreme Court has held that freedom of the press means that the press has a vital and active role to perform in criticizing puclic figures and taking positions on public issues--which may not be fettered by government intrusion; (c) there is no basis for greater encroachment on the broadcaster's freedom to report on and to comment on the events of the day than upon other (print) media. It is argued that these rules will hinder dissemination of news and discourage broadcasters from taking stands (see recent rule revision cited above).

The second issue is argued on the grounds that: (a) the "public interest" standard is not sufficiently specific to justify infringement of First Amendment rights; (b) the 1959 amendment did not specifically adopt the fairness doctrine, and the final clause (requirement to operate in the public interest, etc.) was "intended only to avoid an implied repeal" of the previously imposed requirement; (c) Congress could not have adopted these rules by implication, since the Commission prior to 1959 had never undertaken a "rigid, program-by-program regulation of controversial broadcasting of the kind contemplated by this rule;" (d) even if it had been the intention to adopt or authorize such a rule, there exists in the Communications Act no standard precise enough to provide an adequate guide for the regulation of speech and the press.[101]

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[101] Ibid., pp. 10-13.

The issue of whether the rules would deter broadcasters and impede their effort to develop an informed electorate (a goal which has been stated in numerous Commission and Congressional documents) is nowhere better stated than in the CBS brief; excerpts from this brief are included in Appendix D herein. Many readers will find these excerpts helpful in clarifying some of the practical problems associated with the new rules.

The original rules were not adopted unanimously; Commissioner Bartley dissented, and Commissioner Loevinger concurred on the ground that the right of reply was sound, but he disagreed with the way the rules were drafted. The amendment of the rules one month later was for the stated purpose of "clarification," but it was done with Commissioners Bartley, Loevinger, and Wadsworth absent. But it seemed clear that those who had voted for the new rules were not fully prepared for the concerned response which they generated. Chairman Rosel H. Hyde, in an address before the International Radio and Television Society said late in September that he was "frankly puzzled by the reaction in some quarters" to the Commission's action, but he admitted that there was "considerable confusion and misunderstanding" about what the Commission had done.[102] He added, in a phrase that many broadcasters

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[102]Address by Rosel H. Hyde to the International Radio and Television Society, Waldorf-Astoria Hotel, New York (September 22, 1967), FCC mimeo 6223 p. 4.

found difficult to understand, "We seek only to create an atmosphere and regulatory policy which will foster not hinder that function which is vital to an informed electorate."[103] He continued:

> The Communications Act sets out the fairness doctrine in terms of the obligation "to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." It is an expression of sound public policy. The doctrine is wise and workable. There is no need for me to seek to explain in detail the doctrine to this audience. But I would make two observations about the general doctrine.
>
> First, the manner and extent of coverage of controversial issues is a matter left to the judgment of the licensee. Under the fairness doctrine generally, it is the broadcaster who decides what issues will be covered, who the spokesmen shall be, and what format shall be used.
>
> Second, when a broadcaster has acted reasonably and in good faith, the requirements of the doctrine are satisfied. Time and again the Commission has upheld the broadcaster's judgment against the complaints of those whose ideas of fairness differed.
>
> Most broadcasters accept the soundness and the basic premise of the fairness doctrine.
>
> As to the specific rules we have recently adopted, I am frankly puzzled by the reaction in some quarters to our codification of the personal attack and political editorializing policies. All that the Commission did was to codify policies that had been outstanding for many years and which have not interfered with the effective operation of the broadcasting industry during these years.[104]

Chairman Hyde then turned to the reason for the adoption of the new rules:

> In fairness, it is difficult to see what other policy or rule could properly be followed with respect to political editorializing. Surely, no

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[103] Ibid., p. 3. [104] Ibid., pp. 3-4.

> broadcaster would seriously claim the right to editorialize against a person's candidacy and not afford the opportunity for rebuttal. Where your right to express political editorials has been challenged, the Commission has consistently come to your defense. That defense however would become impossible without strict adherence by the broadcasters of the requirements of the political editorializing policy. Our rule is designed to secure such compliance.[105]

Then, using an idea which he has espoused for many years, he mentioned the notion of conscience, and suggested that it is an integral element in a broadcaster's policy decisions:

> I would return to my topic phrase--a matter of conscience. If there were no Commission rule, would not the responsible broadcaster notify the appropriate candidate of its editorial and provide opportunity for a response? Knowing you as I do from our years of mutual association, I have not the slightest doubt about it.
>
> The same considerations are applicable in the case of the personal attack rule. Where the controversial issue involves the character, honesty and integrity of a particular person and these have been directly and seriously attacked, it seems elementary--under the concept of fairness--that that person should have an opportunity to respond if he wishes. It seems equally elementary that he cannot respond if he does not know what was said about him. That is all our rule requires.
>
> Again, I would ask whether a responsible broadcaster would, for example, call a local official dishonest without letting him know of the attack and giving him the opportunity to tell his side. Isn't this rule also simply a matter of conscience?
>
> It may be asked why then is there any need for these rules. We have adopted these rules in order to make more precise the obligations of broadcasters with respect to the mechanics of compliance and to deal more effectively with the few who flagrantly violated the policies--by, for example, attacking an individual in a controversial issue programming without notifying and giving him an opportunity to respond or editorializing against

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[105] Ibid., p. 4.

> a candidate on election eve, again affording no opportunity for a reply.[106]

Finally, he reassured broadcasters:

> We stressed that the rules would not be the basis for sanctions where the broadcaster made good faith reasonable judgment. And, we promptly clarified the rule to make clear that it was not intended to hamper in any way the discharge of the important news functions of the broadcast industry.
>
> In short, we shall administer these rules in the same fashion as we have done the doctrine generally.[107]

Chairman Hyde concluded his speech with a remark attributed to John D. Rockefeller: "Every right implies a responsibility; every opportunity, an obligation; every possession, a duty."[108]

The final case which will be considered herein is, as yet, unfinished. In a very real sense, it has yet to be started. It is illustrative of the immense leverage which can be exerted by a single concerned individual. In a sense, the WCBS-TV cigarette advertising case is the story of the action taken by John Francis Banzhaf III, a 27 year-old graduate of Columbia University Law School. It is significant that Mr. Banzhaf has given up his association with the Park Avenue law firm of Watson, Leavenworth, Kelton, and Taggart in New York (among whose clients is a major cigarette firm) to form ASH, an organization devoted to Action on Smoking and Health.[109]

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[106] Ibid., pp. 4-5. [107] Ibid., p. 5. [108] Ibid., p. 6.

[109] "Anticigarette Campaign Planned," Broadcasting, March 4, 1968, p. 29.

The case arose when Mr. Banzhaf wrote on his own behalf to WCBS-TV in New York on December 1, 1966, mentioning three cigarette commercials which he had seen, and asserting that the "question of the advisability of smoking is clearly a controversial issue of public importance."[110] He said that the cigarette companies' commercials constitute the expression of a point of view on that question, and that the station was therefore required under the fairness doctrine to grant free time "roughly in proportion to that now spent on your station promoting the virtues and values of smoking" so that responsible groups might present an anti-smoking point of view.[111] On December 20, 1966, Mr. Banzhaf again wrote to WCBS-TV stating that as a prerequisite to filing a formal complaint with the FCC, he was thereby asking for free time so that he, as a responsible spokesman, might present an anti-smoking viewpoint. Ten days later, WCBS-TV (which is owned and operated by the Columbia Broadcasting System) rejected his request for time, pointing to the documentaries it had presented from time to time concerning the "health ramifications of smoking." It therefore deemed it unnecessary to address itself to the question of whether the fairness doctrine applied to product

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[110]WCBS-TV, 9 RR 2d 1423. See record of Commission action, pp. 3-5. (Hereinafter abbreviated R.).

[111]Ibid.

advertisements, but stated that it did not believe the doctrine to be applicable. Said WCBS-TV:

> We believe that it is clear that the fairness doctrine was conceived by the Commission as an aid to the public's right to be informed about public issues--not as a vehicle for giving the Commission power to indirectly regulate product advertising when other governmental agencies are directly charged with responsibility over such advertising.[112]

Mr. Banzhaf then wrote to the Commission, and enclosed copies of his letters to WCBS. This produced an unusual result: although it is customary to give the station notice and the right of reply concerning fairness complaints, the FCC's first action was a June 2, 1967, letter to WCBS-TV which said:

> We hold that the fairness doctrine is applicable to such advertisements. We stress that our holding is limited to this product--cigarettes. . . . We believe that a station which presents such advertisements has the duty of informing its audience of the other side of this controversial issue of public importance--that however enjoyable, such smoking may be a hazard to the smoker's health.[113]

But the Commission did not agree that approximately equal time should be given, for this would be inconsistent with the requirements of the Cigarette Labeling and Advertising Act.[114] This act, which compelled the printing of a health warning on each cigarette package also contained a clause which specifically preempts the problem of health warnings in advertising until 1969.

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[112] R. 8. Also in Brief for The Tobacco Institute, et. al., U.S. Court of Appeals No. 21577, p. 3.

[113] Applicability of the Fairness Doctrine to Cigarette Advertising, FCC 67-1029, 5063, 32 Fed. Reg. 13162, 11 RR 2d 1901 (September 8, 1967).

[114] Ibid.

The Commission's letter to WCBS-TV caused broadcasters and their counsel to react swiftly, and numerous petitions were filed, asking for reconsideration and stay of effect of the ruling. Most of the petitions challenged the Commission's action on grounds of constitutionality, and many claimed it was contrary to statute and good public policy. Despite the numerous petitions, the Commission denied reconsideration or stay of effectiveness, and refused to consider the matter in a formal rule-making proceeding. This June 2, 1967 ruling gave notice that it was not the intention of the FCC to extend the ruling to other products, such as automobiles or alcoholic beverages. It singled out cigarette advertising on two grounds: 1) There are government and private reports and Congressional action concerning the health hazards of smoking, and 2) normal use of this product can be a hazard to the health of millions of people.

To those who claimed the procedure used by the Commission in the adoption of this rule was incorrect, the Commission pointed out that the rule would have effect only in the future, and that the past performance of licensees relative to this rule would not be considered at the time of license renewal. The FCC said that a formal rulemaking proceeding would serve no useful purpose.

To those who claimed that the Cigarette Labeling and Advertising Act would preclude Commission action, the FCC

said that this might possibly have been true if the Commission had required a grant of equal or even substantially equal time. It asserted, however, that the Act did not preclude it from requiring broadcasters to devote "a significant amount of time" to anti-smoking messages.

There was some concern within the Commission regarding the way things had been handled. Commissioner Lee Loevinger, an outspoken gentleman who is noted for his frequent stinging comments on the decisions of his colleagues, wrote a concurring opinion:

> I concur with great doubt and reluctance in the Commission ruling that broadcast licensees presenting cigarette advertising must also present warnings of the health hazards of cigarette smoking. I concur because the result seems to me to be socially and morally right. I have doubts that the action is procedurally and substantively consistent with controlling legal rules. I am reluctant because of concern that this action may represent a subjugation of judgment to sentiment.[115]

Commissioner Loevinger then went on to explain his reasons for disagreeing and concurring. He concluded his opinion with these words:

> Consequently, I am reluctant to concur because this ruling seems to be the result of sentiment rather than conviction. It is based on a strong feeling that the public, especially the younger members of the public, should be protected against enticement to smoke cigarettes, rather than upon a well reasoned conclusion that this is an effective means of achieving that objective and that this ruling is soundly based on legal authority. My opinion cannot change the result, so all I can

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[115] Ibid., at 11 RR 2d 1941.

> do is indicate the difficulties I see in this approach to the subject and the reasons that I have doubts, while confessing candidly that I put doubts aside and join, albeit reluctantly, in voting for the ruling here because of a strong feeling that suggesting cigarette smoking to young people, in the light of present knowledge, is something very close to wickedness.[116]

But FCC Chairman Hyde saw the matter differently. He told his audience at the meeting of the International Radio and Television Society:

> The ruling on cigarette advertising has been reviewed extensively in the news of late. In most quarters our action has been applauded. But, it is a decision which the Commission reached only after extensive soul searching, a clear and firm resolution as to its soundness, and the action is not to be sustained or rejected based on a popularity poll.
>
> Our holding requires a broadcaster who carries cigarette commercials--which understandably present smoking as attractive and enjoyable--to allow opportunity for presentation of the other side--that however enjoyable, smoking may be hazardous to health.
>
> We have stressed here as in other fairness areas, that it is left to the broadcaster to make good faith, reasonable judgments in carrying out this obligation to afford a significant amount of time on a regular basis to the health hazard involved in smoking.[117]

Mr. Hyde did not feel that there was much possibility of the cigarette ruling being extended into other areas:

> There has been concern expressed, not so much as to the cigarette ruling, but that the principle could be extended to a whole host of other products. This simply is not correct. We have explicitly stated that the ruling is limited to

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[116] Ibid., at 1945.

[117] Address of Rosel Hyde, op. cit. (See note 102, supra.).

> this unique product and imposes no fairness doctrine obligation as to other products.
>
> There are highly respected Government reports on smoking which find that the normal use of cigarettes is hazardous to health. There is a Congressionally funded educational campaign to urge the American public, and particularly teenagers, not to use cigarettes. There are no similar findings or campaigns with respect to the host of "other products" which have been the cause of concern in the industry.[118]

Finally, Mr. Hyde again tied responsibility to conscience. He asked broadcasters these questions:

> And again, let's apply the test of conscience. Can responsible broadcasters ignore the recent HEW report? Can you slough aside the latest data reported to the World Conference on Smoking and Health?
>
> What is your obligation in the face of these reports? Can you simply accept cigarette commercials and ignore the welfare of the public, and do nothing or only a minimal, occasional effort to let the public--the teenager--know of this other face of the matter?
>
> I submit to you that the questions answer themselves.[119]

Subsequent to the Commission's announcement of its decision, numerous interested parties (broadcasters, cigarette manufacturers) filed suit in the United States Court of Appeals in the Fourth Circuit in Richmond, Virginia (perhaps, as one wag suggested to this writer, because that's tobacco country). But Mr. Banzhaf also filed a suit--in the U.S. Court of Appeals in the D. C. Circuit--charging that the Commission had not gone far enough in its rulings. Mr. Banzhaf had wanted the Commission to require "substantially equal" time for

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[118] Ibid., p. 6. [119] Ibid.

anti-smoking messages. The problem then was to decide which suit had been filed first, and again Mr. Banzhaf won; the case is to be heard in the D. C. Circuit.

The issues involved are deceptively simple: Did the Cigarette Labeling and Advertising Act preclude coverage of cigarette advertising by the fairness doctrine? Did the Commission's action exceed its statutory and constitutional authority?

There is an interesting and slightly humorous question which has been raised by many foes of the Commission's rule: Many stations, as a matter of principle, carry no cigarette advertising. These stations frequently carry anti-smoking messages. Might they not be required by the fairness doctrine to carry messages extolling the virtues of cigarette smoking in general?

The significance of the Banzhaf-WCBS-TV case is almost obvious: the Commission's rule extends the fairness doctrine into a whole new field--and there is no background of experience, no legislative guidance, no judicial precedent to guide its future development in this direction. The stakes are exceedingly high: Cigarette manufacturers spend approximately $250,000,000 per year to promote the sale of their products, and much of this wealth flows into the treasury of the broadcasters. There can be no doubt that this advertising has some considerable effect, for if it were ineffectual

the manufacturers would stop advertising. And yet there can be no doubt that numerous people die each year from lung cancer and other diseases which may be caused by cigarette smoking. There is here a question of public policy, of constitutional liberty, and of statutory authority.

The pace of development of the fairness doctrine had been extremely rapid during 1966 and 1967, and this fact had not escaped the notice of Congress. The correspondence between the House Interstate and Foreign Commerce Committee and the Commission (which is included in an appendix hereto) was a prelude to more formal action. It was announced that on March 5 and 6, 1968, the Investigations Subcommittee of the House Interstate and Foreign Commerce Committee would conduct a "fairness panel" at which the members of the Committee could hear the views of nationally recognized experts on the problems associated with the fairness doctrine and Section 315. Participants included Dr. Frank Stanton (President, Columbia Broadcasting System), Dr. Charles Siepmann (Professor Emeritus, New York University and prolific author), Dr. Louis L. Jaffe (Byrne Professor of Law, Harvard University), Mr. Rosel Hyde (Chairman of the FCC), Dr. Hyman Goldin (Associate Professor of Communications, Boston University), Mr. Reuven Frank (Executive Vice President, NBC News), William G. Harley (President,

National Association of Educational Broadcasters), Mr. Elmer Lower (President, ABC News), Mr. Glen O. Robinson (Associate Professor of Law, University of Minnesota), and Mr. Vincent T. Wasilewski (President, National Association of Broadcasters). There were numerous other representatives from both broadcasting and the legal profession. The moderator of the two-day panel was Mr. Roscoe L. Barrow, Dean Emeritus of the University of Cincinnati Law School, and author of "The Barrow Report"--the 1957 study of network broadcasting.

For the most part, those people involved in commercial broadcasting expressed the opinion that Section 315 should be re-suspended for a period of testing and study, with an eye to permanent repeal. They felt that the personal attack rules and the cigarette advertising rules were also unjust, primarily on constitutional grounds.

Among most of the rest of the participants, the consensus seemed to be that Section 315 and the fairness doctrine are necessary protections. Indeed, it was pointed out that all broadcasters are not irresponsible, but that some protection is needed because of the small minority who would not exercise a standard of fairness without regulation.[120]

Although no direct statements were made by members of the Committee concerning their feelings about the

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[120]As of this date, the record of these hearings has not been published; for this reason, no specific references have been given to guide the reader to its contents.

future of the fairness doctrine, it was evident from their questioning of the panel members that they felt the doctrine must remain intact, at least as far as editorializing is concerned. This attitude was evident to representatives of the trade press present, for Broadcasting pointed out following the hearing that broadcasters would not find relief from the fairness doctrine in Congress.[121]

The fairness doctrine has now been present in some form for forty years. Having traced these forty years of fairness from the words of Herbert Hoover to the hearings of the House committee, it has become evident to this writer that the fairness doctrine is as much a subject for philosophical consideration as it is for legal interpretation.

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[121]"Panel Sees Many Roads to Fairness," Broadcasting (March 11, 1968), p. 31.

CHAPTER VII

A SUMMARY AND A SPECULATION

Broadcasting is an important part of American life. That it would become so has been evident almost since the beginning. Broadcasting as we conceive of it began in the 1920's. There had been large numbers of amateur radio operators, listening to each other with home-built apparatus, playing phonograph records for each other by means of makeshift transmitters. It soon became evident that factory-made receivers could be sold, and the manufacturers of these sets began operating broadcasting stations as a means of promoting the sale of their receivers. Soon, however, the business of broadcasting became an entity within its own right as the commercial possibilities of the medium were recognized and exploited.

Just as transmitters on ships and at shore locations had been registered in earlier years, there was a requirement that all stations be licensed. But the number of stations grew rapidly, and it soon became obvious that pro forma licensing could not solve the problems which popularity had brought to radio. At first the voices crying for reform were few, but they grew in

number and in strength. Among them was Herbert Hoover, who argued that radio belonged to the public, and that broadcasters--because they were the trustees of the public in the use of valuable frequency--should be required to serve the interest of the public, rather than their own selfish and commercial interests. It seemed possible that the hucksters and the demagogues, the irresponsible radio rabble of the early 1920's, might be forced to change their ways. The people, through their elected representatives, descarded the Radio Act of 1912 as outmoded by the rapid development of the new medium, and in 1927 enacted a bill which would require broadcasters to serve the "public interest, convenience, and necessity." This language of the Radio Act of 1927 has become the standard by which the performance of all broadcasters is measured even today. It was incorporated in the Communications Act of 1934, and has been the touchstone for the Federal Communications Commission, which has administered the Act since that time.

Even as the Act of 1927 was being debated, Congress saw that radio was a powerful force for either good or evil, and that if it were to be a positive influence in the community, it must promote the enlightenment of the public. Even in 1927 there was talk of making a requirement of fairness in the discussion of controversial issues a part of the law. Early decisions of the

Federal Radio Commission (see Great Lakes Broadcasting Co., op. cit.) made clear the notion that fairness was a part of the public service responsibility of each licensee. Other decisions (KFKB, for example) demonstrated that radio is public in character, and that it cannot be used to promote the personal interests of licensees.

While there had been no official pronouncement on the matter of editorializing, many broadcasters felt that it was inappropriate as a general practice. Others occasionally editorialized, but apparently had no strong feeling concerning it. The Commission had neither encouraged nor discouraged broadcasters in this matter. Thus it came as a surprise to the industry when the Commission in 1941 promulgated the Mayflower Doctrine--a prohibition against editorializing as a practice which was not in the public interest. For eight years broadcasters either remained silent concerning their views, or by using commentators as their mouthpieces, editorialized without labelling it as such. In eight years, not one licensee had the courage to risk his license in a test of the Commission's Mayflower ruling. There was considerable pressure from broadcasters for a reversal of this dictum, however. Finally, acting on a petition of an educational broadcaster, the Commission undertook a study of whether its ban on editorializing should be eliminated, and if so, what restrictions should be placed on broadcasters.

At last, in 1949, the Commission issued its Report on Editorializing by Broadcast Licensees. This was a document which reversed the Mayflower Doctrine and substituted a doctrine of fairness. The fairness doctrine required that if one side of a controversial issue of public importance were presented, the broadcaster had the obligation of presenting other conflicting positions. This doctrine was predicated on the assumption that such a presentation would contribute to an informed electorate, and better serve the public interest. But fairness was at this time merely a policy of the Commission. It had failed to become law on several previous occasions; it had been passed by both houses of Congress during the Hoover administration, but was the subject of a pocket veto by the President. But as policy of the Commission the fairness doctrine still had considerable force, for the Commission had served notice in its Report that at the end of each three-year license period, the performance of licensees would be measured against this standard of fairness. It recognized that broadcasters might occasionally err in an issue requiring fairness, but exhorted licensees to make good faith judgments in an attempt to serve the public interest. No broadcaster was ever denied a license renewal for failure to meet the requirements of the fairness doctrine, although there have been numerous cases which have received special consideration at renewal time.

For ten years, the fairness doctrine operated to regulate the coverage of controversial issues of public importance, with the exception of the broadcast activities of political candidates (which were covered by Section 315 of the Federal Communications Act of 1934). In 1959, Congress amended Section 315, and suspended the equal time requirement for the offices of president and vice-president in the 1960 elections. This relaxation allowed the presentation of the Kennedy-Nixon debates without forcing broadcasters to give equal time to the numerous other candidates of minority or "third" parties. Many people (and indeed, the Commission itself) saw in the language of the 1959 amendment an adoption by Congress of the fairness doctrine, which had previously had no sanction by Congress. The wording of the amendment was inspecific, however, and the question is still open to debate.

The fairness doctrine was enforced on an ad hoc basis from its inception, which is to say that action was not taken until a complaint was made. This led to occasional abuse by broadcasters, and frequent complaints from broadcasters and from members of Congress that the Commission had never fully explained the requirements of the doctrine to licensees, or given them specific rules to follow. As a result of this criticism, the Commission in 1964 issued its "Fairness Primer," which was a

collection of recent Commission decisions dealing with the handling of broadcasts of controversial issues of public importance.

Many broadcasters felt that the fairness doctrine was unconstitutional, and infringed upon their freedom to editorialize in whatever way they wished. But the Courts had consistently upheld the Commission in its general regulatory policy, and held that the elements of the fairness doctrine were sound in concept--although the whole question of the constitutionality of the fairness doctrine and certain of its provisions was not faced squarely until very recent times.

One provision which broadcasters frequently expressed a dislike for was the personal attack provision. The Commission had gradually developed the policy of requiring stations to send notice to a person who had been attacked on the air, and to provide these attacked persons with time for an adequate response.

The questions of the constitutionality of the fairness doctrine and the legality of the personal attack provisions thereof were faced squarely in the case of Red Lion Broadcasting Co. v. FCC. The Commission's policy was upheld, but the case is expected to go to the Supreme Court. In the meantime, it has been recognized that one problem with the administration of the fairness doctrine is the long wait for meaningful action by the

Commission, for under the policy in effect until 1967, a licensee was not brought to account for his overall pattern of fairness until the end of his license period, which is of three years' duration. Furthermore, the Commission had but one weapon to punish transgressors: revocation of license, which is a step so drastic that it is unlikely to be used--thus rendering the doctrine difficult to enforce. With these considerations in mind, the Commission in the summer of 1967 adopted certain regulations which for the first time brought fairness within the coverage of formal rule, and made available a whole panopoly of remedies to be used against those who ignored the doctrine. These rules encompassed the personal attack principle previously discussed, and added a provision concerning political editorializing which required the broadcaster to notify candidates who were opposed editorially that the station would provide time for a reply. These rules are now being tested in the courts, and no matter what the outcome of the case, will probably go to the Supreme Court.

In a 1966 case, the Commission ruled that stations carrying cigarette advertising must give a reasonable amount of time for anti-smoking messages. This caused great concern on the part of broadcasters and advertisers, who claimed that the ruling was unconstitutional and without precedent. (To this writer's knowledge, there

have been three possible precedents for the application of the fairness doctrine to commercial announcements. See In Re Petition of Sam Morris, 11 FCC 197, 3 RR 154, which related to alcoholic beverage advertising; WSOC Broadcasting Co. 17 RR 548, in which the Commission said that under certain circumstances, paid announcements are subject to the fairness doctrine; Lamar Life Broadcasting Co., 5 RR 2d 205,211, in which the Commission held that paid announcements about controversial issues [school integration, for example] may be subject to the fairness doctrine). The cigarette advertising case, which began as the result of a fairness complaint by a young New York attorney, will undoubtedly reach the Supreme Court.

The unusually rapid development of the fairness doctrine in the past three years, together with the fact that a presidential election is imminent, has caused a quickening of interest in the political implications of the fairness doctrine and its companion, the equal time provision of Section 315 of the Federal Communications Act of 1934, as amended. At a recent "fairness panel" in Washington, several leading scholars and representatives of the broadcasting industry examined the status of political and controversial-issue programming, and offered some suggestions for the future. While it is impossible to accurately predict the future course of the fairness doctrine, it is possible, and, this writer

believes, fruitful to speculate on the conditions which will likely prevail in the decade or two immediately ahead.

Professor Louis L. Jaffe of the Harvard Law School told the recent fairness panel that he believed the fairness doctrine is much less important than its proponents might claim. This, he feels, is due to the nature of the basic assumptions on which the doctrine is based: 1) that broadcasting is unique in its impact when covering controversial issues, and 2) that audiences receive all or most of their information on controversial subjects from the electronic media, and that decision-making processes are thus structured by the program content of the broadcasts. Professor Jaffe makes the point that newspapers, magazines, inter-personal communications, and all media (both formal and informal) contribute in the social process of public consideration of a controversial subject. But, says Professor Jaffe, the fairness doctrine has played an important role because it has given broadcasters "a model of good programming." Professor Jaffe pointed out that there are certain cases in which fairness may be very important:

> There are certain types of broadcasting, what might be called saturation broadcasting, in which the case for a fairness doctrine is somewhat more persuasive, if not entirely so. I refer to its application to two types of communication of rather different character. One is exemplified by its application to cigarette advertising. Clearly the effect of cigarette advertising is

> debatable. How much, one may ask, is added by TV and radio advertising to the already massive inducements to smoke provided by printed advertising, social custom, quickly established habituation? Possibly very little. On the other hand, arguably the persistency of cigarette advertising and its inexplicit, its unstated assertions of the goodness of smoking may present a special case, i.e., special as distinguished from the overt and occasional debate of a public issue. Furthermore, it might be argued that TV offers a unique opportunity by the use of certain graphic devices of pointing up the risks of smoking, an opportunity at least so long as the manufacturers continue to advertise. The other example is the broadcasting station such as Red Lion or KTYM which exists primarily as an organ of special pleading--e.g., anti-Simitic or some variety of so-called "rightwing" orientation. This type of programing may violate both the fairness doctrine and the more general doctrine of the broadcaster's responsibility for balanced service to the community. The latter aspect I shall discuss under that heading. Though I state it as a special case, I am not sure whether the case provides much support for the utility of the fairness doctrine. My doubt is whether the constituency of such stations can be much persuaded by the occasional, somewhat forced appearance of a "left-winger" or a pro-Semite. Indeed such broadcasters deal in communication for which it is difficult to find answers which will dissuade those who find the communications persuasive. I am told that this overdefines the listeners and that there will be a significant number who are more open to argument. At bottom my doubts reflect my general notion that the fairness doctrine overemphasizes the significance of isolated TV communications.[1]

Mr. Reuven Frank, Executive Vice-President, NBC News, hinted that the development of the medium in the future may make fairness less important. The diversity

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[1]Louis L. Jaffe, "The Fairness Doctrine, Equal Time, Reply to Personal Attacks, and the Local Service Obligation; Implications of Technical Change." Paper delivered before the House Interstate and Foreign Commerce Committee Fairness Panel, March 6, 1968, page 4 of unofficial text. Official transcript of record is not available as of this writing.

of outlets is important:

> Nor is there any reason to assume that Federal regulation is needed to prevent broadcasters from misleading the public through bias and distortion in dealing with controversial issues. That danger is precluded by the very diversity of outlets and the intense competition in the field.[2]

Noted author and scholar Dr. Charles A. Siepmann registered one of the great shocks of the hearings when he said:

> I stand by my testimony before the Commission at the revised Mayflower hearings. I think the Mayflower decision should have been left standing. I see no reason why the recipient of a license (often at the expense of competing applicants) should enjoy the unique privilege of foisting his personal views and/or prejudices on listeners over publicly owned frequencies.[3]

But it seems that the realities of modern broadcasting indicate that editorializing is here to stay; it has become an important part of American life, as have the electronic media themselves.

We are almost certainly at the beginning of a period of great technological change, as Professor Jaffe suggested in his paper. Although we cannot predict with any degree of certainty what form our system of telecommunications

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[2]Reuven Frank, "The Effect of the Fairness Doctrine on Broadcast News Operations." Paper delivered before the House Interstate and Foreign Commerce Committee Fairness Panel, March 5, 1968, page 5 of unofficial text. Official transcript of record is not available as of this writing.

[3]Charles A. Seipmann, "The Fairness Doctrine--A Dissenting Critique." Paper delivered before the House Interstate and Foreign Commerce Committee Fairness Panel, March 5, 1968, page 3 of unnoficial text. Official transcript of record is not available as of this writing.

will take in the decade or two just ahead, it is impossible to ignore the possibilities--all of which indicate that the fairness doctrine will be either vastly more important, or will, as Professor Jaffe suggests, be reassessed in the light of our changing society.

There is now in existence the technology which would make possible the direct reception of television signals in the home from an antenna of "infinite" height--a synchronous satellite placed in orbit above the United States. It would make possible the reception of ten, twenty, or fifty different programs, and dramatically change the character of the local broadcasting station. Indeed, it is doubtful that local stations could survive so great a change, despite their usefulness as sources of local news and local advertising. With the increased flow of information and opinion made possible by the many new program sources thus made available, our concept of the need for fairness on any one given channel might radically change.

Cable or wired television, once restricted to isolated areas with no local stations, has expanded into cities like a vast video web, bringing twelve, twenty, or more channels of high-strength signals into the great brickpiles which are the urban center, and to the sprawl of suburbia beyond. There is no technical reason why the great cities could not be interconnected by cables

or microwave relay systems, relegating broadcasting stations of the conventional sort to remote areas, or entirely to oblivion. Again, with a great diversity of program sources, our concept of the need for fairness may change considerably.

While we realize that this is speculation, it is not idle speculation, but an attempt to recognize that just as the fairness doctrine is now the result of a process of social decision making and societal value-judgments, the changes wrought by time and technology will surely reshape the regulations which govern our system of telecommunications.

BIBLIOGRAPHY

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NOTE: Although all of the items included in this bibliography were not of the greatest value in the preparation of this historical study, the writer is including them because of potential value to other scholars who may wish to use this bibliography as a starting point in researching a closely related subject.

Books

Carson, Gerald. The Roguish World of Dr. Brinkley. New York: Holt, Rinehart and Winston, 1960.

Charnley, Mitchell Vaughn. News By Radio. University of Minnesota. New York: The Macmillan Company, 1948.

Chester, Giraud; Garrison, Garnet R.; and Willis, Edgar E. Television and Radio. Third Edition. New York: Appleton-Century-Crofts, 1963.

Coons, J. E. (Editor). Freedom and Responsibility in Broadcasting. Evanston, Illinois: Northwestern University, 1961.

Cushman, Robert E. and Cushman, Robert F. Cases in Constitutional Law. Second Edition. New York: Appleton-Century-Crofts, 1963.

Emery, Edwin; Ault, Phillip H.; and Agee, Warren K. Introduction to Mass Communications. New York: Dodd, Mead & Company, 1965.

Emery, Walter B. Broadcasting and Government: Responsibilities and Regulations. East Lansing, Michigan: Michigan State University Press, 1961.

Featherwood, Dowling. Journalism On the Air. Emory University. Minneapolis, Minnesota: Burgess Publishing Company, 1939.

Frost, S. E. Is American Radio Democratic? Chicago: The University of Chicago Free Press, 1937.

Klapper, Joseph T. The Effects of Mass Communications. Glenco, Illinois: The Free Press, 1960.

Kraus, Sidney (Editor). The Great Debates; Background--Perspective--Effects. Bloomington, Indiana: Indiana University Press, 1962.

Lawton, Sherman P. The Modern Broadcaster. New York: Harper and Brothers, 1961.

Lazarsfeld, Paul and Field, Harry. The People Look at Radio. Chapel Hill, North Carolina: The University of North Carolina Press, 1946.

Lerner, Max. America as a Civilization (Two volumes). New York: Simon and Schuster, 1957.

Liebling, A. J. The Press. New York: Balantine Books, 1964.

Mill, John Stuart. On Liberty. Great Books Edition, v. 43. Chicago: Encyclopedia Britannica, 1952.

Minow, Newton N. Equal Time, the Private Broadcaster and the Public Interest. New York: Atheneum, 1964.

National Association of Broadcasters. Broadcasting and the Bill of Rights. Washington, D. C.: National Association of Broadcasters, 1947.

Patterson, G. J. Free Speech and a Free Press. Boston: Little, Brown, and Company, 1939.

Pike and Fischer, Inc. Radio Regulation. Washington, D. C.: Pike and Fisher, Inc., a weekly, 1948 to date.

Schramm, Wilbur. Responsibility in Mass Communications. New York: Harper and Brothers, 1957.

Smead, Elmer. Freedom of Speech by Radio and Television. Washington, D. C.: Public Affairs Press, 1959.

Udell, Gilman G. (Compiler). Radio Laws of the United States. Washington, D. C.: U. S. Government Printing Office, 1962.

Court Cases and Other Decisions

Abrams v. United States, 250 U.S. 616 (1919).

American Broadcasting Co. v. United States, 110 F. Supp. 374 (S.D.N.Y. 1953), aff'd, 347 U.S. 284 (1954).

American Communications Association v. Deuds, 339 U.S. 382 (1950).

American Telephone & Telegraph Co. v. United States, 299 U.S. 232 (1936).

Anniston Manufacturing Co. v. Davis, 301 U.S. 337.

Associated Press v. United States, 326 U.S. 1 (1945).

Baggett v. Bullitt, 377 U.S. 360 (1964).

Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963).

Barr v. Matteo, 360 U.S. 564 (1959).

Barron v. Baltimore, 7 Peters 243 (1833).

Bates v. City of Little Rock, 361 U.S. 516 (1960).

Bay State Beacon, Inc. v. FCC, 171 F(2d) 826 (1948).

Beckley Newspapers Corp. v. Hanks, 36 U.S.L.W. 3188 (U.S. Nev. 6, 1967).

Billings Broadcasting Co., 23 RR 951 (1962).

Brandywine-Main Line Radio, Inc. (WXUR), 4 RR(2d) 697 1965).

Bridges v. California, 314 U.S. 252 (1941).

Burstyn v. Wilson, 343 U.S. 495 (1952).

Cantwell v. Connecticut, 310 U.S. 296 (1940).

CBS, Inc. (Lar Daly case), 18 RR 701 (1959).

Chicago Federation of Labor v. Federal Radio Commission, 3 F.R.C. Ann. Rep. 36, aff'd, 41 F(2d) 422 (D.C. Cir. 1930).

Clayton W. Mapoles, 23 RR 586 (1962).

Commonwealth v. Boston Transcript Company, 249 Mass. 477, 144 N.E. 400 (1924).

Corrigan v. Buckley, 271 U.S. 323 (1926).

Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

Dennis v. United States, 341 U.S. 494 (1951).

Duncan v. United States, 48 F(2d) 129 (1931).

Estes v. Texas, 381 U.S. 532 (1965).

Ex parte Endo, 323 U.S. 283 (1944).

Farmer's Coop. v. WDAY, Inc., 79 S.Ct. 1302 (1959).

FCC v. Pottsville Broadcasting Co., 309 U.S. 134 (1940).

FCC v. Sanders Bros. Radio Station, 309 U.S. 470 (1940).

FTC v. Ruberoid Co., 343 U.S. 470 (1952).

Federal Trade Commission v. Dean Foods Co., 384 U.S. 597 (1966).

Felix v. Westinghouse Radio Stations, 186 F(2d) (3d Cir. 1950); cert. denied, 341 U.S. 909 (1951).

FRC v. Nelson Brothers Bond and Mortgage Co., 289 U.S. 266 (1933).

Freedman v. Maryland, 380 U.S. 51 (1965).

Garrison v. Louisiana, 379 U.S. 64 (1964).

Gelling v. Texas, 343 U.S. 960 (1962).

Goldwater v. FCC, 85 S.Ct. 169 (1964).

Great Lakes Broadcasting Co., 3 F.R.C. Ann. Rep. 32 (1929), rev'd on other grounds, 37 F(2d) 933 (D.C. Cir.) cert. dismissed, 281 U.S. 706 (1930), Docket Nos. 4900, 4901, 4902.

Greene v. McElroy, 360 U.S. 474 (1959).

Griswold v. State of Connecticut, 381 U.S. 479

Grosjean v. American Press Co., 297 U.S. 233 (1936).

Hannegan v. Esquire, Inc., 327 U.S. 146 (1946).

Henry v. Federal Communications Commission, 320 F(2d) 191, cert. denied 371 U.S. 821 (1962).

Holmby Productions Inc. v. Vaughn, 350 U.S. 870 (1955).

In re Sawyer, 360 U.S. 622 (1959).

Johnson Broadcasting Co. v. FCC, 12 FCC 517, 175 F(2d) 351.

Johnston Broadcasting Co. v. Federal Communications Commission, 175 F(2d) 351 (1949).

Kent v. Dulles, 357 U.S. 116 (1958).

KFKB Broadcasting Ass'n. v. Federal Radio Commission, 47 F(2d) 670 (D.C. Cir. 1931).

Kovacs v. Cooper, 336 U.S. 77 (1949).

Lamar Life Insurance Co. 18 RR 683 (1959).

Lamar Life Insurance Broadcasting Corp. 5 RR(2d) 1965) reversed and remanded sub nomine United Church of Christ. v. FCC 359 F(2d) 994 (1966).

Lamont v. Postmaster General, 381 U.S. 301 (1965).

Lord v. Winchester Star, Inc., 346 Mass. 764, 190 N.E.(2d) 875 (1963), cert. denied, 376 U.S. 221 (1964).

Lovell v. City of Griffin, 303 U.S. 444 (1938).

McIntire v. Wm. Penn. Broadcasting Co. of Philadelphia, 151 F(2d) 597 (3d Cir. 1945), cert. denied, 327 U.S. 779 (1946).

Massachusetts Universalist Convention v. Hildreth & Rogers Co., 183 F(2d) 497 (1st Cir. 1950).

Mayflower Broadcasting Corporation, 8 FCC 333 (1941).

Mills v. Alabama, 384 U.S. 214 (1966).

Milwaukee Publishing Co. v. Burleson, 255 U.S. 407 (1921).

Murdock v. Pennsylvania, 319 U.S. 105 (1943).

NAACP v. Button, 371 U.S. 415 (1963).

NBC v. United States, 319 U.S. 190 (1943).

Near v. Minnesota, 283 U.S. 697 (1931).

New York Times v. Sullivan, 376 U.S. 254 (1964).

Noe v. FCC, 260 F(2d) 739 (1958).

Office of Communication of the United Church of Christ v. FCC, 359 F(2d) 994 (D.C. Cir. 1966).

Paul M. Butler, 19 RR 991 (March 9, 1960).

Public Utilities Commission v. Pollak, 343 U.S. 451 (1952).

Radio and Television News Directors Association, et al. v. United States of America and Federal Communications Commission, United States Court of Appeals, Seventh Circuit, consolidated cases Nos. 16369, 16498, and 16499.

Red Lion Broadcasting Co. v. FCC, 381 F(2d) 908 (D.C. Cir. 1967), petition for cert. pending No. 600.

Regents of the University System of Georgia v. Carroll, 338 U.S. 586 (1950).

Rosenblatt v. Baer, 383 U.S. 75 (1966).

Rumely v. United States, 197 F(2d) 166 (D.C. Cir. 1952), aff'd, 345 U.S. 41 (1953).

Russell v. United States, 369 U.S. 749 (1962).

SEC v. Chenery Corporation, 332 U.S. 194 (1947).

Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604 (1950).

Schaeffer Radio Company v. Federal Radio Commission, Docket No. 5228, June, 1930 (also at 4 F.R.C. 46).

Schenck v. United States, 249 U.S. 47 (1919).

Shelton v. Tucker, 364 U.S. 479 (1960).

Sherbert v. Verner, 374 U.S. 398 (1963).

Simmons v. FCC, 169 F(2d) 670 (1948).

Smith v. California, 361 U.S. 147 (1959).

Speiser v. Randall, 357 U.S. 513 (1958).

Stromberg v. California, 283 U.S. 359 (1931).

Superior Films v. Department of Education, 346 U.S. 587 (1954).

Talley v. California, 362 U.S. 60 (1960).

Thomas v. Collins, 323 U.S. 516 (1945).

Thornhill v. Alabama, 310 U.S. 88 (1940).

Thorpe v. Housing Authority of the City of Durham, 386 U.S. 670 (1967).

Time, Inc. v. Hill, 385 U.S. 374 (1967).

Times-Mirror Broadcasting Co., 24 RR 404 (1962).

Trinity Methodist Church, South v. Federal Radio Commission, 62 F(2d) 850 (D.C. Cir. 1932), cert. denied, 288 U.S. 299 (1933).

United States v. Paramount Pictures, 334 U.S. 131 (1948).

United States v. Price, 361 U.S. 304 (1960).

United States v. Sullivan, 332 U.S. 689 (1948).

Washington Post Company v. Keogh, 365 F(2d) 965 (D.C. Cir. 1966), cert. denied, 385 U.S. 1011 (1967).

Washington Women's Strike for Peace, 6 RR 2d 307 (1965).

Whitney v. California, 274 U.S. 357 (1927).

Winters v. New York, 333 U.S. 507 (1948).

Wong Yang Sung v. McGrath, 339 U.S. 33.

Wood v. Georgia, 370 U.S. 375 (1962).

Young People's Association for the Propagation of the Gospel, 6 FFC 178 (1938).

Zorach v. Clauson, 343 U.S. 306.

F.C.C. Materials and Commission Decisions

Albuquerque Broadcasting Co., 6 RR 615.

Allen H. Blondy, FCC Public Notice No. 41600, 14 RR 1199 (1957).

Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance, 29 Fed. Reg. 10416 (1964).

Applicability of the Fairness Doctrine to Cigarette Advertising, FCC 67-1029, 5063, 32 Fed. Reg. 13162, 11 RR 2d 1901 (September 8, 1967).

Billings Broadcasting Co., 23 RR 951 (1962).

Brief for Federal Communications Commission in RTDNA v. FCC.

Broadcast Licensees Advised Concerning Stations' Responsibilities Under the Fairness Doctrine as to Controversial Issue Programming, FCC Public Notice 63-734, 38372, 28 Fed. Reg. 7962 (1963).

California Democratic State Central Committee. Public Notice 95873, 20 RR 867 (October 31, 1960.

Capitol Broadcasting Co., 2 RR 2d 1104 (1964).

Clayton W. Maypoles, 23 RR 586 (1962).

Community Broadcasting Co., 12 FCC 85, 3 RR 1360 (1947).

Evening News Association (WWJ), 6 RR 283 (1950).

Federal Radio Commission Reports, Annual, 1927-1934.

FCC Reports, Annual, 1934 to date.

FCC Staff Letter to Tri-State Broadcasting Co., April 26, 1962.

George E. Borst, 4 RR 2d 697 (1965).

Hyde, Rosel. Speech Before the International Radio and Television Society, Waldorf-Astoria Hotel, New York, September 22, 1967. FCC Public Notice 6223.

In re Application of Herbert Muschel, 18 RR 8 (October 13, 1958).

In re Application of Johnston Broadcasting Co., 12 FCC 1105 (1947).

In re Application of Port Huron Broadcasting Co., 12 FCC 1069 (1948).

In re Petition of Sam Morris, 11 FCC 197, 3 RR 154.

In re the Spartan Radiocasting Co., 33 FCC 765 (November 21, 1962).

In re United Broadcasting Co. (WHKC), 10 FCC 515, FCC Docket No. 6631 (1945).

In re Walmac Co., 12 FCC 91, 3 RR 1371 (1947).

In the matter of the Mayflower Broadcasting Company, 8 FCC 333.

Key Broadcasting System, 13 RR 159.

Lamar Life Broadcasting Co., 5 RR 2d 205.

Letter to Cullman Broadcasting Co., Inc., FCC 63-849, 25 RR 895 (1963).

Letter to Douglas A. Anello, 25 RR 1900B (1963).

Letter to Edward J. Heffron, 3 RR 264A (1948).

Letter to the NAB, FCC 63-850, 39636 (September 18, 1963).

Letter to Oren Harris, 3 RR 2d 1963 (September 20, 1963).

Letter to Robert H. Scott, 25 RR 349 (1962).

Letter to WCBS-TV, 9 RR 2d 1423.

Letter to WSOC Broadcasting Co., FCC File No. 58-686, 17 RR 548 (July 16, 1958).

Loevinger, Lee. Dissenting Statement of Commissioner Lee Loevinger, Re Motion to Remand Personal Attack Rules, FCC Mimeo (1968).

Metropolitan Broadcasting Co., 19 RR 602 (1960).

"Motion to Hold Cases in Abeyance and to Authorize Further Proceedings," (in re RTDNA 7th Circuit Court of Appeals case) FCC Mimeo. (March 1, 1968).

Mrs. Madalyn Murray, 5 RR 2d 263 (1965).

Network Programming Inquiry, Report and Statement of Policy, FCC 60-970 (July 29, 1960).

New Broadcasting Co. (WLIB), 6 RR 258 (April 12, 1950).

Northern Corporation (WMEX), 4 RR 333

Notice of Proposed Rulemaking, FCC 66-291, 31 Fed. Reg. 5710.

Paul E. Fitzpatrick, 6 RR 543 (July 21, 1949).

Public Service Responsibility of Broadcast Licensees, March 7, 1946.

Report on Chain Broadcasting, Commission order No. 37, FCC Docket No. 5060 (May, 1941).

Report on Editorializing by Broadcast Licensees, 13 FCC 1246, 25 RR 1901 (1949).

Report on "Living Should Be Fun," 33 FCC 101, 23 RR 1599 (July 18, 1962).

Re Scott, FCC Mimeo. 96050, 11 FCC 372 (July 16, 1946).

Springfield Television Broadcasting Corp., 4 RR 2d 681 (1965).

Times-Mirror Broadcasting Co., 24 RR 404 (1962).

WBNX Broadcasting Co., Inc., 12 FCC 837 (1948).

WSOC Broadcasting Co., 17 RR 548.

Congressional Materials

"Air for Candidates on Sensible Basis," Congressional Record, v. 105, July 29, 1959, pp. A6575-A6576.

"All Created Equal," Congressional Record, v. 105, April 14, 1959, pp. A3024-A3025.

Allott, Gordon. "Amendment of Communications Act, Relating to Applicability of Equal Time Provisions to News Programs," Congressional Record, v. 105, April 7, 1959, pp. 5404-5406.

"Amending Communications Act of 1934 with Respect to Equal-Time Provisions," Congressional Record, v. 105, September 2, 1959, pp. 17776-17782.

"Amending Section 315 of the Communications Act," Congressional Record, v. 105, August 18, 1959, pp. 16223-16246.

"Amendment of Communications Act of 1934--Conference Report," Congressional Record, v. 105, September 3, 1959, pp. 17827-17832.

"Amendment of Communications Act of 1934, Relating to Equal-Time Provisions to Candidates for Public Office," Congressional Record, v. 105, August 19, 1959, p. 16375.

"Amendment of Communications Act to Provide Equal Time to Candidates for Public Office," Congressional Record, v. 105, July 28, 1959, pp. 14439-14463.

"An Attempt to Stifle Criticism of the Administration," Congressional Record, July 20, 1964, p. A3743.

"A Badly Needed Change in the 'Equal Time' Section of the Federal Communications Act," Congressional Record, v. 105, March 17, 1959, pp. A2299-A2300.

Bush, Prescott. "Equal Time Nonsense," Congressional Record, v. 105, May 22, 1959, pp. A4328-A4329.

Case, Francis. "News by Stopwatch is News by State Control," Congressional Record, v. 105, May 21, 1959, pp. 8745-8746.

"Comments on Proposed Amendment of Section 315 of the Federal Communications Law," Congressional Record, v. 105, August 5, 1959, pp. A6767-A6768.

"Crouse, Jay. "The Fairness Doctrine: Its Use and Implication," Paper presented at panel discussion on the fairness doctrine and related subjects, Marcy 5-6, 1968 (unofficial text).

"Dissemination of Political Opinions," Congressional Record, v. 106, September 1, 1960, pp. 19017-19021; September 1, 1960, pp. 19096-19100.

Dorn, W. J. Bryan. "Freedom to Broadcast," Congressional Record, v. 109, August 7, 1963, p. 14333.

Eastland, James O. "Preservation of Freedom of Speech in Reporting or Commenting upon Speeches in Either House of the Congress," Congressional Record, March 9, 1965, p. 4378.

"Equal Air Time is a Very Important Part of the Democratic Process," Congressional Record, v. 105, August 6, 1959, p. A6807.

"Equal Time on TV," Congressional Record, v. 108, July 13, 1962, pp. 13599-13600.

"Editorial Comment on the Equal Time Problem," Congressional Record, v. 105, June 22, 1959, pp. 11415-11416.

"Editorial Freedom for the Broadcasters," Congressional Record, v. 105, February 2, 1959, pp. A743-A744.

"FCC Fairness Doctrine," Congressional Record, February 25, 1965, pp. A841-A842.

"The FCC's Chaotic Unfairness Doctrine," Congressional Record, v. 109, November 27, 1963, p. A7290.

Frank, Renven. "The Effect of the Fairness Doctrine on Broadcast News Operations," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

"Freedom of Communications Subcommittee Available to Serve All Parties and Candidates," Congressional Record, v. 108, October 5, 1962, pp. 22532-22533.

Furber, Lincoln M. "The Effect of Section 315 and the Fairness Doctrine on Educational Broadcasting," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Harley, William G. "The Effect of Section 315 and the Fairness Doctrine on Educational Broadcasting," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Harris, Oren. "Broadcasting and Politices," in remarks of John E. Moss, Congressional Record, v. 109, July 31, 1963, pp. 13849-13851.

Harris, Oren. "Some Correspondence on Broadcast Problems," in remarks of Walter Rogers, Congressional Record, v. 109, September 9, 1963, pp. 16570-16572.

Harris, Oren. "Speech . . . before the Association of Broadcast Executives of Texas, November 14, 1963, Dallas, Texas," in remarks of Paul G. Rogers, Congressional Record, v. 109, November 19, 1963, pp. 22409-22411.

Hart, Philip A. "Freedom on the Air," Congressional Record, v. 107, September 20, 1961, pp. 20466-20467.

"Has Television Become A Propaganda Tool for the Leftwing?" Congressional Record, v. 110, April 29, 1964, p. A2170.

Henry, E. William. "Address . . . Before the Commonwealth Club of California, San Francisco, California, January 15, 1965," Congressional REcord, February 8, 1967, pp. A499-A501; February 9, 1965, pp. 2304-2307; March 9, 1965, pp. 4332-4335.

House Committee on Interstate and Foreign Commerce Staff. "Biographical Briefs of Participants." Prepared for panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Jaffe, Louis L. "The Fairness Doctrine, Equal Time, Reply to Personal Attacks, and the Local Service Obligation; Implications of Technological Change," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Keating, Kenneth B. "Equal Radio and Television Time in Political Campaigns," Congressional Record, v. 105, June 18, 1959, pp. 11168-11169.

Keating, Kenneth B. "Section 315 of the Communications Act Worthy of Congressional Study," Congressional Record, v. 105, May 14, 1959, pp. 8105-8106.

Keating, Kenneth B. "Time for a Congressional Review of Section 315 of Communications Act," Congressional Record, v. 105, May 11, 1959, pp. 7817-7818.

"Legislative History of the Fairness Doctrine," Staff study for the House Interstate and Foreign Commerce Committee, March, 1968.

Lower, Elmer W. "The Role and Influence of Radio and Television in the Formation of Public Opinion: Comparison with Newspapers, Magazines, and Specialized Journals of Opinion," Paper presented at panel discussion on the Fairness Doctrine and related subjects, March 5-6, 1968 (unofficial text).

McGee, Gale. "The Fairness Doctrine: A Challenge for Responsibility in Broadcasting," in remarks of Warren Magnuson, Congressional Record, v. 110, January 29, 1964, pp.1349-1350.

"No TV Debates This Fajl," Congressional Record, September 23, 1964, pp. A4825-A4826.

"President Eisenhower Calls Present Equal Time Provision Ridiculous," Congressional Record, v. 105, March 19, 1959, p. A2440.

"Radio Broadcasting--A Case Study of Governmental Regulation," Congressional Record. v. 110, September 17, 1964, pp. 22346-22347.

"Recommendations of Freedom of Communications Subcommittee," Congressional Record, v. 108, April 19, 1962, pp. 7006-7010.

"Report on Proposed Federal Legislation to Suspend Equal Broadcasting Time Requirements for the 1964 Presidential Campaign," Congressional Record, v. 109, July 15, 1963, pp. A4406-A4407.

"A Reuther Memo Calls for Iron Fist," Congressional Record, v. 109, October 7, 1963, p. A6246.

Robinson, Glen O. "The Fairness Doctrine: The Law and Policy in Its Present Application," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Siepmann, Charles A. "The Fairness Doctrine--A Dissenting Critique," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Stanton, Frank. "The Equal Time Requirements of Section 315 of the Communications Act of 1934," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

"Study of Government Licensed Media for the Dissemination of Political Opinions," Congressional Record, v. 106, June 14, 1960, pp. 12516-12522.

"Study of Uses of Government Licensed Media for Dissemination of Political Opinions, etc.," Congressional Record, v. 106, April 14, 1960, p. 8016.

"Suspension of Equal Opportunity Requirements for Nominees for President and Vice President," Congressional Record, v. 106, June 27, 1960, pp. 14472-14477.

"Suspension of Section 315 of the Communications Act of 1934 for the Presidential Campaign," Congressional Record, v. 106, August 22, 1960, pp. 17035-17041.

Thurmond, Strom. "Amendment of Communications Act, Relating to Equal Time Provisions," Congressional Record, v. 105, April 7, 1959, p. 5399.

Tower, John G. "The Federal Communications Commission," Congressional Record, v. 110, September 9, 1964, pp. 21783-21787.

U. S. Congress, House of Representatives. Committee on Interstate and Foreign Commerce. Amending Section 315 of the Communications Act of 1934, report to accompany H.R. 7985, August 6, 1959. 86th Cong., 1st Sess., House Report 802. Washington, D. C.: U. S. Government Printing Office, 1959.

U. S. Congress, House of Representatives. Committee of Conference. Equal-Time Amendment to Communications Act of 1934, Conference Report to accompany S. 2424, August 27, 1959. 86th Cong., 1st Sess., House Report 1069. Washington, D. C.: U. S. Government Printing Office, 1959.

U. S. Congress, House of Representatives. Committee on Interstate and Foreign Commerce. Subcommittee on Communications and Power. Political Broadcasts--equal time, hearings . . . on H.R. 5389, H.R. 5675, H.R. 6326, bills to amend the Communications Act of 1934 to provide that "equal time" provisions shall not apply to new programs, H.R. 7122, H.R. 7180, H.R. 7206, H.R. 7602, bills to revise, extend, and otherwise improve the Communications Act of 1934 to bring into focus and more proper perspective that section of the law governing political broadcasts, H.R. 7985, a bill to amend the Communications Act of 1934 with respect to facilities for candidates for public office, June 29-July 1, 1959. 86th Cong., 1st Sess. Washington, D. C.: U. S. Government Printing Office, 1959.

U. S. Congress, House of Representatives. Committee on Merchant Marine and Fisheries. Hearings on H. R. 7357. 68th Cong., 1st Sess., 1924.

U. S. Congress, House of Representatives. Select Committee to investigate the Federal Communications Commission, re H. R. 691 80th Cong., 2nd Sess., 1948.

U. S. Congress, House of Representatives. Special Committee to Investigate Campaign Expenditures, 1960. Campaign Expenditures Committee, Report and Hearings pursuant to H. Res. 589, a resolution creating a special committee to investigate the election of members of the House of Representatives, December 20, 1960. 86th Cong., 2d Sess., House Report 2236. Washington, D. C.: U. S. Government Printing Office, 1960.

U. S. Congress, House of Representatives. Report No. 359, 88th Cong., 1st Sess., 1963.

U. S. Congress, House of Representatives. House Report No. 802, 86th Cong., 1st Sess., 1959.

U. S. Congress, House of Representatives. House Report No. 1416, 67th Cong., 4th Sess.

U. S. Congress, Library of Congress Legislative Reference Service. "The Fairness Doctrine: Selected References, 1959-1965," prepared December 20, 1965. Publication No. JK 1351D--E 147.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Equal-time amendment to Communication Act of 1934, report to accompany S. 2424 together with additional views, July 22, 1959, 86th Cong., 1st Sess., Senate Report 562. Washinton, D. C.: U. S. Government Printing Office, 1959.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Hearings on S. 6, 71st Cong., 2nd Sess.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Subcommittee on Communications. Political Broadcasting, hearings . . . on S. 1585 and others, June 18-25, 1959, 86th Cong., 1st Sess. Washington, D. C.: U. S. Government Printing Office, 1959.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Subcommittee on Communications. Review of Section 315 of the Communications Act (1960 temporary suspension of equal time provision), hearings . . . on a preliminary report on the operation of Section 315 of the Communications Act of 1934 as it pertained to the Presidential and Vice-Presidential campaign of 1960, January 31-February 1, 1961, 87th Cong., 1st Sess. Washington, D. C.: U. S. Government Printing Office, 1961.

U. S. Congress, Senate. Committee on Interstate and Foreign Commerce. Suspension of Section 315 of the Communications Act of 1934 for 1960 presidential campaign, report together with minority views to accompany S. J. Res. 207, June 8, 1960. 86th Cong., 2d Sess., Senate Report 1539. Washington, D. C.: U. S. Government Printing Office, 1960.

U. S. Congress, Senate. Committee on Commerce. Subcommittee on Communications. Subcommittee on Freedom of Communications. Freedom of Communications, final report . . . pursuant to S. Res. 305, 86th Congress. 87th Cong., 1st and 2d Sess., Senate Report 994. Washington, D. C.: U. S. Government Printing Office, 1961, 1962, 6 parts.

U. S. Congress, Senate. Committee on Rules and Administration. Increaasing the limit of expenditures by the Committee on Interstate and Foreign Commerce for a study of the uses of Government-licensed media for the dissemination of political opinions, news, and advertising, report to accompany S. Res. 374, August 29, 1960. 86th Cong., 2d Sess., Senate Report 1928. Washington, D. C.: U. S. Government Printing Office, 1960.

U. S. Congress, Senate. Committee on Rules and Administration. Uses of Government-licensed media for the dissemination of political opinions, news, and advertising, report to accompany S. Res. 305, May 11, 1960. 86th Cong., 2d Sess., Senate Report 1342. Washington, D. C.: U. S. Government Printing Office, 1960.

U. S. Congress, Senate. Senate Report No. 772, 69th Cong.

U. S. Congress, Senate. Senate Report No. 781, 73rd Cong., 2nd Sess., 1934.

U. S. Congess, Senate. Report No. 994, 87th Cong., 1st Sess., 1962.

"Use of Broadcast Facilities by Candidates for Public Office," Congressional Record, v. 108, October 10, 1962, pp. 22945-22952.

Wasilewski, Vincent T. "The Effect of the Fairness Doctrine on the Broadcasting of Public Controversy," Paper presented at panel discussion on the fairness doctrine and related subjects, March 5-6, 1968 (unofficial text).

Wiley, Alexander. "Equal Time on the Air," Congressional Record, v. 105, March 23, 1959, pp. A2531-A2532.

Citations in Broadcasting Magazine

"ABC Cleared on Vietnam Fairness Question," Broadcasting, v. 69, November 1, 1965, p. 70.

"Advertisers Join in Fairness Attack," Broadcasting, July 10, 1967, pp. 34-36.

"'All' Becomes 'Other' in Modified Statement," Broadcasting, August 5, 1963, p. 68.

"All's Fair at Election Time," Broadcasting, v. 69, November 8, 1965, p. 66.

"Ambidextrous Dr. McIntire Blasts FCC," Broadcasting, v. 68, May 24, 1965, p. 68.

"AM Radio Editorializing Shows 10% Increase," Broadcasting, v. 67, September 28, 1964, p. 91.

"Anello Offers Updated Advice on Section 315," Broadcasting, v. 67, September 7, 1964, p. 73.

"An Angry Roar from Red Lion," Broadcasting, v. 69, September 27, 1965, p. 65.

"Another Inch of Fairness," Broadcasting, May 22, 1967, p. 58.

"Another March on Washington," Broadcasting, April 3, 1967, p. 120.

"Another Trip into the Fairness Land," Broadcasting, v. 67, September 14, 1964, p. 68.

"Anti-cigarette Campaign Planned," Broadcasting, March 4, 1968, p. 29.

"Athiest's Complaint Denied," Broadcasting, v. 68, June 14, 1965, pp. 70-71.

"At Last a First Amendment Test," Broadcasting, July 31, 1967, pp. 23-24.

"'Anyone Read the First Amendment Lately?'," Broadcasting, v. 65, August 5, 1963, pp. 46-47.

"A Big Test for an Untried Law," Broadcasting, v. 58, February 15, 1960, pp. 122-125.

"Bill to Kill Section 315," Broadcasting, v. 68, February 8, 1965, p. 70.

"Birchers Against Fairness Policy, Too, But Will Use It," Broadcasting, v. 65, October 21, 1963, p. 80.

"Brechner Asks for Editorial Freedom," Broadcasting, v. 67, August 10, .964, p. 60.

"Broadcast Editorializing Under Attack," Broadcasting, v. 65, July 1, 1963, pp. 48-49.

"Broadcasters Testify on Editorials," Broadcasting, v. 65, September 23, 1963, pp. 68-70.

"Build-Up for a Fight on Fairness," Broadcasting, June 19, 1967, pp. 27-30.

"Campaign Group to Explore TV and Politics," Broadcasting, v. 69, September 13, 1965, p. 84.

"CBS Affiliates Appraised of Sec. 315," Broadcasting, v. 57, August 24, 1959, p. 69.

"CBS Sets Up Editorial Guide," Broadcasting, v. 58, January 18, 1960, pp. 94-95.

"CBS Tells FCC Why Daly Was Not Invited," Broadcasting, v. 57, August 17, 1959, p. 72.

"Chance for Cure of Section 315," Broadcasting, v. 56, March 23, 1959, pp. 31-34.

"Complaints on McIntire's Buy," Broadcasting, v. 67, December 7, 1964, p. 38.

"Congress Gets Sec. 315 Revision," Broadcasting, v. 57, August 31, 1959, p. 76.

"Congress Trying to Clear the Air," Broadcasting, v. 64, June 17, 1963, pp. 58-61.

"Congress Votes Sec. 315 Revision," Broadcasting, v. 57, September 7, 1959, pp. 46-50.

"Counterattack Begins on Fairness," Broadcasting, June 26, 1967, pp. 32-33.

"Cox, Pierson and Policy: II," Broadcasting, v. 66, March 2, 1964, pp. 54-56.

"D. C. Stations Subject of Vietnam Complaint," Broadcasting, v. 69, November 22, 1965, p. 80.

"Decisions and More Decisions," Broadcasting, v. 67, November 9, 1964, pp. 26-28.

"Democrats are Listening," Broadcasting, v. 68, February 1, 1965, p. 5.

"Democrats Have Rev. McIntire Up In Arms," Broadcasting, v. 67, July 13, 1964, p. 62.

"Democrats Told to Take Complaints to FCC," Broadcasting, v. 65, August 12, 1963, p. 40.

"Don't Drive Editorials 'Underground'," Broadcasting, v. 65, July 29, 1963, pp. 44-46.

"Down Payment," Broadcasting, July 3, 1967, p. 76.

"Editorial Boards Usually Select Topics," Broadcasting, v. 63, July 16, 1962, p. 52.

"Editorial Freedom Endorsed at Athens," Broadcasting, v. 65, August 5, 1963, pp. 46-48.

"Editorial Freedom Urged at TCA Meeting," Broadcasting, v. 65, August 26, 1963, p. 9.

"Editorial Survey," Broadcasting, v. 59, September 19, 1960, p. 89.

"Editorialists Alerted to a Selling Job," Broadcasting, v. 65, July 29, 1963, p. 9.

"Editorialists Face Equal Time Law," Broadcasting, v. 64, June 24, 1963, p. 85.

"Editorializing Attack," Broadcasting, v. 64, June 10, 1963, p. 5.

"Editorializing is a Moral Obligation--Minow," Broadcasting, v. 62, March 5, 1962, pp. 65-66.

"Editorializing 'Waiting on the Railroad'," Broadcasting, v. 65, August 12, 1963, pp. 42-44.

"Editorials & Ads," Broadcasting, v. 60, March 20, 1961, p. 54.

"Editorials Are Now A House Topic," Broadcasting, v. 65, July 15, 1963, pp. 48-50.

"Editorials Give Station Prestige," Broadcasting, v. 63, July 16, 1962, pp. 43-50.

"Editorials SDX Topic," Broadcasting, v. 61, October 30, 1961, p. 44.

"'Equal Promotion' Sought From WMCA," Broadcasting, v. 59, November 7, 1960, pp. 52-54.

"Equal Time Bills," Broadcasting, v. 56, May 18, 1959, pp. 72-74.

"Equal Time Critics," Broadcasting, v. 56, March 23, 1959, p. 108.

"Equal Time for Debt Adjusters," Broadcasting, v. 69, July 26, 1965, pp. 55-56.

"Equal Time Requests Follow Manion Show," Broadcasting, v. 65, September 2, 1963, pp. 61-62.

"Equal Time's Death Throes?," Broadcasting, v. 58, June 6, 1960, p. 82.

"Equal Time Waiver in '64 Approved," Broadcasting, v. 64, May 27, 1963, pp. 70-71.

"ETAOIN SHRDLU," Broadcasting, June 13, 1949, p. 48.

"The Evolving Doctrine of Fairness," Broadcasting, June 12, 1967, pp. 34-35.

"Excursion into Editorializing," Broadcasting, v. 65, July 22, 1963, pp. 36-46.

"Fairness Applied to Cigarettes," Broadcasting, June 5, 1967, p. 9.

"Fairness Caught Between," Broadcasting, v. 65, October 21, 1963, pp. 80-81.

"Fairness Dims TV's Future," Broadcasting, June 26, 1967, pp. 33-34.

"Fairness Doctrine Called Unconstitutional," Broadcasting, v. 66, May 25, 1964, p. 72.

"Fairness Doctrine Has Eastland Upset," Broadcasting, v. 68, March 15, 1965, pp. 143-143.

"Fairness Doctrine No Cause for Alarm," Broadcasting, v. 65, December 9, 1963, pp. 70-71.

"The Fairness File," Broadcasting, v. 69, October 4, 1965, p. 5.

"Fairness Gets More Complicated," Broadcasting, v. 65, September 30, 1965, p. 68.

"Fairness Methods Enumerated," Broadcasting, v. 67, December 7, 1964, p. 64.

"Fairness Primer Due Soon," Broadcasting, v. 66, February 17, 1964, p. 68.

"'Far Right' Programs Monitored," Broadcasting, v. 67, October 26, 1964, pp. 59-60.

"FCC Affirms Its Daly Ruling," Broadcasting, v. 56, June 22, 1959, pp. 55-56.

"FCC Dismisses Democrats' Fairness Complaints," Broadcasting, v. 69, July 19, 1965, p. 48.

"The FCC Gets a 'Gift' From VOA-Dr. McIntire," Broadcasting, v. 64, April 22, 1963, p. 76.

"FCC Gets Tougher on Fairness," Broadcasting, July 10, 1967, pp. 68-70.

"FCC Hit in Its Fairness Doctirne," Broadcasting, v. 67, September 14, 1964, pp. 70-72.

"FCC Orders Campaign Probe," Broadcasting, v. 59, August 15, 1960, p. 9.

"FCC's Fairness Policy Attacked," Broadcasting, September 9, 1963, pp. 68-72.

"Fifth of Stations Back Own Candidates," Broadcasting, v. 63, July 16, 1962, pp. 54-56.

"First Test of New Sec. 315," Broadcasting, v. 57, November 9, 1959, p. 84.

"Ford Wants Politics Left to FCC," Broadcasting, v. 63, November 12, 1962, pp. 27-29.

"Freedom to Editorialize Came In 1949," Broadcasting, v. 63, July 16, 1962, pp. 56-62.

"Free Time to be 'Fair'," Broadcasting, v. 65, September 2, 1963, p. 5.

"Goldwater Flays CBS News Item," Broadcasting, v. 67, July 20, 1964, p. 9.

"Goldwater Swings at News Commentators," Broadcasting, v. 67, November 9, 1964, pp. 24-26.

"GOP Goes Back to FCC for Aid," Broadcasting, v. 67, November 2, 1964, pp. 26-28.

"Government Interference on Broadcast News," Broadcasting, v. 68, May 3, 1965, p. 48.

"Hargis Adds Stations with 'Token Fees'?" Broadcasting, v. 66, June 15, 1964, p. 46.

"Harris Calls Hearing on 7 Sec. 315 Bills," Broadcasting, v. 56, June 22, 1959, pp. 57-60.

"Harris Tells the FCC to Turn Around," Broadcasting, v. 65, September 9, 1963, pp. 76-78.

"Heat's on for Sec. 315 Relief," Broadcasting, v. 57, July 20, 1959, pp. 68-69.

"Heavy Mail Favors McIntire Purchase," Broadcasting, v. 68, February 8, 1965, p. 58.

"The Hectic 8 Months of Equal-Time Issue," Broadcasting, v. 57, September 7, 1959, pp. 50-52.

"Henry Against Sec. 315 Repeal," Broadcasting, v. 68, January 18, 1965, pp. 76-77.

"Hopes Rise for Sec. 315 Relief," Broadcasting, v. 56, May 11, 1959, pp. 27-30.

"Hot One Coming," Broadcasting, v. 69, October 11, 1965, p. 5.

"House Equal Time Bill Reported to the Floor," Broadcasting, v. 57, August 10, 1959, p. 66.

"House Sets Sec. 315 Debate," Broadcasting, v. 57, August 17, 1959, pp. 74-76.

"How Far Can Fairness Go?," Broadcasting, June 12, 1967, pp. 30-31, 34-35.

"How Politicians Spent $20 Millions In 1962," Broadcasting, v. 64, June 17, 1963, p. 60.

"How to Build Your Own Hot Seat in One Easy Lesson," Broadcasting, v. 59, November 7, 1960, p. 50.

"How to Cope with Political Candidates," Broadcasting, v. 63, October 15, 1962, pp. 107-114.

"Hungry Watchdog with Nothing to Bite," Broadcasting, v. 59, October 24, 1960, pp. 29-32.

"Ike Signs Sec. 315 Amendment into Law," Broadcasting, v. 57, September 21, 1959, pp. 72-74.

"In All Fairness," Broadcasting, v. 69, October 11, 1956, p. 98.

"In the Candidates' Interest," Broadcasting, v. 68, January 25, 1965, p. 94.

"Is the FCC a Pawn In Local Political Battles?" Broadcasting, v. 64, January 7, 1964, p. 64.

"It's Time for More Editorials," Broadcasting, v. 59, October 10, 1960, p. 60.

"Lar Daly Lands Free Time," Broadcasting, v. 56, February 23, 1959, p. 75.

"Lar Keeps Firing," Broadcasting, v. 56, June 22, 1959, pp. 56-57.

"Last Hurdle for Equal Time Bill," Broadcasting, v. 57, August 24, 1959, pp. 62-68.

"Life Line Tax Status Queried," Broadcasting, v 67, September 7, 1964, pp. 72-73.

"A Little Bit of Liberty," Broadcasting, v. 57, September 7, 1959, p. 47.

"Little Rock Reply," Broadcasting, v. 59, August 8, 1960, pp. 65-67.

"Look at Editorializing," Broadcasting, v. 64, June 10, 1963, p. 5.

"A Loosening of Controls on Programs?" Broadcasting, v. 66, January 27, 1964, pp. 66-68.

"Major Newspapers Criticize Senate for Keeping Equal Time," Broadcasting, v. 67, August 24, 1964, p. 72.

"McGee: Birch Money, Ideas Behind Some Wyoming Programs," Broadcasting, v. 64, April 22, 1963, pp. 80-81.

"McIntire Wins WXUR Transfer," Broadcasting, v. 68, March 22, 1965, p. 112.

"McIntire's Wrath Aimed at FCC," Broadcasting, May 15, 1967, pp. 62-63.

"Metering the Candidates' Exposure on TV," Broadcasting, v. 59, October 24, 1960, pp. 27-29.

"Minow Does About Face: Asks Sec. 315 Repeal," Broadcasting, v. 68, February 1, 1965, p. 52.

"Monday Night TV in Little Rock," Broadcasting, v. 59, August 1, 1960, pp. 64-66.

"The Money is Not the Object," Broadcasting, v. 66, April 20, 1964, p. 52.

"More Aggressive Editorials Urged," Broadcasting, v. 67, July 13, 1964, p. 58.

"More FCC Confusion on Fairness," Broadcasting, v. 65, September 23, 1963, p. 72.

"More for the Fairness Stew," Broadcasting, July 17, 1967, p. 64.

"More Harsh Words on TV News," Broadcasting, v. 67, July 27, 1964, p. 68.

"NAB Asks Revision of Fairness Policy," Broadcasting, v. 65, September 2, 1963, pp. 60-61.

"NAB Backs Court Fairness Fight," Broadcasting, July 3, 1967, pp. 33-34.

"NAB Boards Okay Editorials," Broadcasting, v. 56, February 9, 1959, p. 35.

"NAB's Collins Clarifies Position on Fairness," Broadcasting, vo. 65, September 23, 1963, p. 70.

"NAB Set to Fight Editorializing Hobbies," Broadcasting, v. 64, June 24, 1963, pp. 85-86.

"Negroes Must Get Time for Replies," Broadcasting, v. 65, July 29, 1963, p. 9.

"Networks, FCC Tangle Over 315," Broadcasting, v. 67, September 7, 1964, pp. 77-78.

"New Air Rules for Campaign," Broadcasting, v. 59, August 29, 1960, pp. 36-38.

"New Equal Time Bill," Broadcasting, March 2, 1964, p. 56.

"New Move in High Court Fairness Test," Broadcasting, January 15, 1968, p. 44.

"New Perils in Airing Politics," Broadcasting, v. 58, May 9, 1960, pp. 27-29.

"Newspapers Editorialize on Radio-TV Editorials," Broadcasting, v. 65, July 29, 1963, p. 45.

"No Relief from Equal Time in This Campaign," Broadcasting, v. 67, August 24, 1964, pp. 70-72.

"Norris Clarifies McIntire Status," Broadcasting, v. 67, December 14, 1964, p. 45.

"Now AFL-CIO Is After WLBT (TV)'s License," Broadcasting, v. 66, June 8, 1964, p. 66.

"Number of TV's Editorializing Grows Slowly," Broadcasting, v. 67, July 13, 1964, p. 59.

"Odds Improve on Sec. 315 Cure," Broadcasting, v. 56, June 22, 1959, pp. 50-55.

"Only the Broadcaster is Against Sec. 315," Broadcasting, v. 67, December 14, 1964, pp. 54-55.

"Pacifica Frees Officers to Answer FCC Queries," Broadcasting, v. 66, January 6, 1964, p. 67.

"Panel Sees Many Roads to Fairness," Broadcasting, March 11, 1968, p. 31.

"Performance Outruns Promises," Broadcasting, v. 59, October 10, 1960, pp. 33-35.

"Political Broadcasting Law in Action," Broadcasting, v. 57, July 20, 1959, p. 69.

"Political Broadcast Quiz Prepared," Broadcasting, v. 63, November 19, 1963, p. 74.

"Political Gag on the Way Out," Broadcasting, v. 57, August 3, 1959, pp. 62-64.

"A Political Look at Fairness," Broadcasting, v. 68, February 15, 1965, pp. 68-70.

"Politicians' Bill $35 Million," Broadcasting, v. 68, March 1, 1965, p. 50.

"Primer for Negro Complaints Against Radio-TV," Broadcasting, v. 67, July 20, 1964, p. 40.

"Problems, Too, Created by Editorials," Broadcasting, v. 63, July 16, 1962, p. 64.

"Pros and Cons of Fairness," Broadcasting, v. 66, April 20, 1964, p. 52.

"Questions of Fairness," Broadcasting, v. 65, August 26, 1963, pp. 51-52.

"Reagan TV Appearance Draws Equal-Time Pleas," Broadcasting, v. 69, November 8, 1965, p. 58.

"Red Lion, Red Glag," (editorial), Broadcasting, June 19, 1967, p. 94.

"Rely on Good Faith, Broadcasters Told," Broadcasting, v. 64, April 22, 1963, pp. 84-85.

"Repeal Sec. 315 Now or Repent Later," Broadcasting, v. 56, May 25, 1959, pp. 58-62. (Reprinted in Congressional Record, v. 105, June 10, 1959, pp. A4981-A4982.

"Rep. Dorn Defends Radio-TV Editorials in House Speech," Broadcasting, v. 65, August 12, 1963, p. 44.

"Request: Full Sec. 315 Repeal," Broadcasting, v. 59, December 19, 1960, pp. 27-30.

"Results of Station Campaigns Impressive," Broadcasting, v. 63, July 16, 1962, pp. 66-72.

"Rev. Norris Instructed to Amend 'Fairness' Suit," Broadcasting, v. 69, November 1, 1965, p. 10.

"Rogers Still Hot on Fairness Trial," Broadcasting, v. 66, May 25, 1964, p. 68.

"RTNDA TAkes Slap at Magnuson Committee," Broadcasting, v. 57, October 19, 1959, pp. 72-74.

"Second Barrage Hits Fairness Doctrine," Broadcasting, July 3, 1967, pp. 26-27.

"Second Session," Broadcasting, v. 69, November 1, 1965, p. 98.

"Sec. 315: Beginning of the End?," Broadcasting, v. 56, June 1, 1959, pp. 35-39.

"Sec. 315 Bills Near to Vote," Broadcasting, v. 57, July 27, 1959, p. 66.

"Sec. 315 Confuses, Bothers, Bewilders," Broadcasting, v. 63, November 15, 1962, pp. 48, 49.

"Sec. 315 Decisions Affect California," Broadcasting, v. 63, October 29, 1962, p. 10.

"Section 315 Fans to Give Their Views," Broadcasting, v. 64, June 3, 1963, p. 59.

"Sec. 315 Gets Lumps in Hearing," Broadcasting, v. 56, June 29, 1959, pp. 46-54.

"Sec. 315 in Action-Again," Broadcasting, v. 57, August 10, 1959, p. 66.

"Sec. 315: Journalism Body Blow," Broadcasting, v. 56, March 16, 1959, pp. 112-116.

"Sec. 315 May Have a Short-Lived Future," Broadcasting, v. 60, January 9, 1961, p. 48.

"Section 315 Hits Political Fan," Broadcasting, v. 67, October 26, 1964, pp. 54-56.

"Section 315 May Never be the Same Again," Broadcasting, v. 67, November 2, 1964, p. 25.

"Sec. 315 Prospect: Partial Relief," Broadcasting, v. 57, July 6, 1959, pp. 56-63.

"Sec. 315 Relief: Temporary, at Best," Broadcasting, v. 63, July 16, 1962, pp. 82-85.

"Sec. 315: Suspension Likely in '64," Broadcasting, v. 64, March 11, 1963, pp. 72-73.

"315's Last Legs," Broadcasting, v. 56, March 23, 1958, p. 130. (Reprinted in Congressional Record, v. 105, March 26, 1959, p. A2745.)

"315 Suspension Pushed Past House," Broadcasting, v. 64, June 24, 1963, pp. 84-85.

"Senator Keating Calls Pacifica Inquiry 'Useful'," Broadcasting, v. 65, August 5, 1963, p. 64.

"Sen. Scott Cites Fair News Issue," Broadcasting, v. 57, October 19, 1959, p. 32.

"Sen. Talmadge, Too," Broadcasting, v. 65, September 9, 1963, p. 70.

"Sherwood Gordon Makes an Impression on Capitol Hill," Broadcasting, v. 65, July 22, 1963, p. 37.

"Short Renewals in Mississippi," Broadcasting, v. 68, May 24, 1965, pp. 66-69.

"Showdown on FCC Program Policy," Broadcasting, v. 66, June 1, 1964, pp. 52-54.

"Socialists 315 Bid Vetoed by Comr. Lee," Broadcasting, v. 59, August 15, 1960, p. 88.

"Some Problems in Definitions," Broadcasting, v. 56, June 29, 1959, p. 54.

"A Split Decision on Capitol Hill," Broadcasting, v. 60, February 6, 1961, pp. 58-59.

"Stanton Proposes Amendment to 315," Broadcasting, v. 65, July 29, 1963, p. 10.

"Stations Talk Back," Broadcasting, v. 65, November 11, 1963, pp. 75-76.

"Sub Rosa Regulation," Broadcasting, v. 69, July 26, 1965, p.5.

"Suspension of 315 in '64 Still Doubtful," Broadcasting, v. 64, June 10, 1963, p. 66.

"Take the Shackles Off Television News," Broadcasting, v. 67, December 14, 1964, p. 54.

"Taking Sides Necessity, Collins Thinks," Broadcasting, v. 63, July 16, 1962, pp. 72-74.

"Thurmond Takes News Media to Whipping Shed," Broadcasting, v. 67, November 16, 1964, p. 122.

"Trimming Wings of Sec. 315," Broadcasting, v. 57, July 13, 1959, pp. 81-82.

"TV Campaigning (and the FCC's Authority) as Nixon Sees It," Broadcasting, v. 63, November 5, 1962, p. 54.

"TV Passes Political Examination," Broadcasting, v. 69, October 18, 1965, pp. 96-98.

"TV's Political Policies?," Broadcasting, v. 58, May 23, 1960, pp. 78-79.

"Two Senate Bills to Clarify Equal Time," Broadcasting, v. 56, April 13, 1959, p. 68.

"The Unfairness Doctrine," (editorial), Broadcasting, June 12, 1967, p. 94.

"Virginians Hear Bartley on Sec. 315," Broadcasting, v. 56, June 22, 1959, p. 60.

"WALG Rapped on Fairness," Broadcasting, v. 68, January 25, 1965, p. 74.

"Watchdog May Follow Bark with Bite," Broadcasting, v. 60, April 3, 1961, pp. 60-61.

"Watchdog Unit Would Hobble Licensees," Broadcasting, v. 62, April 23, 1962, pp. 46-50.

"Watchdogs Ready to Roam," Broadcasting, v. 58, June 20, 1960, p. 98.

"Watchdog Stalks Stations," Broadcasting, v. 59, October 31, 1960, pp. 66-67.

"Watchdog Tugging at the Leash," Broadcasting, v. 58, June 13, 1960, p. 91.

"Where is the Fairness Line Drawn?," Broadcasting, v. 65, September 16, 1963, pp. 88-89.

"White House Aftermath," Broadcasting, v. 63, December 24, 1962, pp. 40-41.

"Why ETV Stations Don't Take Editorial Stands," Broadcasting, v. 66, May 18, 1964, p. 80.

"Why They Editorialize," Broadcasting, v. 56, March 23, 1959, p. 80.

"A Workable Cure for Sec. 315," Broadcasting, v. 56, June 29, 1958, pp. 48-49.

"WRAL-TV Survives Fairness Investigation," Broadcasting, v. 67, August 3, 1964, p. 66.

Other Periodicals

"Anello: Fairness Doctrine Induces Conformity," Sponsor, v. 18, July 13, 1964, p. 15.

"Anello: FCC Fairness Doctrine Would Discourage Free Expression," Sponsor, v. 18, September 28, 1964, p. 20.

"ANA, NAB, Nets Oppose FCC Plan to Apply Fairness Rule to Cigaret Ads," Advertising Age, July 10, 1967, pp. 3, 56.

"Anti-Cigaret Messages Mandatory, FCC Rules," Television Digest, June 5, 1967, pp. 1-2.

"At Last the FCC Asks for It," (editorial), Television, July, 1967, p. 50.

Barrett, Edward W. and John O. Pastore. "Is Speech on Television Really Free?," TV Guide, April 18, 1964, pp. 22-25.

Bennett, John B. and Frank Stanton. "Is More Federal Control Needed to Regulate TV-Radio Editorials?," Washington World, August 5, 1963, pp. 18-19.

"Broadcast Writing Dull, Pompous, Says McMillin," Sponsor, v. 18, July 13, 1964, p. 16.

"Broadcasters Disagree on Opinion Role," Editor & Publisher, v. 95, December 29, 1962, p. 37.

"Broadcasters Must Make Own Judgments in Controversial Areas, Says Dille," Sponsor, v. 18, Novmeber 16, 1964, p. 25.

"Broadcasters Urged to Speak Out Boldly," Printers' Ink, v. 289, October 9, 1964, p. 37.

"Buboes in the FCC," (editorial), Printers' Ink, June 22, 1967, p. 46.

Buckley, William F., Jr. and Arthur M. Schlesinger, Jr. "The Issues of Free Speech on Television," TV Guide, April 25, 1964, pp. 15-19.

"Candidates on Air: New Ruling from FCC," U. S. News & World Report, v. 57, October 12, 1964, p. 13.

Christopher, Maurine. "FCC Cigaret Proposal Causes Consternation," Advertising Age, June 12, 1967, pp. 1-8, 127.

"CBS Fumes Over FCC Cigaret Ruling," Television Digest, June 26, 1967, pp. 4-5.

"CBS Offers ReBUTTal to FCC," Variety, June 28, 1967, pp. 27, 40.

"Cigaret Ruling," Television Age, June 19, 1967, p. 21.

Cohen, Stanley E. "Congress Eyes Cigaret Advertising as FCC Moves, FTC Waits in Wings," Advertising Age, June 19, 1967, pp. 4, 42.

"Coincidence or Not," National Review, v. 15, November 5, 1963, pp. 382-384.

"Congress Has Ears for Air Editorials," Editor & Publisher, v. 96, July 27, 1963, p. 12.

Cook, Fred J. "Radio Right: Hate Clubs of the Air," Nation, May 25, 1964, pp. 523-527.

Costello, William. "That 'Ridiculous' Lar Daly FCC Ruling," New Republic, v. 140, March 30, 1959, pp. 9-10.

Cusak, Mary Ann. "The Emergence of Political Editorializing in Broadcasting," Journal of Broadcasting, v. 8, Winter 1963-64, pp. 53-62.

"Discriminating TV in Jackson, Mississippi," New Republic, June 5, 1965, pp. 7-8.

"Editorials On the Air," Saturday Review, November 12, 1960, pp. 113-114; discussion, January 14, 1961, p. 34.

Efron, Edith. "Why Speech on Television is Not Really Free," TV Guide, April 11, 1964, pp. 4-9.

"Equal Time," Commonweal, v. 70, July 3, 1959, p. 342.

"'Equal Time' = ?," Newsweek, March 30, 1959, p. 65.

"Equal Time on T.V.," Commonweal, v. 70, April 3, 1959, pp. 7-8.

"Examine Broadcast Editorials," Editor & Publisher, v. 96, August 3, 1963, p. 60.

"Fairness," Journal of Broadcasting, v. 8, Winter 1963-64, pp. 1-2.

"FCC Cigaret Move Raises Hard Issues," (editorial), Advertising Age, June 12, 1967, p. 14.

"FCC Fairness Rules in Court," Television Digest, July 31, 1967, p. 3.

"FCC Fairness Ruling Perils All Ads? TVB," Advertising Age, June 26, 1967, pp. 1, 157.

"FCC Holds Fairness Doctrine Applies to Cig Blurbs, But Won't Ask Equal Time for 'Anti' Spots," Variety, June 7, 1967, pp. 25, 48.

"FCC Puts Presidential Press Conference Under Demands of Equal Time Law," Sponsor, v. 18, October 5, 1964, p. 3.

Ford, Frederick W. "The Fairness Doctrine," Journal of Broadcasting, Winter 1963-64, pp. 3-16.

Frantz, Laurent B. "Pacifica and the FCC--Dangerous Precent," Nation, November 30, 1963, pp. 359-361.

"Free, Equal & Ridiculous," Time, March 30, 1959, p. 34.

"Free Time," New Republic, v. 147, August 13, 1962, p. 8.

"Free Time to Answer Sponsored Program? FCC to Decide Soon," Advertising Age, v. 34, September 9, 1963, pp. 1, 127.

Goodman, Paul. "A Few Questions to Mr. Minow," New Republic, March 2, 1963, pp. 35-37.

"Hands-on, Hands-off," Newsweek, v. 56, August 8, 1960, p. 73.

Hart, Philip A. "A Story of Controlled Communications," International Teamster, October, 1961, pp. 24-26.

"Health Groups Wary of FCC's 'Fairness' Plan," Advertising Age, July 3, 1967, pp. 1, 8.

Henry, Alan. "Editorializing Okay for Public Welfare, But Not Public Service," Sponsor, v. 16, April 9, 1962, p. 61.

"How Do You Feel About the Equal Time Problem?," Sponsor, v. 13, April 18, 1959, pp. 52-53.

"How TV Won the Battle, How It Hopes to Win the War," (Interview with Frank Stanton) Television Magazine, January, 1961, pp. 66-85.

Howell, Rex G. "Fairness . . . Fact or Fable?" Journal of Broadcasting, v. 8, Fall 1964, pp. 321-330.

"Industry Asks FCC to Hold Off Ciggi Action Pending Discussion; 'You're in FTC Territory, Anyway," Variety, June 28, 1967, p. 27.

"Industry Ponders Cigaret Dilemma," Television Digest, June 12, 1967, p. 3.

Jurey, Jack. "Editorializing: Another View From the Same Vineyard," Television Magazine, August, 1961, p. 104.

Kelley, Stanley, Jr. "Campaign Debates: Some Facts and Issues," Public Opinion Quarterly, v. 26, Fall 1962, pp. 351-366.

Kintner, Robert E. "Broadcasting and the News," Harper's Magazine, v. 230, April, 1965, pp. 49-55.

Kintner, Robert E. "Television and the World of Politics," Harper's Magazine, v. 230, May, 1965, pp. 121-132.

May, Catherine. "Every Man Should Have His Say," Vital Speeches, August 1, 1965, pp. 622-624.

McMillin, John E. "Editorializing--What It Means to the Advertiser," Sponsor, v. 18, August 24, 1964, p. 34.

McMillin, John E. "New Voices in a Democracy," Television Quarterly, v. 3, Summer, 1964, p. 27.

Monroe, Bill. "Editorializing: The Newest TV Frontier," Television Magazine, August, 1961, p. 100.

"Networks Ask End to Equal Time," Editor & Publisher, v. 94, February 4, 1961, p. 65.

"'No Toe-Dancing'," Newsweek, v. 59, March 12, 1962, p. 64.

"Novice Lawyer Shakes an Industry," National Observer, Monday, September 18, 1967, v. 6, no. 38.

Paul, S. J. "Cigaret Decision Must Be Challenged," Television Age, June 19, 1967, p. 10.

Perlmutter, A. M. "TV Takes a Stand," Television Quarterly, v. 1, August, 1962, pp. 69-76.

"Political Endorsement Part of Editorializing, Says Strauss," Sponsor, v. 18, July 13, 1964, p. 15.

Porter, Richard D. "Some Values to the Broadcaster of Election Campaign Broadcasting," Journal of Broadcasting, v. 7, Spring 1963, pp. 145-156.

"Preachers of Frea," New Republic, v. 150, January 4, 1964, p. 2.

"Protests Hit FTC [sic] Use of Fairness Rule in Ads," Advertising Age, June 26, 1967, pp. 1, 157.

"'Red Lion' Added to Cigaret 'Fairness' Woes," Television Digest, June 19, 1967, pp. 2-3.

"Right Wing Networks Flood Nation's Airwaves," Democrat, June 1, 1964, pp. 1-4.

Ruwitch, Lee. "Election Editorial: Use Only in Emergency," Sponsor, v. 17, June 3, 1963, p. 65.

Salant, Richard S. "The Television Debates: A Revolution that Deserves a Future," Public Opinion Quarterly, v. 26, Fall 1962, pp. 335-350.

"Salant Attacks Double Standard on Touchy Issues," Sponsor, v. 18, May 11, 1964, pp. 16-17.

"Sarnoff: End Restrictions on TV Journalism," Sponsor, v. 18, December 14, 1964, p. 20.

Seldes, Gilbert. "Tic for Tac," Saturday Review, April 11, 1959, p. 34.

"Senate Unit Will Screen Complaints on Equal Time," Advertising Age, v. 31, June 27, 1960, p. 36.

Shayon, Robert Lewis. "Another Viewpoint," Saturday Review, January 7, 1961, p. 33.

Shayon, Robert Lewis. "The Birchbark Curtain," Saturday Review, October 3, 1964, p. 29.

Shayon, Robert Lewis. "Editorials on the Air," Saturday Review, September 14, 1963, p. 71.

Shayon, Robert Lewis. "Fairness and the FCC," Saturday Review, August 22, 1964, p. 21.

Shayon, Robert Lewis. "Looking at the Birchers," Saturday Review, August 14, 1965, p. 41.

Shayon, Robert Lewis. "A 'Political Clinic' Program?," Saturday Review, November 17, 1962, p. 38; discussion, December 15, 1962, p. 15.

Shayon, Robert Lewis. "The Public May Be Heard," Saturday Review, June 26, 1965, p. 44.

Shayon, Robert Lewis. "Rating the Broadcaster," Saturday Review, July 11, 1964, p. 21.

Shayon, Robert Lewis. "Which Filter Travels Democracy Best?," Saturday Review, July 14, 1962, pp. 46-47.

Sherrill, Robert G. "H. L. Hunt, Portrait of a Super-patriot," Nation, February 24, 1964, pp. 182-195.

"Showdown on 'Equal Time'," Business Week, July 25, 1959, pp. 24-25.

"Some Affiliates Ask CBS to Fight FCC Cigaret Plan," Advertising Age, June 12, 1967, pp. 1, 78.

"Stanton: Broadcast Crusade for Civil Rights Law," Sponsor, v. 18, July 13, 1964, p. 16.

Stanton, Frank. "Stations Should Consider Endorsements," Sponsor, v. 18, September 28, 1964, p. 24.

"Station Editorials Can Boost Ads, Broadcasters Told," Advertising Age, v. 32, March 27, 1964, p. 42.

"Stations Flight New FCC Rule on Free Time," Editor & Publisher, v. 92, February 28, 1959, p. 30.

Tebbel, John. "Freedom of the Air: Myth or Reality?," Saturday Review, April 14, 1962, pp. 56-57.

"TV Editorial Policy Rings Cash Register," Editor & Publisher, v. 94, December 3, 1960, p. 63.

"TV's Equal-Time Gag," Business Week, August 29, 1964, p. 28.

"TV's $20,000,000 Gift to the Presidential Campaign," Sponsor, v. 14, November 7, 1960, pp. 29-32.

"What Are the Fundamental Considerations in Editorializing," Sponsor, v. 13, May 9, 1959, pp. 46-47.

"What to Expect Next in Television," (an interview with E. William Henry), U. S. News & World Report, v. 57, July 6, 1964, pp. 48-52.

"What You Can Do About Sec. 315," Broadcasting, v. 57, July 20, 1959, p. 68.

"When Must I Give Equal Time?," Sponsor, v. 16, June 25, 1962, pp. 35-38, 49.

"Where the Networks Can't Win," Business Week, October 24, 1964, p. 40.

"Will NBC Take the Editorial Plunge?," Sponsor, v. 17, August 12, 1963, p. 54.

Newspapers

"ACLU Backs TV and Radio Editorializing, Reverses 10-Year Opposition," New York Times, May 4, 1959, p. 29.

"ACLU Urges Legislation to Exclude Newscasts," New York Times, July 6, 1959, p. 49.

"Air Campaign Coverage Hailed," New York Times, March 28, 1961, p. 18.

"Bill Exempting News Programs from Equal Time Requirement Gets Final Congressional Approval," New York Times, September 4, 1959, p. 19.

"Bill Exempting News Programs from Equal-Time Requirement Passed, House of Representatives," New York Times, September 3, 1959, p. 52.

Blundell, William E. "Equal Time's Misfire," Wall Street Journal, October 9, 1964, p. 14.

"Broadcast Editorials Attacked and Defended as Hearings Open," Washington Post, July 16, 1963, p. A9.

"Broadcasters Association Urges News Programs Exemption from Equal-Time Ruling," New York Times, June 14, 1959, p. 19.

"CBS President Stanton Backs Senator Hartke Bill Freeing Broadcasters of Obligation to Give Equal Time to Fringe Candidates," New York Times, June 19, 1959, p. 51.

"CBS President Stanton Says News and Editorial Opinion Should be Separate on Broadcasts But Should Be 'Adjacent' and Will 'Clear Labels', House of Representatives Subcommittee," New York Times, November 7, 1959, p. 13.

"CBS Sets Fight," New York Times, February 22, 1959, p. 88.

"CBS, to Avoid Equal-Time Demands, Withdraws Bid to Senator Humphrey to Appear on TV Program, Face the Nation, After Company Attorneys Rule He is Candidate for Presidential Nomination," New York Times, July 17, 1958, p. 1.

"CBS Will Fight Ruling on Political Equal Time," Washington Star, March 15, 1959.

Clayton, James E. "Broadcasters Told to Present Both Sides," Washington Post, July 27, 1963, p. A4.

"Comment on WMCA President Straus One Minute Editorials Broadcast Daily," New York Times, April 9, 1961, p. 11, 15.

"Confusion Over Free Time," Washington Post, October 31, 1964, p. A14.

"Court Upholds FCC's Denial to Goldwater," Washington Star, October 28, 1964, p. B6.

"Daly Demands Time to Reply to Stanton," New York Times, July 29, 1959, p. 59.

"Dean Barrett Backs Bill," New York Times, June 25, 1958, p. 18.

"Distorting the News," Washington Post, March 17, 1959, p. A12.

Dole, Kenneth. "Church of Christ Raps TV Station," Washington Post, April 18, 1964, p. A11.

"Dr. Stanton Says CBS Stations May Back Political Candidates by 1966," New York Times, July 8, 1964, p. 71.

"Dr. Stanton Says CBS Weigh On-the-Air Editorials Opposing FCC Decision," New York Times, March 15, 1959, p. 66.

"Editorial Backs Exemption," New York Times, July 21, 1959, p. 28.

"Editorial Broadcasts Defended at House Quiz," Washington Post, July 18, 1963, p. 11.

"Editorial on FCC's Ruling All Political Candidates be Granted 'Equal Time' on TV," Wall Street Journal, June 19, 1959, p. 6.

"Editorial on FCC's Ruling that Presidential News Conferences are Subject to Broadcasting's 'Equal Time' Law," Wall Street Journal, October 14, 1964, p. 18.

"Editorial on Lar Daly, Perennial Candidate for Mayor of Chicago, Unintentionally Creating Real News by Forcing 'Equal Time' Dispute Back to Congress where New Law Eliminated 'Equal Time' Rule from Four Types of Broadcasting," Wall Street Journal, September 10, 1959, p. 10.

"Editorial on Sen. Humphrey Losing Change to Air Views on TV Program Due to F.C.C.'s 'Equal Time' Ruling," Wall Street Journal, July 21, 1959, p. 14.

"Editorial on Statement by Rep. R. W. Hemphill of South Carolina Criticizing Air-Wave Editorialists," Wall Street Journal, July 22, 1963, p. 6.

"Editorial on TV Coverage of Nov. 6 Elections," Wall Street Journal, November 8, 1962, p. 18.

"Editorial Urges Change," New York Times, June 18, 1959, p. 30.

"Editorializing on the Air," New York Times, July 20, 1963, p. 18.

"Editorializing Reviewed," New York Times, March 30, 1961, p. 58.

"Eisenhower Calls Chicago Case Decision Ridiculous," New York Times, March 19, 1959, p. 1.

"'Equal Time' Abuses," Christian Science Monitor, March 20, 1959.

"Equal Time Conflict," New York Times, November 1, 1964, p. 6E.

"Equal Time Rule on Foreign Issues Rejected by F.C.C.," New York Times, October 23, 1965, p. 63.

"Failure of Analyst H. K. Smith to Appear on His Regular CBS Radio Program Spurs Reports of Dispute Over His Alleged Editorializing," New York Times, October 30, 1961, p. 59.

"FCC Chairman Doerfer Urges Rule Repeal," New York Times, March 18, 1959, p. 75.

"FCC Chairman Ford Puts '60 Spending by All Candidates for TV-Radio Time at $14,650,000," New York Times, February 1, 1961, p. 21.

"FCC Cool to Bill on Editorializing," New York Times, July 17, 1963, p. 63.

"FCC Refuses to Change Chicago Case Ruling that Equal-Time Provision Applies to Newscasts as Well as Other Broadcasts," New York Times, June 17, 1959, p. 1.

"FCC Rejects Bid of Atheist Mrs. M. Murray for Free Broadcast Time on Fifteen Radio Stations in Hawaii," New York Times, June 12, 1965, p. 22.

"FCC Ruled that Broadcaster Who Provides 'Live" Coverage of President's Press Conference During Election Campaign Will Have to Honor Demands for Equal Time from All Other Candidates," Wall Street Journal, October 2, 1964, p. 6.

"FCC Rules that Brief Glimpses of Chicago Mayor Daly on TV Newscasts Entitle His Rival in Primary Election, Lar Daly, to Equal Time," New York Times, February 21, 1959, p. 1.

"FCC to Say in 2 Weeks if Mississippi Stations Violated Fairness Rules," Wall Street Journal, July 16, 1963, p. 8.

Gardner, Paul. "Broadcasters Urged to Support Political Candidates in the Fall," New York Times, July 9, 1964, p. 67.

"Goldwater Aides File Appeal Today for Equal Time," Washington Post, October 22, 1964, p. A4.

"Goldwater Loses Equal-Time Move," New York Times, October 20, 1964, p. 1.

Gould, Jack. "Collins Enters N.A.B. Lists," New York Times, May 9, 1961, p. 79.

Gould, Jack. "Equal Time on the Air," New York Times, July 7, 1963, p. 11, 9.

Gould, Jack. "Fulton Lewis, Jr.," New York Times, April 29, 1962, p. 11, 17.

Gould, Jack. "Radio-TV Editorials," New York Times, June 13, 1962, p. 83.

Gould, Jack. "Right-Wing Radio is Under Inquiry," New York Times, January 17, 1963, p. 5.

Gould, Jack. "Speaking Out," New York Times, July 28, 1963, p. x13.

Gould, Jack. "The Equal-Time Barrier," New York Times, October 2, 1964, p. 17.

Gould, Jack. "TV: Equal Time Issue," New York Times, June 17, 1959, p. 71.

Gould, Jack. "TV: Minorities' Position," New York Times, August 1, 1960, p. 45.

Gould, Jack. "TV: Misusing Video During the Political Campaign," New York Times, October 23, 1964, p. 79.

"Group of Broadcasters Complains of Government Encroachment on Broadcasting Editorials, Conference with President Kennedy," New York Times, August 23, 1963, p. 51.

"Hearing: ABC Executive T. Shaker Sees Editorials Vital," New York Times, July 20, 1963, p. 47.

"High Court Rejects Goldwater TV Plea," New York Times, October 29, 1964, pp. 1, 19.

"House Commerce Committee Voted to Draw Up Legislation to Exempt Radio, TV Newscasts from F.C.C. Equal Time Requirements," Wall Street Journal, July 24, 1959, p. 13.

"House Commerce Subcommittee Heard Frank Stanton, President C.B.S., Say Failure to Overturn F.C.C. Ruling Requiring Broadcasting Industry to Give Equal Time to Minor Political Candidates Would CAuse Blackout of Political News on Radio, TV," New York Times, July 2, 1959, p. 6.

"House Commerce Subcommittee Heard Robert Sarnoff, President, N.B.C., Call for Repeal of Regulation Requiring Broadcasting Industry to Give Equal time to Minor Political Candidates," Wall Street Journal, June 30, 1959, p. 14.

"House of Representatives Passes Bill to Suspend Equal-Time Rule for Presidential and Vice Presidential Candidates," New York Times, August 23, 1960, pp. 1, 59.

"House Passed Compromise Bill to Exempt Radio-TV Newscasts, News Interviews from Equal Time Ruling," Wall Street Journal, September 3, 1959, p. 9.

"House, Senate Conferees Reached Agreement on Compromise Bill to Exempt Newscasts, News Interviews from 'Equal Time' Regulations of F.C.C.," Wall Street Journal, August 28, 1959, p. 5.

"How Candidates Spark Equal-Time Claim Told," Washington Post, March 29, 1961, p. C7.

"How to Harass Radio Station," New York Times, January 14, 1963, p. 6.

"Humphrey, on Today, Charges Equal Time Rule Will Curb Public Service Programs," New York Times, July 18, 1959, p. 35.

"H. V. Kaltenborn Urges Broadcasters Defy FCC Ruling," New York Times, May 21, 1959, p. 63.

"Jack Gould Lauds Station for Stimulating Thinking on Public Issues," New York Times, March 23, 1960, p. 75.

"Jack Gould on ACLU Opposition to Equal-Time Suspension," New York Times, August 1, 1960, p. 45.

"Jack Gould on Chicago Case," New York Times, March 1, 1959, p. 11, 13.

"Jack Gould on Rising Dispute Over Rev. C. McIntire Broadcasts on WINB," New York Times, April 9, 1963, p. 95.

"Justice Department Endorsed Proposals Overturning F.C.C. Ruling Requiring Radio, TV Stations to Give Equal Time to Minor Political Candidates in Testimony Before House Commerse Subcommittee," Wall Street Journal, July 1, 1959, p. 11.

"Justice Department, with Eisenhower Backing, Urges FCC Reverse February Ruling in Chicago Case," New York Times, May 8, 1959, p. 11.

"Lar Daly, Now Presidential Candidate, Demands Time to Match Humphrey," New York Times, July 19, 1959, p. 44.

Laurent, Lawrence. "Airway Editorials Causing Stir," Washington Post, June 22, 1963, p. D8.

Laurent, Lawrence. "Broadcasters Dared to Speak Honestly," Washington Post, September 19, 1963, p. A27.

Laurent, Lawrence. "Broadcasters Scored for Weak Editorial Positions," Washington Post, July 9, 1964, p. D20.

Laurent, Lawrence. "Editorial Broadcasts Urged by FCC Chief," Washington Post, March 2, 1962, p. D10.

Laurent, Lawrence. "Fairness Doctrine is Clarified by FCC," Washington Post, December 15, 1965, p. E14.

Laurent, Lawrence. "Issue of Editorials Flaring Up Again," Washington Post, January 27, 1965, p. D10.

Laurent, Lawrence. "Minow Urges Free Time for Politics," Washington Post, January 24, 1963, p. B10.

Laurent, Lawrence. "NBC and CBS Leaders Attack 'Equal Time' Law," Washington Post, December 10, 1964, p. C27.

Laurent, Lawrence. "TV Still Pestered by Pressure Groups," Washington Post, January 8, 1964, p. C6.

Laurent, Lawrence. "WWDC Editorials Take Strong Stands," Washington Post, October 4, 1963, p. D9.

Letter from Theordore F. Koop, Vice President, Columbia Broadcasting System, to the New York Times, published January 28, 1968, Section 4, p. 13.

Lewis, Anthony. "F.C.C. Sanctions Provocative TV," New York Times, January 23, 1964, pp. 1, 63.

Lyons, Richard L. "GOP Expected to Seek Prime Time to Reply to Kennedy Talk on TV," Washington Post, December 20, 1962, p. A2.

"Minow Advocated Editorials on Air," New York Times, March 2, 1962, p. 59.

"Minow Cautious on Equal Air Time," New York Times, July 13, 1962, p. 49.

"Minow Urges News Programs During Prime Viewing Evening Time," New York Times, September 30, 1961, p. 17.

"National Broadcasters Association President Collins Urges Stations Editorialize and Take Sides," New York Times, May 9, 1961, p. 80.

"National Broadcasters Association President Fellows Says TV and Radio Stations Would Like to Editorialize But Are Barred by Lack of Government Clarification of 'Equal Time' Issues," New York Times, March 16, 1959, p. 54.

"NBC President Sarnoff and CBS Prsident Stanton Urge Repeal of Equal-Time Law, House of Representatives Subcommittee," New York Times, March 5, 1963, p. 5.

"Opinion Programs Face House Study," New York Times, June 29, 1963, p. 51.

"Pacifica Decides Not to Answer F.C.C.'s Questions on Red Ties," New York Times, November 11, 1963, p. 63.

"Pacifica's Policy on Reds Detailed," New York Times, July 28, 1963, p. 56.

Pearson, Drew. "Right-Wing Radio-TV Probed," Washington Post, December 10, 1965, p. D19.

"President Johnson May Forfeit TV Spots by Refusal to Debate Goldwater," Wall Street Journal, September 4, 1964, p. 8.

"Provocative Broadcasting," Washington Post, January 23, 1964, p. A14.

"Radio Minister Raps FCC Policy," Washington Post, May 18, 1965, p. B12.

"Radio-TV Assailed on Editorializing," New York Times, July 16, 1963, p. 63.

"Radio-TV Editorials to be Probed by House Group, Probably in July," Washington Post, May 30, 1963, p. 2.

"Representative Cunningham Offers Bill to Exempt Regular News Programs and Commentaries from Equal Time Rule," New York Times, March 10, 1959, p. 33.

"Republican National Chairman Morton Urges Rule Change," New York Times, June 27, 1959, p. 44.

Ripley, Josephine. "FCC Raps Stations on 'Rights' Issue," Christian Science Monitor, July 31, 1963, p. 3.

Roevekamp, Frederick W. "N. Y. Liberals Ask Probe of Radio Policies," Christian Science Monitor, February 6, 1963, p. 2.

"Senate Committee Approved Bill to Exempt from 'Equal Time' Requirement Coverage of Political Candidates on News, Panel Show," New York Times, July 16, 1959, p. 10.

"Senate Passed Compromise Bill to Exempt Radio, TV Newscasts, News Interviews from Equal Time Rule," Wall Street Journal, September 4, 1959, p. 11.

"Senate Subcommittee Issues Volume in Study of TV-Radio Handling of 1960 Presidential Campaign," New York Times, July 30, 1961, p. 38.

"Senate Subcommittee Study of Political Reporting Finds Network Coverage 'Balanced Quantitatively' But Charges Fulton Lewis Jr. (Mutual Broadcasting) Abused Newscast Time During '60 Presidential Campaign by Openly Endorsing and Editorializing in favor of Richard M. Nixon," New York Times, April 18, 1962, p. 78.

"Senator Morton Protests Radio Station WMCA 1960 Advertisements to Promote Its Broadcast Editorial Stand Backing Kennedy," New York Times, March 30, 1961, p. 58.

Shephard, Richard F. "Equal-Time Law Called Too Rigid," New York Times, November 10, 1962, p. 51.

"Slightly Silly," Washington Star, March 17, 1958, p. A14.

"Smith and CBS End Their Relations in Policy Rift," New York Times, October 31, 1961, p. 63.

"TV Presidents Urge More Editorializing," New York Times, July 19, 1963, p. 53.

"United Church of Christ Sets Network of 400 Volunteers in Nine Southern States to Monitor TV-Radio Programs on Fairness to Negroes," New York Times, July 6, 1965, p. 64.

"White House Frowns at Equal News Ruling," Washington Post, March 19, 1959.

Waugh, John C. "FCC Backs Controversy," Christian Science Monitor, February 15, 1964, p. 3.

"Xerox Corp. Received More than 9,000 Letters, Most of Them Presumably from Members of John Birch Society, Denouncing Company for Sponsoring Television Shows About UN," Wall Street Journal, August 21, 1964, p. 3.

Yerxa, Fendall W. "G.O.P. to Ask Time to Reply to Talk," New York Times, October 18, 1964, p. 32.

Law Review Articles

"Administrative Law--'Equal Time Act' Does Not Apply to Regular Weathercasts by Political Candidate (Brigham v. FCC, 276 F(2d) 828)," Maryland Law Review, v. 20, p. 374 (Fall, 1960).

"Appearances on New Programs Excluded from Equal Time Act," Virginia Law Review, v. 46, pp. 564-575 (April,1960).

Baker, Warren E. "Policy by Rule or Ad Hoc Approach--Which Should It Be?," Law and Contemporary Problems, XXII, no. 4 (1957).

Barren, J. A. "Federal Communications Commission's Fairness Doctrine: An Evaluation," George Washington Law Review, v. 37, p. 31 (Fall, 1964).

Blaine, H. R. "Equality, Fairness and 315: The Frustration of Democratic Politics," Maryland Law Review, v. 24, p. 166 (Spring, 1964).

Branscomb, Anne W. "Should Political Broadcasting be Fair or Equal? A Reappraisal of Section 315 of the Federal Communications Act," George Washington Law Review, v. 30, p. 63 (October, 1961).

Cease, R. H. "Evaluation of Public Policy Relating to Radio and Television Broadcasting: Social and Economic Issues," University of Chicago Law School Record, v. 13, p. 23 (Autumn, 1965).

"Constitutional Law--'Free Television Act' Passed by California General Electorate Held Violative of Free Speech Guarantee," San Diego Law Review, v. 4, p. 162 (January, 1967).

Dean, J. W. "Political Broadcasting: The Communications Act of 1934 Reviewed," Federal Communications Bar Journal, v. 20, p. 16 (1966).

"Defamation by Broadcast: A Lively Dispute," Houston Law Review, v. 2, p. 238 (Fall, 1964).

Derby, E. S. "Section 315: Analysis and Proposal," Harv. J. Legis., v. 3, p. 257 (February, 1966).

"'Equal-Time' Provisions: Has Broadcasting Come of Age?" University of Colorado Law Review, v. 36, p. 257 (Winter, 1964).

Erbst, L. A. "Equal Time for Candidates--Fairness or Frustration?" Southern California Law Review, v. 34, p. 190 (Winter, 1961).

"FCC Rules that President's Report on International Crisis Does Not Entitle Opposition to Equal Time Under Section 315 of Communications Act," University of Pennsylvania Law Review, v. 105 (1957).

"The FCC's Concept of Freedom of the Press," Virginia Law Review, v. 36 (1950).

"Federal Communications Act--Amendment Exempts Certain News Programs from Equal-Time Provisions--Act of Sept. 14, 1959, 73 Stat. 557," Harvard Law Review, v. 73, pp. 794-797 (February, 1960).

"Federal Communications Commission: Control of 'Deceptive Programming'," University of Pennsylvania Law Review, v. 108 (1960).

"The Freedom of Speech of Radio," Harvard Law Review, v. 46 (1932-1933).

Friedenthal, J. H. "Impact of Federal Regulation on Political Broadcasting: Section 315 of the Communications Act," Harvard Law Review, v. 72, p. 445 (January, 1959).

"Justice Black and First Amendment 'Absolutes': A Public Interview," New York University Law Review, v. 37 (June, 1962).

Korbel, H. J. "Defamation by Broadcast: The Need for Federal Control," ABA Journal, v. 49, p. 771 (August, 1963).

Loevinger, Lee. "Issues in Program Regulation," Federal Communications Bar Journal, v. 20, p. 3 (1966).

Loevinger, Lee. "Religious Liberty and Broadcasting," George Washington Law Review, v. 33, p. 631 (March, 1965).

"The Mayflower Doctrine Scuttled," Yale Law Journal, v. 59 (1950).

"Mayflower Rule--Gone But Not Forgotten," Cornell Law Quarterly, v. 35 (1950).

"National Policy and the 'Public Interest'--A Marriage of Necessity in the Communications Act of 1934," University of Pennsylvania Law Review, v. 114, p. 386 (January, 1966).

Pierson, W. Theodore. "The Need for Modifications of Section 326," The Federal Communications Bar Journal, v. 18 (1963).

"Radio and Television Appearances of Candidates for Office: Amended Section 315 of the Communications Act," Yale Law Journal, v. 69, pp. 805-815 (April, 1960).

"Radio Editorials and the Mayflower Doctrine," Columbia Law Review, v. 48 (1948).

"Radio Regulation and Freedom of the Air," Harvard Law Review, v. 54 (1941).

"Regulation of Program Content by the FCC," Harvard Law Review, v. 77 (February, 1964).

"Selected Materials on Political Broadcasting," Record of the Association of the Bar of the City of New York, v. 18, pp. 47-51 (January, 1963).

Sullivan, John Paul. "Editorials and Controversy: The Broadcaster's Dilemma," George Washington Law Review, v. 32, pp. 719-768 (April, 1964).

Miscellaneous Materials

Alexander, Herbert E. "Political Broadcasting: What's Its Impact on Elections?" Grass roots guides on democracy and practical politics booklet no. 14, 1964. 15 pp.

American Civil Liberties Union. 39th Annual Report. American Civil Liberties Union, 1959.

Anello, Douglas A. "The Regulatory Role in Broadcasting." Remarks before the Iowa Broadcasters Association, Iowa City, Iowa, May 15, 1964. National Association of Broadcasters, 1964. 21 pp.

Brief for Amicus Curiae KING Broadcasting Co. in RTDNA v. FCC.

Brief and Reply Brief for Columbia Broadcasting System in RTDNA v. FCC.

Brief for National Broadcasting Co. in RTDNA v. FCC.

Brief for Radio and Television News Directors Association in RTDNA v. FCC.

Brief for The Tobacco Institute in John F. Banzhaf, III v. Federal Communicatons Commission. U. S. Court of Appeals, District of Columbia No. 21285, 21525, 21526, 21577.

Cusak, Mary Ann. "Editorializing in Broadcasting." Doctoral dissertation, Wayne State University, 1960. University Microfilms no. 60-2319.

Center for the Study of Democratic Institutions. "Broadcasting and Government Regulation in a Free Society," An Occasional Paper on the Role of the Mass Media in the Free Society, 1959.

"Darkness is Descending on the Land," Dan Smoot Report, v. 9, pp. 289-296 (September 16, 1963).

Ford, Frederick W. "Broadcasting Political and Controversial Issues." Address before the Ohio Broadcasters' Association, Columbus, Ohio, November 9, 1962. Federal Communications Commission, 1962.

Ford, Frederick. Speech before the Radio-Television News Directors Association, Montreal, Canada, October 6, 1960.

McGee, Gale. "The Fairness Doctrine--A Challenge for Responsibility in Broadcasting." Address before the Academy of Television Arts and Sciences, January 27, 1964.

Manion, Dean Clarence E. "Do You Want Federal Censorship for Your Local Radio Station?" Manion Forum, October 27, 1963.

National Association of Broadcasters. Editorializing on the Air. 1963.

National Association of Broadcasters. Letter to the FCC, August 29, 1963. (Mimeo.)

National Association of Broadcasters. Political Broadcast Catechism. 4th ed. rev. National Association of Broadcasters, June, 1960.

Third National Radio Conference. Recommendations for Regulation of Radio. Washington, D. C., 1924.

Fourth National Radio Conference. Proceedings and Recommendations for Regulation of Radio. Washington, D. C., 1925.

Ripley, Joseph Marion. "The Practices and Policies Regarding Broadcasts of Opinions about Controversial Issues by Radio and Television Stations in the U. S." Doctoral dissertation, Ohio State University, 1961. University Microfilms no. 62-805.

Schmidt, Larry D. "The Development of the Federal Communications Commission's Fairness Doctrine." Master's thesis, University of Kansas, 1965.

Television Information Office. "Television in Government and Politics, A Bibliography." 1964.

Tower, Charles H. "The Fairness Doctrine." Speech before the Convention of the Indiana Broadcasters Association, French Lick, Indiana, October 18, 1963. Corinthian Broadcasting Corporation, 1963.

White, Melvin R. "History of Radio Regulation Affecting Program Policy." Doctoral Dissertation, University of Wisconsin, 1948.

APPENDICES

APPENDIX A

REPRODUCTION OF PAGES 10416-10427,
THE FEDERAL REGISTER, VOL. 29,
JULY 25, 1964, INCLUDING THE
"FAIRNESS PRIMER" AND THE
REPORT ON EDITORIALIZING
BY BROADCAST LICENSEES

FEDERAL COMMUNICATIONS COMMISSION

[FCC 64-611]

APPLICABILITY OF THE FAIRNESS DOCTRINE IN THE HANDLING OF CONTROVERSIAL ISSUES OF PUBLIC IMPORTANCE

PART I—INTRODUCTION

It is the purpose of this Public Notice to advise broadcast licensees and members of the public of the rights, obligations, and responsibilites of such licensees under the Commission's "fairness doctrine", which is applicable in any case in which broadcast facilities are used for the discussion of a controversial issue of public importance. For this purpose, we have set out a digest of the Commission's interpretative rulings on the fairness doctrine. This Notice will be revised at appropriate intervals to reflect new rulings in this area. In this way, we hope to keep the broadcaster and the public informed of pertinent Commission determinations on the fairness doctrine, and thus reduce the number of these cases required to be referred to the Commission for resolution. Before turning to the digest of the rulings, we believe some brief introductory discussion of the fairness doctrine is desirable.

The basic administrative action with respect to the fairness doctrine was taken in the Commission's 1949 Report, Editorializing by Broadcast Licensees, 13 FCC 1246; Vol. 1, Part 3, R.R. 91-201.[1] This report is attached hereto because it still constitutes the Commission's basic policy in this field.[2]

Congress recognized this policy in 1959. In amending Section 315 so as to exempt appearances by legally qualified candidates on certain news-type programs from the "equal opportunities" provision, it was stated in the statute that such action should not be construed as relieving broadcasters "• • • from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance" (Public Law 86-274, approved September 14, 1959, 73 Stat. 557).[3] The legislative history[4] establishes that this provision "is a restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H. Rept. No. 1063, 86th Cong., 1st Sess., p. 5).

While Section 315 thus embodies both the "equal opportunities" requirement and the fairness doctrine, they apply to different situations and in different ways. The "equal opportunities" requirement relates solely to use of broadcast facilities by candidates for public office. With certain exceptions involving specified news-type programs, the law provides that if a licensee permits a person who is a legally qualified candidate for public office to use a broadcast station, he shall afford equal opportunities to all other such candidates for that office in the use of the station. The Commission's Public Notice on Use of Broadcast Facilities by Candidates for Public Office, 27 Fed. Reg. 10063 (October 12, 1962), should be consulted with respect to "equal opportunities" questions involving political candidates.

The fairness doctrine deals with the broader question of affording reasonable opportunity for the presentation of contrasting viewpoints on controversial issues of public importance. Generally speaking, it does not apply with the precision of the "equal opportunities" requirement. Rather, the licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation—as to whether a controversial issue of public importance is involved, as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all the other facets of such programming. See par. 9, Editorializing Report. In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee as to any of the above programming decisions, but rather to determine whether the licensee can be said to have acted reasonably and in good faith. There is thus room for considerably more discretion on the part of the licensee under the fairness doctrine than under the "equal opportunities" requirement.

INTERPRETATIVE RULINGS—COMMISSION PROCEDURE

We set forth below a digest of the Commission's rulings on the fairness doctrine. References, with citations, to the Commission's decisions or rulings are made so that the researcher may, if he desires, review the complete text of the Commission's ruling. Copies of rulings may be found in a "Fairness Doctrine" folder kept in the Commission's Reference Room.

In an area such as the fairness doctrine, the Commission's rulings are necessarily based upon the facts of the particular case presented and thus a variation in facts might call for a different or revised ruling. We therefore urge that interested persons, in studying the rulings for guidance, look not only to the language of the ruling but the specific factual context in which it was made.

It is our hope, as stated, that this Notice will reduce significantly the number of fairness complaints made to the Commission. Where complaint is made to the Commission, the Commission expects a complainant to submit specific information indicating (1) the particular station involved; (2) the particular issue of a controversial nature discussed over the air; (3) the date and time when the program was carried; (4) the basis for the claim that the station has presented only one side of the question; and (5) whether the station had afforded, or has plans to afford, an opportunity for the presentation of contrasting viewpoints.[5] (Lar Daly, 19 R.R. 1104, March 24, 1960; cf. Cullman Bcstg. Co., FCC 63-849, Sept. 18, 1963.)

If the Commission determines that the complaint sets forth sufficient facts to warrant further consideration, it will promptly advise the licensee of the complaint and request the licensee's comments on the matter. Full opportunity is given to the licensee to set out all programs which he has presented, or plans to present, with respect to the issue in question during an appropriate time period. Unless additional information is sought from either the complainant or the licensee, the matter is then usually disposed of by Commission action. (Letter of September 18, 1963 to Honorable Oren Harris, FCC 63-851.)

Finally, we repeat what we stated in our 1949 Report:

> • • • It is this right of the public to be informed, rather than any right on the part of the Government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting.

PART II—COMMISSION RULINGS

A. *Controversial Issue of Public Importance.*

1. *Civil rights as controversial issue.* In response to a Commission inquiry, a station advised the Commission, in a letter dated March 6, 1950, that it had broadcast editorial programs in support of a National Fair Employment Practices Commission on January 15-17, 1950, and that it had taken no affirmative steps to encourage and implement the presentation of points of view with respect to these matters which differed from the point of view expressed by the station.

Ruling. The establishment of a National Fair Employment Practices Commission constitutes a controversial question of public importance so as to impose upon the licensee the affirmative duty to aid and encourage the broadcast of opposing views. It is a matter of common knowledge that the establishment of a National Fair Employment Practices Commission is a subject that has been actively controverted by members of the public and by members of the Congress of the United States and that in the course of that controversy numerous differing views have been espoused. The broadcast by the station of a relatively large number of programs relating to this matter over a period of three days indicates an awareness of its

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[1] Citations in "R.R." refer to Pike & Fischer, Radio Regulations. The above report thus deals not only with the question of editorializing but also the requirements of the fairness doctrine.

[2] The report (par. 6) also points up the responsibility of broadcast licensees to devote a reasonable amount of their broadcast time to the presentation of programs dealing with the discussion of controversial issues of public importance. See Appendix A.

[3] The full statement in Section 315(a) reads as follows: "Nothing in the foregoing sentence [i.e., exemption from equal time requirements for news-type programs] shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

[4] See Appendix B.

[5] The complainant can usually obtain this information by communicating with the station.

importance and raises the presumption that at least one of the purposes of the broadcasts was to influence public opinion. In our report In the Matter of Editorializing by Broadcast Licensees, we stated that:

> * * * In appraising the record of a station in presenting programs concerning a controversial bill pending before the Congress of the United States, if the record disclosed that the licensee had permitted only advocates of the bill's enactment to utilize its facilities to the exclusion of its opponents, it is clear that no independent appraisal of the bill's merits by the Commission would be required to reach a determination that the licensee had misconstrued its duties and obligations as a person licensed to serve the public interest.

In light of the foregoing the conduct of the licensee was not in accord with the principles set forth in the report. (New Broadcasting Co. (WLIB), 6 R.R. 258, April 12, 1950.)

2. *Political spot announcements.* In an election an attempt was made to promote campaign contributions to the candidates of the two major parties through the use of spot announcements on broadcast stations. Certain broadcast stations raised the question whether the airing of such announcements imposed an obligation under Section 315 of the Act and/or the fairness doctrine to broadcast such special announcements for all candidates running for a particular office in a given election.

Ruling. The "equal opportunities" provision of Section 315 applies only to uses by candidates and not to those speaking in behalf of or against candidates. Since the above announcements did not contemplate the appearance of a candidate, the "equal opportunities" provision of Section 315 would not be applicable. The fairness doctrine is, however, applicable. (Letter to Lawrence M. C. Smith, FCC 63-358, 25 R.R. 291, April 17, 1963.) See Ruling No. 13.

3. *"Reports to the People".* The complaint of the Chairman of the Democratic State Committee of New York alleged that an address by Governor Dewey over the facilities of the stations affiliated with the CBS network on May 2, 1949, entitled "A Report to the People of New York State," was political in nature and contained statements of a controversial nature. The CBS reply stated, in substance, that it was necessary to distinguish between the reports made by holders of office to the people whom they represented and the partisan political activities of the individuals holding office.

Ruling. The Commission recognizes that public officials may be permitted to utilize radio facilities to report on their stewardship to the people and that "the mere claim that the subject is political does not automatically require that the opposite political party be given equal facilities for a reply." On the other hand, it is apparent that so-called reports to the people may constitute attacks on the opposite political party or may be a discussion of a public controversial issue. Consistent with the views expressed by the Commission in the Editorializing Report, it is clear that the characterization of a particular program as a report to the people does not necessarily establish such a program as noncontroversial in nature so as to avoid the requirement of affording time for the expression of opposing views. In that Report, we stated "* * * that there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues * * *. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view." The duty of the licensee to make time available for the expression of differing views is invoked where the facts and circumstances in each case indicate an area of controversy and differences of opinion where the subject matter is of public importance. In the light of the foregoing, the Commission concludes that "it does not appear that there has been the abuse of judgment on the part of [CBS] such as to warrant holding a hearing on its applications for renewal of license." (Paul E. Fitzpatrick, 6 R.R. 543, July 21, 1949; (see also, California Democratic State Central Committee, Public Notice 95873, 20 R.R. 867.869, October 31, 1960.))

4. *Controversial issue within service area.* A station broadcast a statement by the President of CBS opposing pay TV; two newscasts containing the views of a Senator opposed to pay TV; one newscast reporting the introduction by a Congressman of an anti-pay TV bill; a half-hour network program on pay TV in which both sides were represented, followed by a ten-minute film clip of a Senator opposing pay TV; a half-hour program in which a known opponent of pay TV was interviewed by interrogators whose questions in some instances indicated an opinion by the questioner favorable to pay TV. In a hearing upon the station's application for modification of its construction permit, an issue was raised whether the station had complied with the requirements of the fairness doctrine. The licensee stated that while nationally pay TV was "certainly" a controversial issue, it regarded pay TV as a local controversial issue only to a very limited extent in its service area, and therefore it was under no obligation to take the initiative to present the views of advocates of pay TV.

Ruling. The station's handling of the pay TV question was improper. It could be inferred that the station's sympathies with the opposition to pay TV made it less than a vigorous searcher for advocates of subscription television. The station evidently thought the subject of sufficient general interest (beyond its own concern in the matter) to devote broadcast time to it, and even to preempt part of a local program to present the views of the Senator in opposition to pay TV immediately after the balanced network discussion program, with the apparent design of neutralizing any possible public sympathy for pay TV which might have arisen from the preceding network forum. The anti-pay TV side was represented to a greater extent on the station than the other, though it cannot be said that the station choked off the expression of all views inimical to its interest. A licensee cannot excuse a one-sided presentation on the basis that the subject matter was not controversial in its service area, for it is only through a fair presentation of all facts and arguments on a particular question that public opinion can properly develop. (In re The Spartan Radiocasting Co., 33 F.C.C., 765, 771, 794-795, 802-803, November 21, 1962.)

5. *Substance of broadcast.* A number of stations broadcast a program entitled "Living Should Be Fun", featuring a nutritionist giving comment and advice on diet and health. Complaint was made that the program presented only one side of controversial issues of public importance. Several licensees contended that a program dealing with the desirability of good health and nutritious diet should not be placed in the category of discussion of controversial issues.

Ruling. The Commission cannot agree that the program consisted merely of the discussion of the desirability of good health and nutritious diet. Anyone who listened to the program regularly—and station licensees have the obligation to know what is being broadcast over their facilities—should have been aware that at times controversial issues of public importance were discussed. In discussing such subjects as the fluoridation of water, the value of krebiozen in the treatment of cancer, the nutritive qualities of white bread, and the use of high potency vitamins without medical advice, the nutritionist emphasized the fact that his views were opposed to many authorities in these fields, and on occasions on the air, he invited those with opposing viewpoints to present such viewpoints on his program. A licensee who did not recognize the applicability of the fairness doctrine failed in the performance of his obligations to the public. (Report on "Living Should be Fun" Inquiry, 33 F.C.C. 101, 107, 23 R.R. 1599, 1606, July 18, 1962.)

6. *Substance of broadcast.* A station broadcast a program entitled "Communist Encirclement" in which the following matters, among others, were discussed: socialist forms of government were viewed as a transitory form of government leading eventually to communism; it was asserted that this country's continuing foreign policy in the Far East and Latin America, the alleged infiltration of our government by communists, and the alleged moral weakening in our homes, schools and churches have all contributed to the advance of international communism. In response to complaints alleging one-sided presentation of these issues, the licensee stated that since it did not know of the existence of any communist organizations or communists in its community, it was unable to afford opportunity to those who might wish to present opposing view

Ruling. In situations of this kind, it was not and is not the Commission's in-

tention to require licensees to make time available to communists or the communist viewpoint. But the matters listed above raise controversial issues of public importance on which persons other than communists hold contrasting views. There are responsible contrasting viewpoints on the most effective methods of combatting communism and communist infiltration. Broadcast of proposals supporting only one method raises the question whether reasonable opportunity has been afforded for the expression of contrasting viewpoints. (Letter to Tri-State Broadcasting Company, Inc., April 26, 1962 (staff letter).)

7. *Substance of broadcast.* In 1957, a station broadcast a panel discussion entitled "The Little Rock Crisis" in which several public officials appeared, and whose purpose, a complainant stated, was to stress the maintenance of segregation and to express an opinion as to what the Negro wants or does not want. A request for time to present contrasting viewpoints was refused by the licensee who stated that the program was most helpful in preventing trouble by urging people to keep calm and look to their elected representatives for leadership, that it was a report by elected officials to the people, and that therefore no reply was necessary or advisable.

Ruling. If the matters discussed involved no more than urging people to remain calm, it can be urged that no question exists as to fair presentation. However, if the station permitted the use of its facilities for the presentation of one side of the controversial issue of racial integration, the station incurred an obligation to afford a reasonable opportunity for the expression of contrasting views. The fact that the proponents of one particular position were elected officials did not in any way alter the nature of the program or remove the applicability of the fairness doctrine. See Ruling No. 3. (Lamar Life Insurance Co., FCC 59-651, 18 R.R. 693, July 1, 1959.)

8. *National controversial issues.* Stations broadcast a daily commentary program six days a week, in three of which views were expressed critical of the proposed nuclear weapons test ban treaty. On one of the stations the program was sponsored six days a week and on the other one day a week. A national committee in favor of the proposed treaty requested that the stations afford free time to present a tape of a program containing viewpoints opposed to those in the sponsored commentary program. The stations indicated, among other things, that it was their opinion that the fairness doctrine is applicable only to local issues.

Ruling. The keystone of the fairness doctrine and of the public interest is the right of the public to be informed—to have presented to it the "conflicting views of issues of public importance." Where a licensee permits the use of its facilities for the expression of views on controversial local or national issues of public importance such as the nuclear weapons test ban treaty, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. (Letter to Cullman Broadcasting Co., Inc., FCC 62-849, September 18, 1962.) See Rulings No. 16 and 17 for other aspects of the Cullman decision.

B. *Licensee's obligation to afford reasonable opportunity for the presentation of contrasting viewpoints.*

9. *Affirmative duty to encourage.* In response to various complaints alleging that a station had been "one-sided" in its presentations on controversial issues of public importance, the licensee concerned rested upon its policy of making time available, upon request, for "the other side."

Ruling. The licensee's obligations to serve the public interest cannot be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. As the Commission pointed out in the Editorializing Report (par. 9):

> • • • If, as we believe to be the case, the public interest is best served in a democracy through the ability of the people to hear expositions of the various positions taken by responsible groups and individuals on particular topics and to choose between them, it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints.

(John J. Dempsey, 6 R.R. 615, August 16, 1950; Editorializing Report, par. 9.) (See also Metropolitan Betg. Corp., Public Notice 82388, 19 R.R. 602, 604, December 29, 1959.)

10. *Non-delegable duty.* Approximately 50 radio stations broadcast a program entitled "Living Should Be Fun", featuring a nutritionist giving comment and advice on diet and health. The program was syndicated and taped for presentation, twenty-five minutes a day, five days a week. Many of the programs discussed controversial issues of public importance. In response to complaints that the stations failed to observe the requirements of the fairness doctrine, some of the licensees relied upon (i) the nutritionist's own invitation to those with opposing viewpoints to appear on his program or (ii) upon the assurances of the nutritionist or the sponsor that the program fairly represented all responsible contrasting viewpoints on the issues with which it dealt, as an adequate discharge of their obligations under the fairness doctrine.

Ruling. Those licensees who relied solely upon the assumed built-in fairness of the program itself, or upon the nutritionist's invitation to those with opposing viewpoints, cannot be said to have properly discharged their responsibilities. Neither alternative is likely to produce the fairness which the public interest demands. There could be many valid reasons why the advocate of an opposing viewpoint would be unwilling to appear upon such a program. In short, the licensee may not delegate his responsibilities to others, and particularly to an advocate of one particular viewpoint. As the Commission said in our Report in the Matter of Editorializing by Broadcast Licensees, "It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints." (Report on "Living Should Be Fun" Inquiry, 33 FCC 101, 107, 23 R.R. 1599, 1606, July 18, 1962.)

11. *Reliance upon other media.* In January 1958, the issue of subscription television was a matter of public controversy, and it was generally known that the matter was the subject of Congressional hearings being conducted by the House and Senate Interstate and Foreign Commerce Committees. On Monday, January 27, 1958, between 9:30 and 10:00 p.m., WSOC-TV broadcast the program "Now It Can Be Told" (simultaneously with the other Charlotte television station, WBTV), a program consisting of a skit followed by a discussion in which the president of WSOC-TV and the vice president and general manager of Station WBTV were interviewed by employees of the two stations. The skit and interview were clearly weighted against subscription TV, and in the program the station made clear its preference for the present TV system. On Saturday, February 1, 1958, WSOC-TV presented for 15 minutes, beginning at 3:35 p.m., a film clip in which a United States Representative discussed subscription television and expressed his opposition thereto. From January 24 to January 30, 1958, inclusive, WSOC-TV presented a total of 43 spot announcements, all of them against subscription television, and urged viewers, if they opposed it, to write their Congressmen without delay to express their opposition. WSOC-TV did not broadcast any programs or announcements presenting a viewpoint favorable to subscription television although on February 28, 1958, the station did (together with the management of Station WBTV) send a telegram to the three chief subscription television groups, offering them joint use of the two Charlotte stations, without charge, at a time mutually agreeable to all parties concerned, for the purpose of putting on a program by the proponents of pay TV. This offer was refused by Skiatron, one of the three groups. In its reply to the Commission's inquiry, the station referred to "the large amount of publicity already given by the Pay-TV proponents in newspapers, magazines and by direct mail," and asserted that its decision in this matter was taken "in an effort to furnish the public with the opposing viewpoints on the subject • • •"

Ruling. The station's broadcast presentation of the subscription TV issue was essentially one-sided, and, taking into account the circumstances of the situation existing at the time the station did not make any timely effort to secure the presentation of the other side of the issue by responsible representatives. It is the Commission's view that

the requirement of fairness, as set forth in the Editorializing Report, applies to a broadcast licensee irrespective of the position which may be taken by other media on the issue involved; and that the licensee's own performance in this respect, in and of itself, must demonstrate compliance with the fairness doctrine. (Letter to WSOC Broadcasting Co., FCC 53-686, 17 R.R. 548, 550, July 16, 1958.)

C. *Reasonable opportunity for the presentation of contrasting viewpoints.*

12. *"Equal time" not required.* Licensee broadcast over its several facilities on October 28, 1960, a 30-minute documentary concerning a North Dakota hospital. The last five minutes of the program consisted of an interview of the Superintendent of the hospital and the Chairman of the Board of Administration for State Institutions who responded to charges that the complainant, a candidate for the office of Attorney General of North Dakota, had publicly leveled against the Superintendent and Chairman concerning the administration of the hospital. On November 4, 1960 and at about the same viewing time as the preceding documentary, complainant's 30-minute broadcast was aired over the Stations in which complainant presented his allegations about the professional, administrative, and disciplinary conditions at the hospital and a state training school. The following day (November 5) licensee presented a 30-minute documentary on the state training school, the last five minutes of which consisted of a discussion of the charges made by complainant on his November 4 program by a spokesman for the opposing political party, and by the interviewees of the October 28 program. Licensee refused complainant's request for "equal time" to reply to the November 5 broadcast.

Ruling. In view of the fact that the "equal opportunities" requirement of Section 315 becomes applicable only when an opposing candidate for the same office has been afforded broadcast time, and that the complainant's political opponent did not appear on any of the programs in question (and, in fact, was never mentioned during the broadcast of these programs), the Commission reviewed the matter in light of the fairness doctrine. Unlike the "equal opportunities" requirement of Section 315, the fairness doctrine requires that where a licensee affords time over his facilities for an expression of one opinion on a controversial issue of public importance, he is under obligation to insure that proponents of opposing viewpoints are afforded a reasonable opportunity for the presentation of such views. The Commission concludes that on the facts before it, the licensee's actions were not inconsistent with the principles enunciated in the Editorializing Report. (Hon. Charles L. Murphy, FCC 62-737, 23 R.R. 953, July 13, 1962.)

13. *"Equal time" not required.* During a state-wide election an attempt was made to promote bipartisan campaign contributions, particularly for the candidates of the two major parties running for Governor and Senator, through the use of spot announcements on broadcast stations. Several stations raised the question whether the broadcast of these announcements would impose upon them the obligation, under the fairness doctrine, to broadcast such special announcements for all candidates running for a particular office in a given election.

Ruling. If there were only the two candidates of the major parties for the office in question, fairness would obviously require that these two be treated roughly the same with respect to the announcements. But it does not follow that if there were, in addition, so-called minority party candidates for the office of Senator, these candidates also would have to be afforded a roughly equivalent number of similar announcements. In such an event, the licensee would be called upon to make a good faith judgment as to whether there can reasonably be said to be a need or interest in the community calling for some provision of announcement time to these other parties or candidates and, if so, to determine the extent of that interest or need and the appropriate way to meet it. In short, the licensee's obligation under the fairness doctrine is to afford a reasonable opportunity for the presentation of opposing views in the light of circumstances—an obligation calling for the same kind of judgment as in the case where party spokesmen (rather than candidates) appear. (Letter to Mr. Lawrence M. C. Smith, FCC 63-658, April 18, 1963.)

14. *No necessity for presentation on same program.* In the proceedings leading to the Editorializing Report, it was urged, in effect, that contrasting viewpoints with respect to a controversial issue of public importance should be presented on the same program.

Ruling. The Commission concluded that any rigid requirement in this respect would seriously limit the ability of the licensees to serve the public interest. "Forums and roundtable discussions, while often excellent techniques of presenting a fair cross section of differing viewpoints on a given issue, are not the only appropriate devices for radio discussion, and in some circumstances may not be particularly appropriate or advantageous." (Par. 8, Editorializing Report.)

15. *Overall performance on the issue.* A licensee presented a program in which views were expressed critical of the proposed nuclear weapons test ban treaty. The licensee rejected a request of an organization seeking to present views favorable to the treaty, on the ground, among others, that the contrasting viewpoint on this issue had already been presented over the station's facilities in other programming.

Ruling. The licensee's overall performance is considered in determining whether fairness has been achieved on a specific issue. Thus, where complaint is made, the licensee is afforded the opportunity to set out all the programs, irrespective of the programming format, which he has devoted to the particular controversial issue during the appropriate time period. In this case, the Commission files contained no complaints to the contrary, and therefore, if it was the licensee's good faith judgment that the public had had the opportunity fairly to hear contrasting views on the issue involved in his other programming, it appeared that the licensee's obligation pursuant to the fairness doctrine had been met. (Letter to Cullman Bctg. Co., FCC 63-849, September 18, 1963; Letter of September 20, 1963, FCC 63-851, to Honorable Oren Harris.)

D. *Limitations which may reasonably be imposed by the licensee.*

16. *Licensee discretion to choose spokesman.* See Ruling 8 for facts.

Ruling. Where a licensee permits the use of its facilities for the expression of views on controversial local or national issues of public importance such as the nuclear weapons test ban treaty, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. There is, of course, no single method by which this obligation is to be met. As the Editorializing Report makes clear, the licensee has considerable discretion as to the techniques or formats to be employed and the spokesmen for each point of view. In the good faith exercise of his best judgment, he may, in a particular case, decide upon a local rather than regional or national spokesmen—or upon a spokesman for a group which also is willing to pay for the broadcast time. Thus, with the exception of the broadcast of personal attacks (see Part E), there is no single group or person entitled as a matter of right to present a viewpoint differing from that previously expressed on the station. (Letter to Cullman Broadcasting Co., Inc., FCC 63-849, September 18, 1963.)

17. *Non-local spokesman; paid sponsorship.* See Ruling 8 for facts. The stations contended that their obligation under the fairness doctrine extended only to a local group or its spokesman, and also inquired whether they were required to give free time to a group wishing to present viewpoints opposed to those aired on a sponsored program.

Ruling. Where the licensee has achieved a balanced presentation of contrasting views, either by affording time to a particular group or person of its own choice or through its own programming, the licensee's obligations under the fairness doctrine—to inform the public—will have been met. But, it is clear that the public's paramount right to hear opposing views on controversial issues of public importance cannot be nullified by either the inability of the licensee to obtain paid sponsorship of the broadcast time or the licensee's refusal to consider requests for time to present a conflicting viewpoint from an organization on the sole ground that the organization has no local chapter. In short, where the licensee has chosen to broadcast a sponsored program which for the first time presents one side of a controversial issue, has not presented (or does not plan to present) contrasting viewpoints in other programming, and has been unable to obtain paid sponsorship for the appropriate presentation of the opposing viewpoint or viewpoints, he cannot reject a presentation otherwise suitable to the li-

censee—and thus leave the public uninformed—on the ground that he cannot obtain paid sponsorship for that presentation. (Letter to Cullman Broadcasting Co., Inc., FCC 63-849, September 18, 1963.)

16. *Unreasonable limitation; refusal to permit appeal not to vote.* A station refused to sell broadcast time to the complainant who, as a spokesman for a community group, was seeking to present his point of view concerning a bond election to be held in the community; the station had sold time to an organization in favor of the bond issue. The complainant alleged that the station had broadcast editorials urging people to vote in the election and that his group's position was that because of the peculiarities in the bond election law (more than 50 percent of the electorate had to vote in the election for it to be valid), the best way to defeat the proposed measure was for people not to vote in the election. The complainant alleged, and the station admitted, that the station refused to sell him broadcast time because the licensee felt that to urge people not to vote was improper.

Ruling. Because of the peculiarities of the state election law, the sale of broadcast time to an organization favoring the bond issue, and the urging of listeners to vote, the question of whether to vote became an issue. Accordingly, by failing to broadcast views urging listeners not to vote, the licensee failed to discharge the obligations imposed upon him by the Commission's Report on Editorializing. (Letter to Radio Station WMOP, January 21, 1963 (staff ruling).)

19. *Unreasonable limitation, insistence upon request from both parties to dispute.* During the period of a labor strike which involved a matter of paramount importance to the community and to the nation at large, a union requested broadcast time to discuss the issues involved. The request was denied by the station solely because of its policy to refuse time for such discussion unless both the union and the management agreed, in advance, that they would jointly request and use the station, and the management of the company involved in the strike had refused to do so.

Ruling. In view of the licensee's statement that the issue was "of paramount importance to the community • • •," the licensee's actions were not in accordance with the principles enunciated in the Editorializing Report, specifically that portion of par. 8, which states that:

• • • where the licensee has determined that the subject is of sufficient import to receive broadcast attention, it would obviously not be in the public interest for spokesmen for one of the opposing points of view to be able to exercise a veto power over the entire presentation by refusing to broadcast its position. Fairness in such circumstances might require no more than that the licensee make a reasonable representation of t[illegible] particular position and if it fails in this effort, to continue to make available its facilities to the spokesmen for such position in the event that, after the original programs are broadcast, they t[illegible] decide to avail themselves of a right to present their contrary opinion.

(Par. 8, Report on Editorializing by Broadcast Licensees; The Evening News Ass'n (WWJ), 4 R.R. 283, April 21, 1950.)

E. *Personal Attack Principle*

20. *Personal attack.* A newscaster on a station, in a series of broadcasts, attacked certain county and state officials, charging them with nefarious schemes and the use of their offices for personal gain, attaching derisive epithets to their names, and analogizing their local administration with the political methods of foreign dictators. At the time of renewal of the station's license, the persons attacked urged that the station had been used for the licensee's selfish purposes and to vent his personal spite. The licensee denied the charge, and asserted that the broadcasts had a factual basis. On several occasions, the persons attacked were invited to use the station to discuss the matters in the broadcasts.

Ruling. Where a licensee expresses an opinion concerning controversial issues of public importance, he is under obligation to see that those holding opposing viewpoints are afforded a reasonable opportunity for the presentation of their views. He is under a further obligation not to present biased or one-sided news programming (viewing such programming on an overall basis) and not to use his station for his purely personal and private interests. Investigation established that the licensee did not subordinate his public interest obligations to his private interests, and that there was "a body of opinion" in the community "that such broadcasts had a factual basis."

As to the attacks, the *Editorializing Report* states that "• • • elementary considerations of fairness may dictate that time be allocated to a person or group which has been specifically attacked over the station, where otherwise no such obligation would exist • • •" In this case, the attacks were of a highly personal nature, impugning the character and honesty of named individuals. In such circumstances, the licensee has an affirmative duty to take all appropriate steps to see to it that the persons attacked are afforded the fullest opportunity to respond. Here, the persons attacked knew of the attacks, were generally apprised of their nature, and were aware of the opportunities afforded them to respond. Accordingly, the license was renewed. (Clayton W. Mapoles, FCC 62-501, 23 R.R. 583, May 9, 1962.)

21. *Personal attack.* For a period of five days, September 18-22, a station broadcast a series of daily editorials attacking the general manager of a national rural electric cooperative association in connection with a pending controversial issue of public importance. The manager arrived in town on September 21 for a two-day stay and, upon being informed of the editorials, on the morning of September 22d sought to obtain copies of them. About noon of the same day, the station approached the manager with an offer of an interview to respond to the statements made in the editorials. The manager stated, however, that he would not have had time to prepare adequately a reply which would require a series of broadcasts. He complained to the Commission that the station had acted unfairly.

Ruling. Where, as here, a station's editorials contain a personal attack upon an individual by name, the fairness doctrine requires that a copy of the specific editorial or editorials shall be communicated to the person attacked either prior to or at the time of the broadcast of such editorials so that a reasonable opportunity is afforded that person to reply. This duty on the part of the station is greater where, as here, interest in the editorials was consciously built up by the station over a period of days and the time within which the person attacked would have an opportunity to reply was known to be so limited. The Commission concludes that in failing to supply copies of the editorials promptly to the manager and delaying in affording him the opportunity to reply to them, the station had not fully met the requirements of the Commission's fairness doctrine. (Billings Bcstg. Co., FCC 62-736, 23 R.R. 951, July 18, 1962.)

22. *No personal attack merely because individual is named.* A network program discussed the applicability of Section 315 to appearances by candidates for public office on TV newscasts and the Commission's decision holding that the mayoralty candidate, Lar Daly, was entitled to equal time when the Mayor of Chicago appeared on a newscast. The program contained the editorial views of the President of CBS opposing the interpretation of the Commission and urging that Section 315 not apply to newscasts. Three other persons on the program expressed contrasting points of view. Lar Daly's request that he be afforded time to reply to the President of CBS, because he was "directly involved" in the Commission's decision which was discussed over the air and because he was the most qualified spokesman to present opposing views, was denied by the station. Did the fairness doctrine require that his request be granted?

Ruling. It was the newscast question involved in the Commission's decision, rather than Lar Daly, which was the controversial issue which was presented. Since the network presented several spokesmen, all of whom appeared qualified to state views contrasting with those expressed by the network President, the network fulfilled its obligation to provide a "fair and balanced presentation of an important public issue of a controversial nature." (Lar Daly, 19 R.R. 1103, at 1104, Mar. 24, 1960.)*

23. *Licensee involvement in personal attack.* It was urged that in Mapoles, Billings, and Times-Mirror (see Ruling

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*As seen from the above rulings, the personal attack principle is applicable where there are statements, in connection with a controversial issue of public importance, attacking an individual's or group's integrity, character, or honesty or like personal qualities, and not when an individual or group is simply named or referred to. Thus, while a definitive Commission ruling must await a complaint involving specific facts—see Introduction, p. 3, the personal attack principle has not been applied where there is simply stated disagreement with the views of an individual or group concerning a controversial issue of public importance. Nor is it necessary to send a transcript or summary of the attack, with an offer of time for response, in the case of a personal attack upon a foreign leader, even assuming that an attack occurred in connection with a controversial issue of public importance.

20, 21, 25), the station was, in effect, "personally involved"; that the personal attack principle should be applied only when the licensee is personally involved in the attack upon a person or group (i.e., through editorials or through station commentator programming), and not where the attack is made by a party unconnected with the station.

Ruling. Under fundamental communications policy, the licensee, with the exception of appearances of political candidates subject to the equal opportunities requirement of Section 315, is fully responsible for all matter which is broadcast over his station. It follows that when a program contains a personal attack, the licensee must be fully aware of the contents of the program, whatever its source or his actual involvement in the broadcast. The crucial consideration, as the Commission stated in Mapoles, is that "his broadcast facilities [have been] used to attack a person or group." (Letter of September 18, 1963 to Douglas A. Anello, FCC 63-850.)

24. *Personal attack—no tape or transcript.* In the same inquiry as above (Ruling 23), the question was also raised as to the responsibility of the licensee when his facilities are used for a personal attack in a program dealing with a controversial issue of public importance and the licensee has no transcript or tape of the program.

Ruling. Where a personal attack is made and no script or tape is available, good sense and fairness dictate that the licensee send as accurate a summary as possible of the substance of the attack to the person or group involved. (Letter of September 18, 1963 to Douglas A. Anello, FCC 63-850.)

25. *Personal attacks on, and criticism of, candidate; partisan position on campaign issues.* In more than 20 broadcasts, two station commentators presented their views on the issues in the 1962 California gubernatorial campaign between Governor Brown and Mr. Nixon. The views expressed on the issues were critical of the Governor and favored Mr. Nixon, and at times involved personal attacks on individuals and groups in the gubernatorial campaign, and specifically on Governor Brown. The licensee responded that it had presented opposing viewpoints but upon examination there were two instances of broadcasts featuring Governor Brown (both of which were counterbalanced by appearances of Mr. Nixon) and two instances of broadcasts presenting viewpoints opposed to two of the issues raised by the above-noted broadcasts by the commentators. It did not appear that any of the other broadcasts cited by the station dealt with the issues raised as to the gubernatorial campaign.

Ruling. Since there were only two instances which involved the presentation of viewpoints concerning the gubernatorial campaign, opposed to the more than twenty programs of the commentators presenting their views on many different issues of the campaign for which no opportunity was afforded for the presentation of opposing viewpoints, there was not a fair opportunity for presentation of opposing viewpoints with respect to many of the issues discussed in the commentators' programs. The continuous, repetitive opportunity afforded for the expression of the commentators' viewpoints on the gubernatorial campaign, in contrast to the minimal opportunity afforded to opposing viewpoints, violated the right of the public to a fair presentation of views. Further, with respect to the personal attacks by the one commentator on individuals and groups involved in the gubernatorial campaign, the principle in Mapoles and Billings should have been followed. In the circumstances, the station should have sent a transcript of the pertinent continuity on the above programs to Governor Brown and should have offered a comparable opportunity for an appropriate spokesman to answer the broadcasts. (Times-Mirror, FCC 62-1130, 24 R.R. 404, Oct. 26, 1962; FCC 62-1109, 24 R.R. 407, Oct. 19, 1962.)

26. *Personal attacks on, and criticism of, candidates; partisan position on campaign issues—appropriate spokesman.* See facts above. The question was raised whether the candidate has the right to insist upon his own appearance, to respond to the broadcasts in question.

Ruling. Since a response by a candidate would, in turn, require that equal opportunities under Section 315 be afforded to the other legally-qualified candidates for the same office, the fairness doctrine requires only that the licensee afford the attacked candidate an opportunity to respond through an appropriate spokesman. The candidate should, of course, be given a substantial voice in the selection of the spokesman to respond to the attack or to the statement of support. (Times-Mirror Bstg. Co., FCC 62-1130, 24 R.R. 404, 406, Oct. 19, 1962, Oct. 26, 1962.)

27. *Personal attacks on, and criticism of, candidate; partisan position on campaign issues.* During the fall of an election year, a news commentator on a local affairs program made several critical and uncomplimentary references to the actions and public positions of various political and non-partisan candidates for public office and of the California Democratic Clubs and demanded the resignation of an employee of the staff of the County Superintendent of Schools. In response to a request for time to respond by the local Democratic Central Committee, and after negotiations between the licensee and the complaining party, the licensee offered two five-minute segments of time on November 1 and 2, 1962, and instructed its commentator to refrain from expressing any point of view on partisan issues on November 5, or November 6, election eve and election day, respectively.

Ruling. On the facts of this case, the comments of the news commentator constituted personal attacks on candidates and others and involved the taking of a partisan position on issues involved in a race for political office. Therefore, under the ruling of the Times-Mirror case, the licensee was under an obligation to "send a transcript of the pertinent continuity in each such program to the appropriate candidates immediately and [to] offer a comparable opportunity for an appropriate spokesman to answer the broadcast." However, upon the basis of the showing, the licensee's offer of time, in response to the request, was not unreasonable under the fairness doctrine. (Letter to The McBride Industries, Inc., FCC 63-756, July 31, 1963.)

F. *Licensee Editorializing.*

28. *Freedom to editorialize.* The Editorializing Report and the 1960 Programming Statement, while stating that the licensee is not required to editorialize, make clear that he is free to do so, but that if he does, he must meet the requirements of the fairness doctrine.

Adopted: July 1, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

Appendix A

EDITORIALIZING BY BROADCAST LICENSEES

REPORT OF COMMISSION

1. This report is issued by the Commission in connection with its hearings on the above entitled matter held at Washington, D.C., on March 1, 2, 3, 4, and 5 and April 19, 20, and 21, 1948. The hearing had been ordered on the Commission's own motion on September 5, 1947, because of our belief that further clarification of the Commission's position with respect to the obligations of broadcast licensees in the field of broadcasts of news, commentary and opinion was advisable. It was believed that in view of the apparent confusion concerning certain of the Commission's previous statements on these vital matters by broadcast licensees and members of the general public, as well as the professed disagreement on the part of some of these persons with earlier Commission pronouncements, a reexamination and restatement of its views by the Commission would be desirable. And in order to provide an opportunity to interested persons and organizations to acquaint the Commission with their views, prior to any Commission determination, as to the proper resolution of the difficult and complex problems involved in the presentation of radio news and comment in a democracy, it was designated for public hearing before the Commission en banc on the following issues:

1. To determine whether the expression of editorial opinions by broadcast station licensees on matters of public interest and controversy is consistent with their obligations to operate their stations in the public interest.

2. To determine the relationship between any such editorial expression and the affirmative obligation of the licensees to insure that a fair and equal presentation of all sides of controversial issues is made over their facilities.

2. At the hearings testimony was received from some 49 witnesses representing the broadcasting industry and various interested organizations and members of the public. In addition, written statements of their position on the matter were placed into the record by 21 persons and organizations who were unable to appear and testify in person. The various witnesses and statements brought forth for the Commission's consideration arguments on every side of both of the questions involved in the hearing. Because of the importance of the issues considered in the hearing, and because of the possible confusion which may have existed in the past concerning the policies applicable to the matters which were the subject of the hearing, we have deemed it advisable to set forth

in detail and at some length our conclusions as to the basic considerations relevant to the expression of editorial opinion by broadcast licensees and the relationship of any such expression to the general obligations of broadcast licensees with respect to the presentation of programs involving controversial issues.

3. In approaching the issues upon which this proceeding has been held, we believe that the paramount and controlling consideration is the relationship between the American system of broadcasting carried on through a large number of private licensees upon whom devolves the responsibility for the selection and presentation of program material, and the Congressional mandate that this licensee responsibility is to be exercised in the interests of, and as a trustee for the public at large which retains ultimate control over the channels of radio and television communications. One important aspect of this relationship, we believe, results from the fact that the needs and interests of the general public with respect to programs devoted to news commentary and opinion can only be satisfied by making available to them for their consideration and acceptance or rejection, of varying and conflicting views held by responsible elements of the community. And it is in the light of these basic concepts that the problems of insuring fairness in the presentation of news and opinion and the place in such a picture of any expression of the views of the station licensee as such must be considered.

4. It is apparent that our system of broadcasting, under which private persons and organizations are licensed to provide broadcasting service to the various communities and regions, imposes responsibility in the selection and presentation of radio program material upon such licensees. Congress has recognized that the requests for radio time may far exceed the amount of time reasonably available for distribution by broadcasters. It provided, therefore, in section 3 (h) of the Communications Act that a person engaged in radio broadcasting shall not be deemed a common carrier. It is the licensee, therefore, who must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues, rather than to the other legitimate services of radio broadcasting, and who must select or be responsible for the selection of the particular news items to be reported or the particular local, state, national or international issues or questions of public interest to be considered, as well as the person or persons to comment or analyze the news or to discuss or debate the issues chosen as topics for radio consideration. "The life of each community involves a multitude of interests some dominant and all pervasive such as interest in public affairs, education and similar matters and some highly specialized and limited to few. The practical day-to-day problem with which every licensee is faced is one of striking a balance between these various interests to reflect them in a program service which is useful to the community, and which will in some way fulfil the needs and interests of the many." Capital Broadcasting Company, 4 Pike & Fischer, R.R. 21; The Northern Corporation (WMEX), 4 Pike & Fischer, R.R. 333, 338. And both the Commission and the Courts have stressed that this responsibility devolves upon the individual licensees, and can neither be delegated by the licensee to any network or other person or group, or be unduly fettered by contractual arrangements restricting the licensee in his free exercise of his independent judgments. National Broadcasting Company v. United States, 319 U.S. 190 (upholding the Commission's Chain Broadcasting Regulations, §§ 3.101–3.106, 3.231–3.233, 3.631–3.638), Churchhill Tabernacle v. Federal Communications Commission, 160 F. 2d 244 (See, Rules and Regulations, §§ 3.100, 3.299, 3.699); Allen T. Simmons v. Federal Communications Commission, 169 F. 2d 670, certiorari denied 335 U.S. 846.

5. But the inevitability that there must be some choosing between various claimants for access to a licensee's microphone, does not mean that the licensee is free to utilize his facilities as he sees fit or in his own particular interests as contrasted with the interests of the general public. The Communications Act of 1934, as amended, makes clear that licenses are to be issued only where the public interest, convenience or necessity would be served thereby. And we think it is equally clear that one of the basic elements of any such operation is the maintenance of radio and television as a medium of freedom of speech and freedom of expression for the people of the nation as a whole. Section 301 of the Communications Act provides that it is the purpose of the Act to maintain the control of the United States over all channels of interstate and foreign commerce. Section 326 of the Act provides that this control of the United States shall not result in any impairment of the right of free speech by means of such radio communications. It would be inconsistent with these express provisions of the Act to assert that, while it is the purpose of the Act to maintain the control of the United States over radio channels, but free from any regulation or condition which interferes with the right of free speech, nevertheless persons who are granted limited rights to be licensees of radio stations, upon a finding under Sections 307(a) and 309 of the Act that the public interest, convenience, or necessity would be served thereby, may themselves make radio unavailable as a medium of free speech. The legislative history of the Communications Act and its predecessor, the Radio Act of 1927 shows, on the contrary, that Congress intended that radio stations should not be used for the private interest, whims, or caprices of the particular persons who have been granted licenses, but in manner which will serve the community generally and the various groups which make up the community.[2] And the courts have consistently upheld Commission action giving recognition to and fulfilling that intent of Congress. KFAB Broadcasting Association v. Federal Radio Commission, 47 F. 2d 670; Trinity Methodist Church, South v. Federal Radio Commission, 62 F. 2d 850, certiorari denied, 288 U.S. 599.

6. It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day. Basically, it is in recognition of the great contribution which radio can make in the advancement of this purpose that portions of the radio spectrum are allocated to that form of radio communications known as radio-broadcasting. Unquestionably, then, the standard of public interest, convenience and necessity as applied to radio-broadcasting must be interpreted in the light of this basic purpose. The Commission has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station. And we have recognized, with respect to such programs, the paramount right of the public in a free society to be informed and to have presented to it for acceptance or rejection the different attitudes and viewpoints concerning those vital and often controversial issues which are held by the various groups which make up the community.[3] It is this right of the public to be informed, rather than any right on the part of the government, any broadcast licensee or any individual member of the public to broadcast his own particular views on any matter, which is the foundation stone of the American system of broadcasting.

And this view that the interest of the listening public rather than the private interests of particular licensees was reemphasized as recently as June 9, 1948 in a unanimous report of the Senate Committee on Interstate and Foreign Commerce on S. 1333 (80th Cong.) which would have amended the present Communications Act in certain respects. See S. Rep't No. 1567, 80th Cong., 2d Sess., pp. 1415.

7. This affirmative responsibility on the part of broadcast licensees to provide a reasonable amount of time for the presentation over their facilities of programs devoted to the discussion and consideration of public issues has been reaffirmed by this Commission in a long series of decisions. The United Broadcasting Company (WHKC) case, 10 F.C.C. 675, emphasized that this duty includes the making of reasonable provision for the discussion of controversial issues of public importance in the community served, and to make sufficient time available for full discussion thereof. The Scott case, 3 Pike & Fischer, Radio Regulation 259, stated our conclusions that this duty extends to all subjects of substantial importance to the community coming within the scope of free discussion under the First Amendment without regard to personal views and opinions of the licensees on the matter, or any determination by the licensee as to the possible unpopularity of the views to be expressed on the subject matter to be discussed among particular elements of the station's listening audience. Cf., National Broadcasting Company v. United States, 319 U.S. 190; Allen T. Simmons, 3 Pike & Fischer, R.R. 1623, affirmed: Simmons v. Federal Communications Commission, 169 F. 2d 670, certiorari denied, 335 U.S. 846; Bay State Beacon, 3 Pike & Fischer, R.R. 1455, affirmed: Bay State Beacon v. Federal Communications Commission, U.S. App. D.C., decided December 20, 1948; Petition of Sam Morris, 3 Pike & Fischer, R.R. 151; Thomas N. Beach, 3 Pike & Fischer R.R. 1703. And the Commission has made clear that in such presentation of news and comment the public interest requires that the licensee must operate on a basis of overall fairness, making his facilities available for the ex-

[2] Thus in the Congressional debates leading to the enactment of the Radio Act of 1927, Congressman (later Senator) White stated (67 Cong. Rec. 5479, March 12, 1926):

We have reached the definite conclusion that the right of all our people to enjoy this means of communication can be preserved only by the repudiation of the idea underlying the 1912 law that anyone who will, may transmit and by the assertion in its stead of the doctrine that the right of the public to service is superior to the right of any individual to use the ether * * * the recent radio conference met this issue squarely. It recognized that in the present state of scientific development there must be a limitation upon the number of broadcasting stations and it recommended that licenses should be issued only to those stations whose operation would render a benefit to the public, are necessary in the public interest or would contribute to the development of the art. This principle was approved by every witness before your committee. We have written it into the bill. *If enacted into law, the broadcasting privilege will not be a right of selfishness. It will rest upon an assurance of public interest to be served.* [Emphasis added.]

[3] Cf., Thornhill v. Alabama 310 U.S. 88, 102; Associated Press v. United States, 326 U.S. 1, 20.

pression of the contrasting views of all responsible elements in the community on the various issues which arise. Mayflower Broadcasting Co., 8 F.C.C. 333; United Broadcasting Co. (WHKC), 10 F.C.C. 515; Cf. WBNX Broadcasting Co., Inc., 4 Pike & Fischer, R.R. 244 (Memorandum Opinion). Only where the licensee's discretion in the choice of the particular programs to be broadcast over his facilities is exercised so as to afford a reasonable opportunity for the presentation of all responsible positions on matters of sufficient importance to be afforded radio time can radio be maintained as a medium of freedom of speech for the people as a whole. These concepts, of course, do restrict the licensee's freedom to utilize his station in whatever manner he chooses but they do so in order to make possible the maintenance of radio as a medium of freedom of speech for the general public.

8. It has been suggested in the course of the hearings that licensees have an affirmative obligation to insure fair presentation of all sides of any controversial issue before any time may be allocated to the discussion or consideration of the matter. On the other hand, arguments have been advanced in support of the proposition that the licensee's sole obligation to the public is to refrain from suppressing or excluding any responsible point of view from access to the radio. We are of the opinion, however, that any rigid requirement that licensees adhere to either of these extreme prescriptions for proper station programming techniques would seriously limit the ability of licensees to serve the public interest. Forums and roundtable discussions, while often excellent techniques of presenting a fair cross section of differing viewpoints on a given issue, are not the only appropriate devices for radio discussion, and in some circumstances may not be particularly appropriate or advantageous. Moreover, in many instances the primary "controversy" will be whether or not the particular problem should be discussed at all; in such circumstances, where the licensee has determined that the subject is of sufficient import to receive broadcast attention, it would obviously not be in the public interest for spokesmen for one of the opposing points of view to be able to exercise a veto power over the entire presentation by refusing to broadcast its position. Fairness, in such circumstances might require no more than that the licensee make a reasonable effort to secure responsible representation of the particular position and, if it fails in this effort, to continue to make available its facilities to the spokesmen for such position in the event that, after the original programs are broadcast, they then decide to avail themselves of a right to reply to present their contrary opinion. It should be remembered, moreover that discussion of public issues will not necessarily be confined to questions which are obviously controversial in nature, and in many cases, programs initiated with no thought on the part of the licensee of their possibly controversial nature will subsequently arouse controversy and opposition of a substantial nature which will merit presentation of opposing views. In such cases, however, fairness can be preserved without undue difficulty since the facilities of the station can be made available to the spokesmen for the groups wishing to state views in opposition to those expressed in the original presentation when such opposition becomes manifest.

9. We do not believe, however, that the licensee's obligations to serve the public interest can be met merely through the adoption of a general policy of not refusing to broadcast opposing views where a demand is made of the station for broadcast time. If, as we believe to be the case, the public interest is best served in a democracy through the ability of the people to hear expositions of the various positions taken by responsible groups and individuals on particular topics and to choose between them, it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints..

10. It should be recognized that there can be no one all embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesmen for each point of view. In determining whether to honor specific requests for time, the station will inevitably be confronted with such questions as whether the subject is worth considering, whether the viewpoint of the requesting party has already received a sufficient amount of broadcast time, or whether there may not be other available groups or individuals who might be more appropriate spokesmen for the particular point of view than the person making the request. The latter's personal involvement in the controversy may also be a factor which must be considered, for elementary considerations of fairness may dictate that time be allocated to a person or group which has been specifically attacked over the station, where otherwise no such obligation would exist. Undoubtedly, over a period of time some licensees may make honest errors of judgment. But there can be no doubt that any licensee honestly desiring to live up to its obligation to serve the public interest and making a reasonable effort to do so, will be able to achieve a fair and satisfactory resolution of these problems in the light of the specific facts.

11. It is against this background that we must approach the question of "editorialization"—the use of radio facilities by the licensees thereof for the expression of the opinions and ideas of the licensee on the various controversial and significant issues of interest to the members of the general public afforded radio (or television) service by the particular station. In considering this problem it must be kept in mind that such editorial expression may take many forms ranging from the overt statement of position by the licensee in person or by his acknowledged spokesmen to the selection and presentation of news editors and commentators sharing the licensee's general opinions or the making available of the licensee's facilities, either free of charge or for a fee to persons or organizations reflecting the licensee's viewpoint either generally or with respect to specific issues. It should also be clearly indicated that the question of the relationship of broadcast editorialization, as defined above, to operation in the public interest, is not identical with the broader problem of assuring "fairness" in the presentation of news, comment or opinion, but is rather one specific facet of this larger problem.

12. It is clear that the licensee's authority to determine the specific programs to be broadcast over his station gives him an opportunity, not available to other persons, to insure that his personal viewpoint on any particular issue is presented in his station's broadcasts, whether or not these views are expressly identified with the licensee. And, in absence of governmental restraint, he would, if he so chose, be able to utilize his position as a broadcast licensee to weight the scales in line with his personal views, or even directly or indirectly to propagandize in behalf of his particular philosophy or views on the various public issues to the exclusion of any contrary opinions. Such action can be effective and persuasive whether or not it is accompanied by any editorialization in the narrow sense of overt statement of particular opinions and views identified as those of licensee.

13. The narrower question of whether any overt editorialization or advocacy by broadcast licensees, identified as such is consonant with the operation of their stations in the public interest, resolves itself, primarily into the issue of whether such identification of comment or opinion broadcast over a radio or television station with the licensee, as such, would inevitably or even probably result in such over-emphasis on the side of any particular controversy which the licensee chooses to espouse as to make impossible any reasonably balanced presentation of all sides of such issues or to render ineffective the available safeguards of that over-all fairness which is the essential element of operation in the public interest. We do not believe that any such consequence is either inevitable or probable, and we have therefore come to the conclusion that overt licensee editorialization, within reasonable limits and subject to the general requirements of fairness detailed above, is not contrary to the public interest.

14. The Commission has given careful consideration to contentions of those witnesses at the hearing who stated their belief that any overt editorialization or advocacy by broadcast licensee is *per se* contrary to the public interest. The main arguments advanced by these witnesses were that overt editorialization by broadcast licensees would not be consistent with the attainment of balanced presentations since there was a danger that the institutional good will and the production resources at the disposal of broadcast licensees would inevitably influence public opinion in favor of the positions advocated in the name of the licensee and that, having taken an open stand on behalf of one position in a given controversy, a licensee is not likely to give a fair break to the opposition. We believe, however, that these fears are largely misdirected, and that they stem from a confusion of the question of overt advocacy in the name of the licensee, with the broader issue of insuring that the station's broadcasts devoted to the consideration of public issues will provide the listening public with a fair and balanced presentation of differing viewpoints on such issues, without regard to the particular views which may be held or expressed by the licensee. Considered, as we believe they must be, as just one of several types of presentation of public issues, to be afforded their appropriate and non-exclusive place in the station's total schedule of programs devoted to balanced discussion and consideration of public issues, we do not believe that programs in which the licensee's personal opinions are expressed are intrinsically more or less subject to abuse than any other program devoted to public issues. If it be true that station good will and licensee prestige, where it exists, may give added weight to opinion expressed by the licensee, it does not follow that such opinion should be excluded from the air any more than it should in the case of any individual or institution in which over a period of time has built up a reservoir of good will or prestige in the community. In any competition for public acceptance of ideas, the skills and resources of the proponents and opponents will always have some measure of effect in producing the results sought. But it would not be

suggested that they should be denied expression of their opinions over the air by reason of their particular assets. What is against the public interest is for the licensee "to stack the cards" by a deliberate selection of spokesmen for opposing points of view to favor one viewpoint at the expense of the other, whether or not the views of those spokesmen are identified as the views of the licensee or of others. Assurance of fairness must in the final analysis be achieved, not by the exclusion of particular views because of the source of the views, or the forcefulness with which the view is expressed, but by making the microphone available, for the presentation of contrary views without deliberate restrictions designed to impede equally forceful presentation.

15. Similarly, while licensees will in most instances have at their disposal production resources making possible graphic and persuasive techinques for forceful presentation of ideas, their utilization for the promulgation of the licensee's personal viewpoints will not necessarily or automatically lead to unfairness or lack of balance. While uncontrolled utilization of such resources for the partisan ends of the licensee might conceivably lead to serious abuses, such abuses could as well exist where the station's resources are used for the sole use of his personal spokesmen. The prejudicial or unfair use of broadcast production resources would, in either case, be contrary to the public interest.

16. The Commission is not persuaded that a station's willingness to stand up and be counted on these particular issues upon which the licensee has a definite position may not be actually helpful in providing and maintaining a climate of fairness and equal opportunity for the expression of contrary views. Certainly the public has less to fear from the open partisan than from the covert propagandist. On many issues, of sufficient importance to be allocated broadcast time, the station licensee may have no fixed opinion or viewpoint which he wishes to state or advocate. But where the licensee, himself, believes strongly that one side of a controversial issue is correct and should prevail, prohibition of his expression of such position will not of itself insure fair presentation of that issue over his station's facilities, nor would open advocacy necessarily prevent an overall fair presentation of the subject. It is not a sufficient answer to state that a licensee should occupy the position of an impartial umpire, where the licensee is in fact partial. In the absence of a duty to present all sides of controversial issues, overt editorialization by station licensees could conceivably result in serious abuse. But where, as we believe to be the case under the Communications Act, such a responsibility for a fair and balanced presentation of controversial public issues exists, we cannot see how the open espousal of one point of view by the licensee should necessarily prevent him from affording a fair opportunity for the presentation of contrary positions or make more difficult the enforcement of the statutory standard of fairness upon any licensee.

17. It must be recognized, however, that the licensee's opportunity to express his own views as part of a general presentation of varying opinions on particular controversial issues, does not justify or empower any licensee to exercise his authority over the selection of program material to distort or suppress the basic factual information upon which any truly fair and free discussion of public issues must necessarily depend. The basis for any fair consideration of public issues, and particularly those of a controversial nature, is the presentation of news and information concerning the basic facts of the controversy in as complete and impartial a manner as possible. A licensee would be abusing his position as public trustee of these important means of mass communication were he to withhold from expression over his facilities relevant news or facts concerning a controversy or to slant or distort the presentation of such news. No discussion of the issues involved in any controversy can be fair or in the public interest where such discussion must take place in a climate of false or misleading information concerning the basic facts of the controversy.

18. During the course of the hearings, fears have been expressed that any effort on the part of the Commission to enforce a reasonable standard of fairness and impartiality would inevitably require the Commission to take a stand on the merits of the particular issues considered in the programs broadcast by the several licensees, as well as exposing the licensees to the risk of loss of license because of "honest mistakes" which they may make in the exercise of their judgment with respect to the broadcasts of programs of a controversial nature. We believe that these fears are wholly without justification, and are based on either an assumption of abuse of power by the Commission or a lack of proper understanding of the role of the Commission, under the Communications Act, in considering the program service of broadcast licensees in passing upon applications for renewal of license. While this Commission and its predecessor, the Federal Radio Commission, have, from the beginning of effective radio regulation in 1927, properly considered that a licensee's overall program service is one of the primary indicia of his ability to serve the public interest, actual consideration of such service has always been limited to a determination as to whether the licensee's programming, taken as a whole, demonstrates that the licensee is aware of his listening public and is willing and able to make an honest and reasonable effort to live up to such obligations. The action of the station in carrying or refusing to carry any particular program is of relevance only as the station's actions with respect to such programs fits into its overall pattern of broadcast service, and must be considered in the light of its other program activities. This does not mean, of course, that stations may, with impunity, engage in a partisan editorial campaign on a particular issue or series of issues provided only that the remainder of its program schedule conforms to the statutory norm of fairness; a licensee may not utilize the portion of its broadcast service which conforms to the statutory requirements as a cover or shield for other programming which fails to meet the minimum standards of operation in the public interest. But it is clear that the standard of public interest is not so rigid that an honest mistake or error in judgment on the part of a licensee will be or should be condemned where his overall record demonstrates a reasonable effort to provide a balanced presentation of comment and opinion on such issues. The question is necessarily one of the reasonableness of the station's actions, not whether any absolute standard of fairness has been achieved. It does not require any appraisal of the merits of the particular issue to determine whether reasonable efforts have been made to present both sides of the question. Thus, in appraising the record of a station in presenting programs concerning a controversial bill pending before the Congress of the United States, if the record disclosed that the licensee had permitted only advocates of the bill's enactment to utilize its facilities to the exclusion of its opponents, it is clear that no independent appraisal of the bill's merits by the Commission would be required to reach a determination that the licensee had misconstrued its duties and obligations as a person licensed to serve the public interest. The Commission has observed, in considering this general problem that "the duty to operate in the public interest is no esoteric mystery, but is essentially a duty to operate a radio station with good judgment and good faith guided by a reasonable regard for the interests of the community to be served." Northern Corporation (WMEX), 4 Pike & Fischer, R.R. 333, 339. Of course, some cases will be clearer than others, and the Commission in the exercise of its functions may be called upon to weigh conflicting evidence to determine whether the licensee has or has not made reasonable efforts to present a fair and well-rounded presentation of particular public issues. But the standard of reasonableness and the reasonable approximation of a statutory norm is not an arbitrary standard incapable of administrative or judicial determination, but, on the contrary, one of the basic standards of conduct in numerous fields of Anglo-American law. Like all other flexible standards of conduct, it is subject to abuse and arbitrary interpretation and application by the duly authorized reviewing authorities. But the possibility that a legitimate standard of legal conduct might be abused or arbitrarily applied by capricious governmental authority is not and cannot be a reason for abandoning the standard itself. And broadcast licensees are protected against any conceivable abuse of power by the Commission in the exercising of its licensing authority by the procedural safeguards of the Communications Act and the Administrative Procedure Act, and by the right of appeal to the Courts from final action claimed to be arbitrary or capricious.

19. There remains for consideration the allegation made by a few of the witnesses in the hearing that any action by the Commission in this field enforcing a basic standard of fairness upon broadcast licensees necessarily constitutes an "abridgement of the right of free speech" in violation of the First Amendment of the United States Constitution. We can see no sound basis for any such conclusion. The freedom of speech protected against governmental abridgement by the First Amendment does not extend any privilege to government licensees of means of public communications to exclude the expression of opinions and ideas with which they are in disagreement. We believe, on the contrary, that a requirement that broadcast licensees utilize their franchises in a manner in which the listening public may be assured of hearing varying opinions on the paramount issues facing the American people is within both the spirit and letter of the First Amendment. As the Supreme Court of the United States has pointed out in the Associated Press monopoly case:

> It would be strange indeed, however, if the grave concern for freedom of the press which prompted adoption of the First Amendment should be read as a command that the government was without power to protect that freedom. * * * That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford nongovernmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. Freedom to publish means freedom for all and not for some. Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. (Associated Press v. United States, 326 U.S. 1 at p. 20.)

20. We fully recognize that freedom of the radio is included among the freedoms protected against government abridgement by the First Amendment. United States v. Paramount Pictures, Inc., et al., 334 U.S. 131, 166.

But this does not mean that the freedom of the people as a whole to enjoy the maximum possible utilization of this medium of mass communication may be subordinated to the freedom of any single person to exploit the medium for his own private interest. Indeed, it seems indisputable that full effect can only be given to the concept of freedom of speech on the radio by giving precedence to the right of the American public to be informed on all sides of public questions over any such individual exploitation for private purposes. Any regulation of radio, especially a system of limited licensees, is in a real sense an abrigement of the inherent freedom of persons to express themselves by means of radio communications. It is, however, a necessary and constitutional abridgement in order to prevent chaotic interference from destroying the great potential of this medium for public enlightenment and entertainment. National Broadcasting Company v. United States, 319 U.S. 190, 296; cf. Federal Radio Commission v. Nelson Brothers Bond & Mortgage Co., 289 U.S. 266; Fisher's Blend Station, Inc. v. State Tax Commission, 277 U.S. 650. Nothing in the Communications Act or its history supports any conclusion that the people of the nation, acting through Congress, have intended to surrender or diminish their paramount rights in the air waves, including access to radio broadcasting facilities to a limited number of private licensees to be used as such licensees see fit, without regard to the paramount interests of the people. The most significant meaning of freedom of the radio is the right of the American people to listen to this great medium of communications free from any governmental dictation as to what they can or cannot hear and free alike from similar restraints by private licensees.

21. To recapitulate, the Commission believes that under the American system of broadcasting the individual licensees of radio stations have the responsibility for determining the specific program material to be broadcast over their stations. This choice, however, must be exercised in a manner consistent with the basic policy of the Congress that radio be maintained as a medium of free speech for the general public as a whole rather than as an outlet for the purely personal or private interests of the licensee. This requires that licensees devote a reasonable percentage of their broadcasting time to the discussion of public issues of interest in the community served by their stations and that such programs be designed so that the public has a reasonable opportunity to hear different opposing positions on the public issues of interest and importance in the community. The particular format best suited for the presentation of such programs in a manner consistent with the public interest must be determined by the licensee in the light of the facts of each individual situation. Such presentation may include the identified expression of the licensee's personal viewpoint as part of the more general presentation of views or comments on the various issues, but the opportunity of licensees to present such views as they may have on matters of controversy may not be utilized to achieve a partisan or one-sided presentation of issues. Licensee editorialization is but one aspect of freedom of expression by means of radio. Only insofar as it is exercised in conformity with the paramount right of the public to hear a reasonably balanced presentation of all responsible viewpoints on particular issues can such editorialization be considered to be consistent with the licensee's duty to operate in the public interest. For the licensee is a trustee impressed with the duty of preserving for the public generally radio as a medium of free expression and fair presentation.

Appendix B

[FCC 64-612]

THE HISTORY OF THE FAIRNESS DOCTRINE

A. *Legislative History.*

The fairness doctrine was adopted pursuant to the public interest standards of the Federal Radio Act of 1927 and the Communications Act of 1934, and in light of the expressions of Congress as set forth in legislative history.

From the inception of commercial radio broadcasting, Congress expressed its concern that the air waves be used as a vital means of communication, capable of making a major contribution to the development of an informed public opinion. It was to encourage these capabilities within the American institutional framework that Congress legislated in this field.[1]

Both the Federal Radio Act of 1927 and the Communications Act of 1934 established that the American system of broadcasting should be carried on through a large number of private licensees upon whom rested the sole responsibility for determining the content and presentation of program material. But the Congress, in granting access to broadcast facilities to a limited number of private licensees, made clear from the beginning that the responsibility which licensees held must be exercised in accordance with the paramount public interest. Thus, the legislative history is clear that the Congress intended that radio should be maintained as a medium of free speech for the general public, rather than as an outlet for the views of a few, and that the responsibility held by broadcast licensees must be exercised in a manner which would serve the community generally and the various groups, whether organized or not, which made up the community.

As early as 1926, in the Congressional debates which led to the enactment of the Radio Act of 1927, Congressman (later Senator) White stated (67 Cong. Rec. 5479, March 12, 1926):

"We have reached the definite conclusion that the right of all our people to enjoy this means of communication can be preserved only by repudiation of the idea underlying the 1912 law that anyone who will, may transmit and by the assertion in its stead of the doctrine that the right of public to service is superior to the right of any individual to use the ether. This is the first and most fundamental difference between the pending bill and present law."

"The recent radio conference met this issue squarely. It recognized that in the present state of scientific development there must be a limitation upon the number of broadcasting stations and it recognized that licenses should be issued only to those stations whose operation would render a benefit to the public, are necessary in the public interest or would contribute to the development of the art. This principle was approved by every witness before your committee. We have written it into the bill. If enacted into law, the broadcasting privilege will not be the right of selfishness. It will rest upon an assurance of public interest to be served."

Similarly, the view that the public interest is paramount to the private interest of particular licensees was emphasized again on June 9, 1948, in a unanimous report of the Senate Committee on Interstate and Foreign Commerce on S. 1333, S. Rept. No. 1567, 80th Cong., 2d Sess., pp. 14–15; and, more recently, on April 17, 1962, in S. Rept. No. 994 (Part 6), 87th Cong., 2d Sess., pp. 1–4, with particular reference to the Commission's fairness doctrine, in which the view was expressed that the public interest requires that a fair cross-section of opinion be presented with respect to the controversial issues discussed, regardless of the personal views of the licensee.

Indeed, since 1959 the Communications Act has affirmed the fairness doctrine with respect to the broadcast licensee who permits the use of his facilities for the presentation of controversial public issues. In the 1959 Amendment to Section 315 of the Act, Congress specifically affirmed the fairness doctrine by providing that:

"Nothing in the foregoing sentence [i.e., exemption from equal time requirements for news-type programs] shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this chapter to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."

The legislative history of this amendment establishes that this provision "is a restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (House Rept. No. 1069, 85th Cong., 1st Sess., August 27, 1959, p. 5). As shown by the use of the word "chapter" rather than "section" and also by the legislative history (Ibid., Sen. Rept. No. 562, 86th Cong., 1st Sess., pp. 13, 19; 105 Cong. Rec. 16310, 16346–17; 17773, 17830–31), Congress made clear that the obligation of fairness is applicable to all broadcasts dealing with controversial issues of public importance. Thus, just as Section 315 prior to 1959 imposed a specific statutory obligation upon the licensee to afford "equal opportunities" to legally qualified candidates for public office, since 1959 it also gives specific statutory recognition to the doctrine that requires the licensee "to afford reasonable opportunity for the discussion of conflicting views on issues of public importance," i.e., to be fair in the broadcasting of controversial issues.

B. *The History of the Fairness Doctrine Within the Commission.*

The administrative history of the fairness doctrine dates back to some of the first decisions of the Federal Radio Commission, operating under the authority of the Federal Radio Act of 1927[2] and seeking to implement the public interest requirement of that Act.

One of the first responsibilities of the Radio Commission was to assign the frequencies and hours of operation to the numerous radio stations which had begun operations prior to the enactment of the Radio Act. The means through which the Radio Commission carried out this responsibility was primarily by the adoption of a general reallocation program which became effective on November 1, 1928, and pursuant to which, the frequencies and hours of operation of every radio station in the country were specified.[3]

Following the adoption of the general reallocation plan, the Radio Commission received numerous applications, many of which were mutually exclusive, for modification of the licenses which had been issued pursuant to the plan. Many of the applications were from organizations which had been using their facilities primarily for the promotion of their own viewpoint. While the Commission generally adopted the principle that, as between two broadcasting stations with otherwise equal claims for privileges, the station with the longest record of continuous service would have the superior right for

[1] S. Rept. No. 994 (Part 6), 87th Cong., 2d Sess., p. 1.

[2] 44 Stat. 1162 (1927).

[3] See 2 F.R.C. Ann. Rept. 17–18, 210–214.

a license, one exception to the principle of "priority" was made in the case of stations which served as outlets for the presentation of only one point of view.

Thus, in *Great Lakes Broadcasting Company* (reported in 3 F.R.C. Ann. Rep. 32), the Commission denied an application for modification of license of a station which broadcast only one point of view, stating that (at pp. 32, 33):

Broadcasting stations are licensed to serve the public and not for the purpose of furthering the private or selfish interests of individuals or groups of individuals. The standard of public interest, convenience, or necessity means nothing if it does not mean this.

It would not be fair, indeed it would not be good service, to the public to allow a one-sided presentation of the political issues of a campaign. Insofar as a program consists of discussion of public questions, public interest requires ample play for the free and fair competition of opposing views, and the commission believes that the principle applies not only to addresses by political candidates but to all discussions of issues of importance to the public. The great majority of broadcasting stations are, the commission is glad to say, already tacitly recognizing a broader duty than the law imposes upon them.

In explanation of this view, the Radio Commission pointed out that in the commercial radio broadcasting scheme (*Id.* at p. 34):

• • • there is no room for the operation of broadcasting stations exclusively by or in the private interests of individuals or groups so far as the nature of programs is concerned. There is not room in the broadcast band for every school of thought, religious, political, social, and economic, each to have its separate broadcasting station, its mouthpiece in the ether. If franchises are extended to some it gives them an unfair advantage over others, and results in a corresponding cutting-down of general public-service stations. It favors the interests and desires of a portion of the listening public at the expense of the rest. Propaganda stations (a term which is here used for the sake of convenience and not in a derogatory sense) are not consistent with the most beneficial sort of discussion of public questions. As a general rule, postulated on the laws of nature as well as on the standard of public interest, convenience, or necessity, particular doctrines, creeds and beliefs must find their way into the market of ideas by the existing public-service stations, and if they are of sufficient importance to the listening public the microphone will undoubtedly be available. If it is not, a well-founded complaint will receive the careful consideration of the Commission in its future action with reference to the station complained of.[4]

And, in the Chicago Federation of Labor case (reported in 3 F.R.C. 33, affirmed, Chicago Federation of Labor v. F.R.C., 41 F. 2d 422, the Commission again denied a modification of license on the ground that:

Since there is only a limited number of available frequencies for broadcasting, this commission was of the opinion, and so found, that there is no place for a station catering to any group, but that all stations should cater to the general public and serve public interest as against group or class interest.[5]

These principles received early and unequivocal affirmation by the Federal Communications Commission operating under the authority of the Communications Act of 1934. Thus, in 1938, the Commission denied an application for a construction permit primarily because of the applicant's policy of refusing to permit the use of its broadcast facilities by persons or organizations wishing to present any viewpoint different from that of the applicant.[6] Similarly, in 1940, in its Sixth Annual Report, the Commission stated (6 F.C.C. Ann. Rep. at 55):

"In carrying out the obligation to render a public service, stations are required to furnish well-rounded rather than one-sided discussion of public questions."

Again, in 1941, in Mayflower Broadcasting Corp., 8 FCC 333 at 340, the Commission stated:

"Freedom of speech on the radio must be broad enough to provide full and equal opportunity for the presentation to the public of all sides of public issues. Indeed, as one licensed to operate in the public domain the licensee has assumed the obligation of presenting all sides of important public questions fairly, objectively and without bias. The public interest—not the private—is paramount."

In that same case, however, it was also stated at p. 340: "In brief, the broadcaster cannot be an advocate." This statement was widely accepted as an outright prohibition of broadcast editorializing, and, in view of the reaction to such policy, the Commission, on September 5, 1947, initiated a proceeding in Docket No. 8516 to study and reexamine the role of broadcast editorializing and the fairness doctrine, in general. This study culminated in the Report on Editorializing, supra, as will be set forth more fully below.

Concurrently with its study in Docket No. 8516, however, the Commission continued the process of defining and applying the fairness doctrine to the various problems which were presented to it. Thus, the Commission made clear its belief that not only did the public interest require broadcast licensees to affirmatively encourage the discussion of controversial issues, but that, in presenting such programs, every licensee had the responsibility to afford reasonable opportunity for the presentation of contrasting viewpoints. See e.g., United Broadcasting Co., 10 FCC 515 (1945); Johnston Broadcasting Co., 12 FCC 517 (1947), reversed on other grounds, Johnston Broadcasting Co. v. F.C.C., 175 F. 2d 351 (1949); Laurence W. Hyman, 13 FCC 23 (1948); WBNX Broadcasting Co., 12 FCC 805, 837. In the WBNX case the Commission also stated (12 FCC at 841):

"The fairness with which a licensee deals with particular racial or religious groups in its community, in the exercise of its power to determine who can broadcast what over its facilities, is clearly a substantial aspect of his operation in the public interest."

C. The Commission's Report on Editorializing.

The Report on Editorializing by Broadcast Licensees, supra, which was issued by the Commission in 1949 in Docket No. 8516, sets forth most fully the basic requirements of the "fairness doctrine" and remains the keystone of the Commission's fairness policy today. The Report was the result of a two-year proceeding in which members of the public, the broadcasting industry, and the Commission participated. In essence, the Report established a two-fold obligation on the part of every licensee seeking to operate in the public interest: (1) that every licensee devote a reasonable portion of broadcast time to the discussion and consideration of controversial issues of public importance; and (2) that in doing so, he be fair—that is, that he affirmatively endeavor to make his facilities available for the expression of contrasting viewpoints held by responsible elements with respect to the controversial issues presented. While concerned with the basic considerations relevant to the expression of editorial opinion by broadcast licensees, the Report also dealt with the relationship of licensee editorial opinion to the general obligations of licensees for the presentation of programs involving controversial issues, and, accordingly, set forth in detail the general obligations of licensees in this area.

First, the Report reaffirmed the basic responsibility of broadcast licensees operating in the public interest to provide a reasonable amount of broadcast time for the presentation of programs devoted to the discussion and consideration of controversial issues of public importance. Because of the vital role that broadcast facilities can play in the development of an informed public opinion in our democracy, the Commission noted that it:

"• • • has consequently recognized the necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station."[7]

The Commission further determined, however, that the "paramount" right of the public in a free society to be informed could not truly be maintained by radio unless there was presented to the public "for acceptance or rejection the different attitudes and viewpoints concerning these vital and often controversial issues which are held by the various groups which make up the community." Consequently, the Commission stated that:

"• • • the licensee's obligations to serve the public interest can[not] be met merely through the adoption of a general policy of not refusing to broadcast opposing views when a demand is made of the station for broadcast time • • • it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints."[8]

At the same time, the Report made clear that the precise means by which fairness would be achieved is a matter for the dis-

[4] Although the Commission's decision was reversed on other grounds, Great Lakes Broadcasting Co. v. Federal Radio Commission, 37 F. 2d at 993, in discussing the above holding, the Court stated (37 F. 2d at 995): "It is our opinion that [the] application was rightly denied. This conclusion is based upon the comparatively limited public service rendered by the station • • •."

[5] In affirming the Commission's decision, the Court of Appeals found that the radio station which would be adversely affected by a grant of the labor-organization's application "has always rendered and continues to render admirable public service. The station has consistently furnished equal broadcasting facilities to all classes in its community." Chicago Federation of Labor v. F.R.C., 41 F. 2d at 423.

[6] Young People's Association for the Propagation of the Gospel, 6 FCC 178.

[7] Paragraph 6, Report on Editorializing, supra.

[8] Paragraph 9, Report on Editorializing by Broadcast Licensees.

cretion of the licensee. Thus, the Commission rejected suggestions that licensees be required to utilize definite formats, and stated:

"It should be recognized that there can be no one all-embracing formula which licensees can hope to apply to insure the fair and balanced presentation of all public issues. Different issues will inevitably require different techniques of presentation and production. The licensee will in each instance be called upon to exercise his best judgment and good sense in determining what subjects should be considered, the particular format of the programs to be devoted to each subject, the different shades of opinion to be presented, and the spokesman for each point of view." [9]

A limitation on this exercise of discretion is where a personal attack occurs in a program involving controversial issues of public importance. Here the Commission stated:

"• • • for elementary considerations may dictate that time be allocated to a person or group which has been specifically attacked over the station, where otherwise no such obligation would exist • • •." [10]

In determining in an individual case whether or not a licensee has complied with the fairness doctrine, the Commission looks solely to whether, in the circumstances presented, the licensee acted reasonably and in good faith to present a fair cross-section of opinion on the controversial issue presented. In making such a determination, an honest mistake or error in judgment will not be condemned, so long as the licensee demonstrates a reasonable and honest effort to provide a balanced presentation of the controversial issue. The question of whether the licensee generally is operating in the public interest is determined at the time of renewal on an overall basis.

Further, the above procedure does not require the Commission to consider the merits of the viewpoint presented. As stated in the Report:

"The question is necessarily one of the reasonableness of the station's actions, not whether any absolute standard of fairness has been achieved. It does not require any appraisal of the merits of the particular issue to determine whether reasonable efforts have been made to present both sides of the question • • •." [11]

It was against this background that the Commission approached the question of editorialization, stating that:

"Considered, as we believe they must be, as just one of several types of presentation of public issues, to be afforded their appropriate and nonexclusive place on the station's total schedule of programs devoted to balanced discussion and consideration of public issues, we do not believe that programs in which the licensee's personal opinions are expressed are intrinsically more or less subject to abuse than any other program devoted to public issues." [12]

Thus, the Commission concluded that while licensee editorialization was not contrary to the public interest, the overriding question was not whether a licensee could present his own viewpoint, but whether in presenting any viewpoint the licensee was fair.

Finally, the Report set forth the basic "fairness" considerations in the presentation of factual information concerning controversial issues, stating:

"The basis for any fair consideration of public issues, and particularly those of a controversial nature, is the presentation of news and information concerning the basic facts of the controversy in as complete and impartial a manner as possible. A licensee would be abusing his position as public trustee of these important means of mass communication were he to withhold from expression over his facilities relevant news or facts concerning a controversy or to slant or distort presentation of such news. No discussion of the issues involved in any controversy can be fair or in the public interest where such discussion must take place in a climate of false or misleading information concerning the basic facts of the controversy." [13]

[F.R. Doc. 64-7327; Filed, July 24, 1964; 8:45 a.m.]

[9] Paragraph 10, Report on Editorializing by Broadcast Licensees.

[10] Paragraph 10, Report on Editorializing by Broadcast Licensees.

[11] Paragraph 18, Report on Editorializing by Broadcast Licensees.

[12] Paragraph 14, Report on Editorializing by Broadcast Licensees.

[13] Report, Par. 17.

APPENDIX B

LETTERS RE RED LION

REPRODUCED FROM 381 F(2d) 908

AM WGCB FM
BOX 88
RED LION, PENNA.

May 19, 1965

Mr. Ben Waple Secretary
Federal Communications
Commission
Washington, D. C.

In re: Complaint of Mr. Fred J. Cook; Your ref. #8425-A

Dear Sir:

Under the date of March 22, 1965, you wrote us in regard to a complaint from Mr. Fred J. Cook, Interlaken, New Jersey, alleging that he had been refused free broadcast time on our station WGCB to rebut an alleged personal attack made upon him in late November over the Billy James Hargis Program. You have requested that we comment on this complaint.

The Billy James Hargis Broadcast to which Mr. Cook apparently refers was carried on this station on November 27, 1964. We received a letter from Mr. Cook dated December 19, 1964, to which we replied on December 28, 1964. A further letter dated December 31, 1964, was received from Mr. Cook to which we replied on January 7, 1965. Copies of these letters are attached.

It has been our understanding that the Commission's fairness doctrine requires a broadcast licensee to give free time to reply to paid broadcasts only if sponsorship is not available for such reply broadcast. Our communications to Mr. Cook were designated to ascertain whether Mr. Cook was prepared to 'sponsor' or pay for his reply broadcast. Mr. Cook's communications to us, however, have not directly answered our inquiry.

The Commission is hereby advised that WGCB will give Mr. Cook an appropriate amount of time to answer the alleged attack upon him in the Hargis program if he advises us that he is financially unable to 'sponsor' or pay for such broadcast. We are quite certain that it would be impossible for us to obtain other sponsorship of such a broadcast. If we are incorrect in our proposed method of disposition of this matter, we will be glad to have the Commission so advise us and we will follow such other procedure as the Commission may suggest.

A copy of this letter is being sent to Mr. Cook for any comment that he might care to make to us or to the Commission.

Very truly yours,

RED LION BROADCASTING COMPANY
Rev. John M. Norris, President

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

In Reply Refer To: 8427-A

October 6, 1965

Reverend John M. Norris,
President
Red Lion Broadcasting
Company, Inc.
Radio Station WGCB
Post Office Box 88
Red Lion, Pennsylvania

Dear Sir:

This letter refers to a complaint filed with the Commission by Mr. Fred J. Cook of Interlaken, New Jersey, concerning a Billy James Hargis program, 'Christian Crusade', which you broadcast in November, 1964. The program included a discussion of the 1964 presidential election and of a book by Mr. Cook about the Republican campaign. Mr. Cook alleges the discussion included the following personal attack against him:

> Now who is Cook? Cook was fired from the New York World-Telegram after he made a false charge publicly on television against an unnamed official of the New York City goverment. New York publishers and Newsweek magazine for December 7, 1959, showed that Fred Cook and his pal Eugene Gleason had made up the whole story and this confession was made to District Attorney Frank Hogan.

Mr. Cook asserts that you failed to notify him of the attack or to furnish him with a transcript of summary either before or after the program was aired, and that you refused his request for free time to respond to the attack.

In your reply to the Commission's inquiry, you said that your understanding of the requirements of the 'fairness doctrine' is that a licensee is not required to grant free time for a reply to a paid broadcast if paid sponsorship is available; and that your letters to Mr. Cook were designed to ascertain whether he was prepared to sponsor

or pay for his reply broadcast and, specifically, whether he was financially unable to do so.

The licensee, with the exception of appearances of political candidates, is fully responsible for all matter which is broadcast over his station, including broadcasts containing a personal attack. The latter is defined in our recent fairness primer as an attack '* * * on an individual's or group's honesty, character, integrity, or like personal qualities * * *' in connection with a controversial issue of public importance. See part E, Personal Attack Principle, 'Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance', 29 F.R. 10415, 10420-21. A copy of this document is enclosed.

Where such an attack occurs, the licensee has an obligation to inform the person attacked of the attack, by sending a tape or transcript of the broadcast, or if these are unavailable, as accurate a summary as possible of the substance of the attack, and to offer him a comparable opportunity to respond. Ibid. The licensee may not delegate his responsibilities in this respect to others. Report on 'Living Should Be Fun' Inquiry, 33 FCC 101, 107.

In this case, the program in question contained a personal attack on Mr. Cook, since it asserted that he was fired from his newspaper job because he made false charges against public officials. Your failure to notify Mr. Cook of the attack upon him by Mr. Hargis aired by your station and to offer him the opportunity to reply, was inconsistent with the foregoing procedural requirements.

In the case of a personal attack, the individual or group attacked has the right to appear. Cullman Broadcasting Co., FCC 63-849, Ruling 16, Fairness Primer. The licensee is, of course, perfectly free to inquire whether the individual is willing to pay to appear. Here Mr. Cook, in his letters of December 19 and 21, 1964, had stated that he was not. The licensee is also free to obtain a sponsor for the program in which the reply is broadcast, or to present the reply on the particular program series involved, if this is agreeable to the parties such as Mr. Cook and Reverend Hargis. But having presented a personal attack on an individual's integrity, honesty, or character, the licensee cannot bar the response--and thus leave the public uninformed as to his side and 'elemental fairness' not achieved as to the person attacked (Editorializing Report, Paragraph 10)--simply because sponsorship is not forthcoming. Cf. Cullman Broadcasting Co., supra.

In short, the burden was upon you to find sponsorship, if you so desired, for Mr. Cook's reply; nor, in the circumstances, did Mr. Cook have to make any showing or representation that he is financially unable to sponsor or pay for his reply time.

Accordingly, you are requested to advise the Commission of your plans to comply with the 'fairness doctrine', applicable to the situation.

BY DIRECTION OF THE COMMISSION
BEN F. WAPLE
Secretary

Enclosure
cc: Fred J. Cook

AM WGCB FM
BOX 88
RED LION, PENNA.

November 8, 1965

Mr. Ben Waple,
Secretary
Federal Communications
Commission
Washington, D. C.

In re: Complaint of Fred J. Cook concerning alleged attack by Rev. Billy James Hargis on Station WGCB, Red Lion, Pennsylvania, Ref: 8427-A.

Dear Sir:

This is in reference to the Commission's letter on the above matter, dated October 6, 1965, public notice of which was given on October 8, 1965, but the text of which has not been publicly released. The letter was postmarked October 8th and received by us on October 11, 1965.

It is our understanding that by this letter the Commission has directed Red Lion Broadcasting Company to provide Mr. Fred J. Cook with free broadcast time on Station WGCB to answer the alleged personal attack upon him in the Billy James Hargis program broadcast on Station WGCB in November, 1964. The Commission's directive, however, does not indicate by what date Station WGCB is required to put on the broadcast. The Commission has rejected our proposal, stated in our letter of May 19, 1965 to the Commission (copy of which was sent to Mr. Cook and to which we have received no reply from Mr. Cook), making an offer of free time to Mr. Cook upon a simple statement by him that he is unable to pay for such a broadcast. We would appreciate being advised by the Commission as to the time period for complying with the Commission's directive.

We respectfully urge, however, that the Commission reconsider its directive to us. We ask the Commission to refer to the mimeographed 'Statement of Red Lion Broadcasting Company, Inc. (Station WGCB AM-FM, Red Lion, Pa.) In Response to Complaint of Democratic National Committee' transmitted to the Commission under date of March 11 1965. It will be noted that, in that statement, reference was made to the fact that the Democratic National Committee in the summer of 1964, sent to Station WGCB a reprint of an article in <u>The Nation</u>, a nationwide publication,

entitled 'Radio Right: Hate Clubs of the Air' with a warning concerning our alleged obligation to give free time to answer broadcasts by such 'Hate Clubs'. The article was written by the same Mr. Fred J. Cook who complained about the alleged personal attack upon him in the Hargis program. Mr. Cook, in his article, attacked Billy James Hargis, his program, and his organization, Christian Crusade. It will also be noted that the Democratic National Committee was given thirty minutes of free time on the Twentieth Century Reformation Hour (it had previously been given two fifteen minute segments on this hour) to broadcast a thirty minute taped discussion entitled 'Hate Clubs of the Air.' Nevertheless, WGCB has advised the Commission and Mr. Cook that it would give Mr. Cook free time to reply if he states that he is unable to pay for the time.

Under the circumstances, we are at a loss to see the 'fairness' in the Commission's letter to us of October 6, 1965. The Commission has directed that we give Mr. Cook free time to answer an alleged attack upon him made in a paid broadcast by one who had previously been the subject of a nationwide attack by Mr. Cook despite the fact we have offered Mr. Cook free time upon his statement that he is unable to pay. The Commission has given us no reason why the "Fairness Doctrine" requires an offer of free time to Mr. Cook to be made without condition as to his inability to pay.

We sincerely request that, either by way of reconsideration or clarification of the Commission's directive, we be advised whether in good conscience and in 'fairness,' we should now be forced to give Mr. Cook free time to reply to an attack by one whom he has previously attacked. And, if Mr. Cook, in his reply, should personally attack Mr. Hargis and other 'Hate Clubs', as he calls them, would we then be required to give free time to Mr. Hargis and others whom Mr. Cook may again attack? Or, if Mr. Hargis should then reply to Mr. Cook in his paid broadcast, would we then be required to give Mr. Cook more free time for further reply?

It has been stated in a brief filed in the U.S. District Court for the District of Columbia by the United States and the Federal Communications Commission, in the case of Red Lion Broadcasting Co., Inc. v. Federal Communications Commission et al. (Civil action #2331-65) that the Commission's letter of October 6, 1965 with reference to this matter '* * *

constitutes a final order * * *'. This apparently indicates that we are presently under a mandate from the Commission which, if not complied with, may subject us to revocation, forfeitures and possibly other penalites. It is for this reason that we ask that the Commission reconsider its October 6th ruling, or clarify at the earliest possible date, by way of declaratory ruling, the scope of its directive to us in its letter of October 6, 1965.

In view of other statements in that brief, a ruling by the Commission on the constitutionality of the 'Fairness Doctrine' as applied to the instant situation, is also requested.

Respectfully submitted,

RED LION BROADCASTING COMPANY, INC.
By JOHN H. NORRIS
John H. Norris, Vice President

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C. 20554

December 9, 1965

In Reply Refer To: 8427-A 11-186

John H. Norris, Vice
President
Red Lion Broadcasting
Company, Inc.
Radio Station WGCB
Box 88
Red Lion, Pannsylvania
17356

Dear Sir:

This is in reference to your request that the Commission reconsider its ruling of October 8, 1965 on the complaint of Mr. Fred J. Cook. We have considered the contentions and adhere to our prior ruling for the reasons given below.

1. Your letter states that Mr. Cook in an article in The Nation, entitled 'Radio Right: Hate Clubs of the Air, attacked "Billy James Hargis, his program, and his organization * * *'; that your station gave the Democratic National Committee 30 minutes of free time on the Twentieth Century Reformation Hour to broadcast a discussion entitled 'Hate Clubs of the Air'; and that you advised Mr. Cook that you would give him free time to reply to the personal attack upon him 'if he states that he is unable to pay for the time.' In the circumstances, you state that fairness does not require the station to 'give Mr. Cook free time to answer an alleged attack upon him made in a paid broadcast by one who had previously been the subject of a nationwide attack by Mr. Cook * * *.'

We have held that 'the requirement of fairness, as set forth in the Editorializing Report, applies to a broadcast licensee irrespective of the position which may be taken by other media on the issue involved; and that the licensee's own performance in this respect, in and of itself, must demonstrate compliance with the fairness doctrine.' Letter to WSOC Broadcast Co., FCC 58-686, Ruling No. 11, 'Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance' (herein called Fairness Primer) 29 F.R. 10415, 10418-19). Thus, the requirement of the statute is that

the licensee 'afford reasonable opportunity for the discussion of conflicting views on issues of public importance' (Section 315 (a)). This requirement is not satisfied by reference to what other media, such as newspapers or magazines, or indeed other stations have presented on a particular issue. It deals solely with the particular station and what it has broadcast on the controversial issue of public importance. It follows that Mr. Cook's article in The Nation does not constitute a ground for absolving the licensee of its responsibility to allow Mr. Cook comparable use of Station WGCB's facilities to reply to the personal attack which had been broadcast.

Nor does the reference to the Democratic National Committee program constitute such a ground. Except for the use of its facilities by legally qualified candidates, the licensee is fully responsible for all matter which is broadcast over its station. Here the licensee, in its presentation of programming dealing with a controversial issue of public importance, has permitted its facilities to be used for a personal attack upon Mr. Cook. Elemental fairness requires that Mr. Cook be notified of the attack and be given a comparable opportunity to reply. You do not claim that the Democratic National Committee program contained such a reply by Mr. Cook to the personal attack made upon him, and therefore that program does not constitute compliance with the fairness doctrine's requirements in the case of Mr. Cook.

As to the contention that you will permit Mr. Cook to air a free response only if he is financially unable to pay, such a position is, we think, inconsistent with the public interest. The licensee has decided that it served the needs and interests of its area to have a personal attack aired over its station; the public interest requires that the public be given the opportunity to hear the other side. The licensee cannot properly make that opportunity contingent upon the payment of money by the person attacked (or the circumstance that he is financially unable to pay). The licensee may, of course, inquire whether the person attacked is willing to pay for airing his response, or take other appropriate steps to obtain sponsorship. See our prior ruling. But if these efforts fail, the person attacked must be presented on a sustaining basis. We believe that this is a matter of both elemental fairness to the person involved and, more important, of affording the public the opportunity to hear the other side of an issue which the licensee has adjudged to be of importance to his listeners. See Cullman Broadcasting Co., FCC 63-849, Ruling No. 17, Fairness Primer.

There are other policy considerations supporting the foregoing conclusion. A contrary position would mean that in the case of a network or widely syndicated program containing a personal attack in discussion of a controversial issue of public importance, the person attacked might be required to deplete or substantially cut into his assets, if he wished to inform the public of his side of the matter; in such circumstances reasonable opportunity to present conflicting views would not, practically speaking, be afforded. Indeed, it has been argued that under such a construction, personal attacks might even be resorted to as an opportunity to obtain additional revenues.

For all the above considerations, we hold that the licensee may inquire about payment, but cannot insist upon either such payment or a showing of financial inability to pay in this personal attack situation. Here Mr. Cook, in his letters of December 19 and 21, 1964, stated that he was not willing to pay to appear.

2. You have raised the question of a continuing chain of personal attacks. This matter is discussed in the enclosed Letter to the Honorable Oren Harris, FCC 63-851, p. 5, pointing out that the licensee 'has discretion (except in the case of an appearance of candidates) to review a proposed program, including the script, to insure that it does not go unreasonably far afield as to the issues.' In any event, there is no indication of such a hypothetical chain in the circumstances of this case, nor indeed have you raised any question concerning Mr. Cook's proposed reply except on the ground of payment.

3. You have referred to a statement in the brief filed in the case of Red Lion Broadcasting Co., Inc. v. Federal Communications Commission, et al. (Civil Action No. 2331-65) that the Commission's letter of October 6, 1965 'constitutes a final order * * *', and seeks clarification as to the scope of the directive in that letter, and particularly 'by what date Station WGCB is required to put on the broadcast.' The ruling is a 'final order', in the same sense as a ruling under Section 315 dealing with the 'equal opportunities' provision. As stated in the enclosed Letter to the Honorable Oren Harris, supra:

> '* * * the licensee should have the opportunity to contest the validity of any Commission "fairness" ruling. If the Commission rules at the time of complaint, the licensee can, if he believes the ruling incorrect, appeal to the court. Cf. Brigham v. F.C.C., 276 F.2d 828, 829 (C.A. 5); Fadell v. U.S., Case No. 14,142, (C.A. 7); Frozen Foods

> Express v. U.S., 337 U.S. 426, 432-440; Caples Co. v. U.S., [100 U.S. App. D.C. 126], 243 F.2d 232 (C.A.D.C.); if he wins, he need not comply, while if he loses, he will of course follow the ruling. * * *'

The licensee thus has the choice of complying with the ruling or seeking review thereof. As to the time of compliance, this varies with the factual situation and is a matter to be worked out in good faith and on a reasonable basis by the licensee and the person involved.

4. Finally, you have requested a ruling by the Commission as to the constitutionality of the fairness doctrine, as applied to this situation. We discussed the constitutionality of the fairness doctrine generally in the Report on Editorializing, 13 F.C.C. 1246-1270. We adhere fully to that discussion, and particularly the considerations set out in paragraphs 19 and 20 of the Report.

We believe that the discussion in those paragraphs is equally applicable to our ruling in this case. The ruling does not involve any prior restraint. The licensee is free to select what controversial issue should be covered, and whether coverage of that issue should include a personal attack. The ruling simply requires that if the licensee does choose to present a personal attack, the person attacked must be notified and given the opportunity for comparable response.

The ruling provides that if sponsorship is not forthcoming (see p. 2), the person attacked must be presented on a sustaining basis, because, in line with the above cited discussion in the Editorializing Report the paramount public interest is that the public have the opportunity of hearing the other side of the controversy, and elemental fairness establishes that the person attacked is the appropriate spokesman to present that other side. Since this personal attack situation is the only area under the fairness doctrine where the licensee does not have discretion as to the choice of spokesmen, the Commission has carefully limited the applicability of the personal attack principle to those situations where there is an attack upon a person's 'honesty, character,' integrity or like personal qualities." See Part E, Personal Attack Principle, Fairness Primer, 29 F.R. 10415, 10420-21. The principle is not applicable simply because an individual is named or referred to, or because vigorous exception is taken to the views held by an individual or group. Ibid; see also letter to Pennsylvania Community Antenna Association enclosed.

A broadcaster has sought the license to a valuable public frequency, and has taken it, subject to the obligation to operate in the public interest. Valuable frequency space has been allocated to broadcasting in considerable part, so that it may contribute to an informed electorate. Report on Editorializing, 13 F.C.C. 1246-1270, par. 6. Viewed against these fundamental precepts, our ruling is, we believe, reasonably related to the public interest 'in the larger and more effective use of radio' (Section 303(g) of the Communications Act). Since that is so, it is a requirement fully consistent with the Constitution. NBC v. United States, 319 U.S. 109, [190] 227 [63 S. Ct. 997, 87 L. ED 1344].

BY DIRECTION OF THE COMMISSION
BEN F. WAPLE
Secretary

APPENDIX C

CORRESPONDENCE BETWEEN HOUSE INTERSTATE AND FOREIGN COMMERCE COMMITTEE AND FEDERAL COMMUNICATIONS COMMISSION

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

WASHINGTON, D. C.

August 15, 1967

Honorable Rosel H. Hyde
Chairman
Federal Communications Commission
Washington, D. C.

Dear Mr. Chairman:

I have reviewed the Commission's recent amendment to its rules (order adopted July 5, 1967) providing procedures to be followed when a station broadcasts a personal attack, and the subsequently issued "clarification" (order adopted August 2, 1967) exempting newscasts and on-the-spot news coverage from the personal attack principle. For reasons which are stated below, the conclusion seems inescapable to me that the Commission, under the terminology of "clarification," has not only repudiated its long-standing policy on personal attacks, but has directly contravened the express language of Section 315 (a) of the Communications Act.

Section 315 (a), as you know, exempts four types of news programs from the operation of the "equal opportunities" requirement provided for in the first sentence of the section. This was done to permit political candidates to appear on such programs without creating an obligation on the licensee to afford equal opportunities to other legally qualified candidates. In making this exemption, however, the Congress made it clear that such programs must still be governed by the fairness doctrine:

> Sec. 315(a) . . . Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, news documentaries, and on-the-spot coverage of news events, from the obligation imposed upon them under this Act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

Whatever else the fairness doctrine may embrace, therefore, it is perfectly clear that it applies to the

four types of news programs specifically enumerated in Section 315 (a); i.e., "newscasts, news interviews, news documentaries, and on-the-spot coverage of news events." The "clarification" released by the Commission on August 7 informs us that the Commission, in effect, now proposes to exempt two of these types of news programs (i.e., newscasts, and on-the-spot coverage) from the fairness doctrine. Mr. Chairman, your Commission has no such authority.

The Commission's original order of July 5, 1967 was a codification of the FCC's "long adhered-to personal attack principle," (paragraph 3 of the memorandum opinion).

> Under the principle it has always been the duty of a licensee to forward to a person or group attacked notification of the attack and an offer of an opportunity to respond, rather than to await a request or complaint from the person attacked. The notification requirement is of the utmost importance, since our experience indicates that otherwise the person or group attacked may be unaware of the attack, and thus the public may not have a meaningful opportunity to hear the other side.

This, of course, merely reaffirms the previously stated policy of the FCC in this area as set forth in the 1964 Fairness Primer. The August 2 "clarification," however, purports to distinguish between the personal attack principle and the "general" fairness doctrine, (paragraph 2 of memorandum opinion of August 2, 1967). This contravenes the previous FCC holding that, in the area of personal attacks, the fairness doctrine requires adherence to the personal attack principle. The only exclusion heretofore enunciated by the Commission was the case of political candidates, and even in those cases the FCC did not deny the right to notice and time to reply, but merely stated that the candidate himself could not insist that he be the one to make the reply.

The Commission has taken a drastic and unwarranted step in its August 2 order. If this order is allowed to remain in effect, attacks on individuals' or groups' integrity, character, or honesty may be indulged in without any effective recourse given to the victim of the attack to defend his reputation. Of at least equal importance, the public will be denied its right to be assured of hearing both sides of an important controversy. The licensee need only see to it that the attack is made during the course of a newscast. This requirement will present no serious challenge to the ingenuity of any

unscrupulous broadcaster. While such persons are, fortunately, a very small minority of the broadcasting industry, I can see no reason for providing them with a sanctuary within which to launch with impunity assaults on the reputation of those who have incurred their displeasure.

The stated reasons for such a serious departure, both from previous FCC precedent and statutory mandate, are singularly unconvincing.

It is said, for example, that a notification to the victim of a personal attack is "impractical," (paragraph 2):

> To import the concept of notification within a week period, with a presentation of the person attacked on some later newscast when other news might normally be broadcast, is impractical and might impede the effective execution of the important news functions of licensees or networks. (Paragraph 2, memorandum opinion of August 7, 1967, emphasis added).

It is not clear from this just what it is that the Commission deems has become impractical. From the language underlined above, however, it appears that the rights of both the personal attack victim and the public are to be compromised because the licensee who has lent his facilities to the attack might wish to present other news on future programs, and not be bothered with the victim's response. This affords not the slightest basis for the Commission's order. The public interest and the rights of a personal attack victim cannot be subordinated to the convenience of the licensee.

A further puzzling aspect of the August 2 order is the distinction drawn between newscasts and on-the-spot news coverage, on the one hand, and editorials, documentaries and the like, on the other. The reason for the distinction given by the FCC in its memorandum opinion only serves to heighten the mystery:

> (S)ince the licensee has chosen to present a personal attack in his editorial, he should not be the one to determine wholly what the public shall or shall not hear on the other side of a matter affecting the integrity, honesty, and like personal qualities of the person attacked. Under elemental fairness, the person attacked should be afforded a comparable opportunity to give that side, subject to reasonable conditions set by the licensee . . . More important, the person attacked is the most appropriate spokesman to inform the public of the other side of the attack issue. (Paragraph 3).

The broadcasting of a personal attack in a newscast or on-the-spot news coverage, however, is no less a decision of the licensee than an attack launched through an editorial; the licensee in both cases is responsible for the program content being broadcast over his facilities. This much was at one time conceded by the Commission:

> Under fundamental communications policy, the licensee, with the exception of appearances of political candidates . . . is fully responsible for all matter which is broadcast over his station. It follows that when a program contains a personal attack, the licensee must be fully aware of the contents of the program, whatever its source or his actual involvement in the broadcast. The crucial consideration, as the Commission stated in Mapoles is that "his broadcast facilities (have been) used to attack a person or group." (Fairness Primer, 1964, page 18, emphasis added).

I believe that this language sets forth clearly the essential factors involved in personal attack situations. The deliberation of the licensee, or lack thereof, should not be used as the determining factor in affording reply time to the victim of a personal attack.

The actual inability of a licensee to locate a victim of a personal attack so as to provide him with transcript and an offer of reply time should, of course, relieve him of any censure by the FCC. But the fact that such situations may arise cannot, in my view, be a valid basis for a blanket across-the-board exemption such as the Commission has now issued.

Likewise, as I have already indicated, the factor of premeditation or deliberation by the licensee prior to the broadcast of the attack cannot take precedence over the rights of the victim of that attack, or the rights of the public to hear both sides. The right to notice and reply time embodied in the personal attack principle was never intended as a punishment to the licensee from which he can be excused absent a showing of premeditation. Rather, it was recognized that this procedure is the only realistic and effective way in which to uphold individual rights and the public interest in personal attack situations. The Commission, in emphasizing this factor of deliberation as a rationale for exempting newscasts and on-the-spot coverage from the personal attack principle has apparently lost sight of the real reasons behind the personal attack principle.

Finally, it appears inescapable to me that, in the area of personal attacks, the principle heretofore upheld

by the Commission is the only procedure compatible with essential fairness. The denial of a notice and reply opportunity to the victim of a personal attack cannot be reconciled with the express language of Section 315 (a) which specifically provides that the standard of fairness is to be applied to just those types of news programs which the FCC now has exempted from the standard.

I am looking forward to your comments on the points raised above.

With every good wish,

Sincerely yours,

John E. Moss, M.C.

John D. Dingell, M.C.

Richard L. Ottinger, M.C.

Lionel Van Deerlin, M.C.

Brock Adams, M.C.

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

October 2, 1967

In Reply Refer To:
3000

The Honorable John D. Dingell
House of Representatives
Washington, D. C. 20515

Dear Congressman Dingell:

This is in reply to the letter of August 15, 1967, which you and four of your colleagues on the House Interstate and Foreign Commerce Committee addressed to me questioning the Commission's action in exempting newscasts and on-the-spot news coverage from the recently adopted regulations on personal attacks.

There is no question but that the fairness doctrine is applicable to the above programs. Indeed, we stressed its applicability both in our opinion (par. 2) and in our rule (see the note to subsection (iii)).

The critical issue would thus appear to be whether in every situation the fairness doctrine requires that a person or group attacked be directly notified and given the opportunity to personally respond. While the Commission believes that this is generally the case, it has also concluded that there are attack situations where application of the personal attack rule is inappropriate.

Newscasts and on-the-spot coverage of bona fide news events are two areas where the Commission concluded that the broad requirements of the fairness doctrine, rather than the specifics of the personal attack rule, are appropriate. In reaching this conclusion, we took full account of the 1959 amendments to Section 315(a). Indeed, we believe that the same kind of policy consideration which led to that amendment is also applicable to the situation before us.

As you know, the Commission's 1959 Lar Daly ruling, requiring equal opportunities whenever a candidate appeared on a newscast, was found by the Congress to

impose so rigid a requirement as to inhibit broadcast journalism in its coverage of election campaigns. In order to permit broadcast journalism to contribute more effectively to an informed electorate, the 1959 amendments were enacted.

The personal attack rule, with its requirement of an offer of time to the person attacked for a personal response, works with a precision somewhat similar to the equal opportunities provision. And, we concluded, it would have similar undesirable effects in the "hard" news area, which would be inconsistent with promotion of the important news function of broadcasting.

This can best be pointed up by one, quite typical example. A newsworthy personal attack occurs, and the wire service (e.g., AP or UPI) sends its news story out (via news tickers) to almost all of the over 5,000 radio stations,who use such portion of it as they believe is appropriate in the context of the competing news stories. The wire services also cover the reply and send this addition to the story out as soon as it is available, with the licensee again exercising good faith, journalistic judgment as to the portion to be presented. This manner of proceeding is designed to ensure that the American public hears as soon as possible what is adjudged in good faith as newsworthy on both sides of the issue.

We do not believe that the personal attack procedure, with its requirement of notification within a seven day period and an opportunity to respond personally at some time, can be appropriately engrafted upon the above hard news situation. It would mean that each time the wire services carry an attack (and such newsworthy attacks do occur with some frequency each year), thousands of licensees would have to dispatch letters to the person or group attacked, who in turn would have to respond to these thousands of offers, with thousands of proposed transcripts or tapes. Further, in the circumstances, some substantial time period might lapse before the response material was received, which might also create problems in the context of this "hard" news area. The result of all this might well be a reluctance on the part of the licensee to present newsworthy stories concerning attacks and the response thereto--even though the wire services and other media were covering these stories.

There are other similar examples which could be put forth in the network news field. We stress here that it is not any inconvenience to the licensee or network with which we are concerned, but rather the possible

adverse effect on the public interest in fair and rapid dissemination of hard news to the American public.

In short, in this fast-breaking news field, both good journalism and, we think, fairness require that the network or licensee broadcast both sides of the story as soon as possible. The automatic application of the personal attack procedure might inhibit or impede networks or licensees in the effective execution of their important news functions, whereas the application of the general doctrine does not do so, and still assures essential fairness.

While we believe that in this hard news area the manner and extent of presentation, both as to the attack and the response, are necessarily matters for the licensee's good faith, reasonable journalistic judgment, as stated, the fairness doctrine is applicable to that judgment. This means that while the licensee has wide discretion and latitude to make the above good faith judgments, there is a forum for corrective action where there is a disparity in treatment clearly going beyond any reasonable, good faith journalistic judgment. We should also like to stress that where a licensee does not act in good faith--where, to quote your letter, an "unscrupulous broadcaster" uses his newscast as a "sanctuary within which to launch with impunity assaults on the reputation of those who have incurred their displeasure", he is of course in violation of the fairness doctrine (see Report on Editorializing by Broadcast Licensees, 13 F.C.C. 1246, 1255 (1949)), but a far more serious question is presented as to his fitness to be a licensee under the Communications Act. See G. A. Richards, 5 Pike & Fischer, R.R. 1292.

In the Senate Report accompanying the 1959 amendments, it was stated (S. Rept. No. 562, 86th Cong., 1st Sess., p. 13):

> The Commission must be mindful at all times that broadcasting is an integral part of our society and the public has become dependent upon this media for information, views, and facts. Broadcast journalism serves the public interest. It has made giant strides in the past 10 years through its distinctive capabilities to report directly and dramatically news of political campaigns to the people. This must be encouraged but care must be taken that the exemptions granted herein are not used as an umbrella of protection to heap abuse or favoritism on certain candidates.

We believe that this statement is equally applicable here. We think that just as in the case of the 1959 exemptions, which experience over the eight years has shown to have accomplished their objective of promoting broadcast journalism without abuses, so also this exemption will be consistent with that objective and will not result in abuse. We shall certainly take care, however, to be alert to any possible abuses, to review the situation periodically, and to keep the Congress fully informed of any significant developments.

We hope that the foregoing is helpful in explaining the reasons for the Commission's action in leaving the two areas in question to the operation of the fairness doctrine generally rather than the personal attack rule. Our reasons for not exempting from the rule the news documentary, news interviews, or editorials or commentary (even if included in newscasts or on-the-spot coverage of bona fide news events), none of which involve the time and practical considerations discussed above in the case of fastbreaking, hard news, have been fully set out in paragraph 3 and note 1 of our opinion of August 2, 1967, and we have not therefore repeated them here.

Sincerely yours,

Rosel H. Hyde
Chairman

CONGRESS OF THE UNITED STATES

HOUSE OF REPRESENTATIVES

WASHINGTON, D.C. 20554

November 24, 1967

Rosel H. Hyde
Chairman
Federal Communications Commission
Washington, D. C. 20554

Dear Mr. Chairman:

Thank you for your letter of October 2, 1967, replying to our letter of August 15. In that letter we questioned both the legality and the propriety of the Commission's action in exempting newscasts and on-the-spot news coverage from the recently adopted regulations on personal attacks (FCC Memorandum and Orders of July 5 and August 2). After careful review of your comments, we regret to note that they do not satisfactorily explain the FCC action. Nor are your comments entirely responsive to the points raised in our letter.

Like all regulatory agencies, Mr. Chairman, your Commission must operate within both the letter and the spirit of the law; we do not believe it has done so in this case. The elimination of the victim's right to reply to a given personal attack, based on the completely fortuitous circumstance that the attack is carried over a newscast, is an arbitrary action by the Commission that is incompatible with the public interest, and does violence to private rights.

Unfortunately, the confusion which has now been created with respect to personal attack situations is typical of the fairness doctrine generally. In his dissenting statement to the FCC order of July 5, 1967, Commissioner Bartley stated that codification of the personal attack procedures by rule was premature since "the Fairness Doctrine is in the process of being perfected on a case by case basis." We would point out to you that the perfecting process seems to be taking a long time. Indeed, the present ad hoc approach of the Commission is a source of steadily rising confusion on the part of broadcasters and the public. There are no signs of any satisfactory rationale emerging to delineate with suitable clarity the duties of the broadcaster to be "fair."

For the present, we are dealing with the personal attack situation, which, like the statutory provision for equal time to competing political candidates, involves more than the fairness doctrine. But the uncertainty surrounding the scope and operation of the fairness doctrine is of considerable concern to us, and is undergoing serious study in our Committee. This matter should be of equal concern to your agency.

Returning to your Orders of July 5 and August 2, and in the hope of reaching the real issues which require discussion here, we again direct your attention to the following.

BACKGROUND

The Commission, by Order dated July 5, 1967, set up rules to cover the duties of licensees in instances of personal attacks or political editorial endorsements. With respect to personal attacks, the rule stated that no later than one week after the attack, the licensee must supply to the person or group attacked: (1) notice of the attack, (2) a summary, script, or tape, of the attack, and (3) an offer of reply time. Commissioner Bartley dissented from this action as being premature. Commissioner Loevinger concurred, stating that the promulgation of a rule "specifically providing for the right of reply" is correct in principle. He also indicated that the rule should be more clearly delineated than it was in the Commission order. Commissioner Wadsworth was absent.

On August 2, the Commission issued a new order, described as a "clarification," which exempted newscasts and on-the-spot news coverage from the above requirements. Commissioners Bartley, Loevinger and Wadsworth were absent. Commissioner Cox is listed as concurring in the result.

Our previous letter informed you of our opinion that this "clarification" of the Commission effectively repudiated the FCC's previous policy on personal attacks, and contravened the express language of Section 315 of the Communications Act. In view of the importance of the August 2 Order, it is indeed unfortunate that it did not receive the consideration of all of the Commissioners. The August 2 "clarification" seems clearly inconsistent with Commissioner Loevinger's concurring opinion in the initial Commission Order of July 5. In that statement, Commissioner Loevinger upheld the establishment of an FCC rule to provide for the right to reply. The August 2 Order, however, makes clear that the official policy of the FCC is now that the individual has no such right. This will be discussed further below.

EFFECT OF NEW FCC RULE

The effect of the new rule is to draw a distinction between newscasts and on-the-spot coverage on the one hand, and news interviews and documentaries on the other. If we understand the new rule correctly, the victim of a personal attack is entitled to notice, a summary of the attack, and reply time, if the attack occurs during a news interview or documentary, or any other program for that matter. But he is not entitled to these three things, or any of them, if he is attacked over a newscast or during on-the-spot coverage of a news event. These latter types of news programs are referred to by the FCC as "hard" news.

APPLICABILITY OF SECTION 315

As stated in our letter of August 15, Section 315 of the Communications Act applies with equal force to all news programs, specifically including newscasts and on-the-spot coverage. We also pointed out that, whatever else the fairness doctrine may embrace, it applies to these news programs.

In your reply you readily concede this. In doing so, however, you fail to point to any statutory authority for the distinction which the Commission now proposed to draw between personal attacks occurring during "hard" news programs, and those occurring during what, we suppose, must now be referred to as "non-hard", or "soft", news programs (i.e., news interviews or documentaries). There is no such distinction in the law; Section 315 does not permit of one standard of fairness for "hard" news and another for "soft" news. Whatever value these concepts may have for the Commission, it is not at liberty to write them into the Communications Act.

VICTIM'S RIGHT TO REPLY

Prior to the Commission Order of August 2, it has been our understanding that the victim of a personal attack, as the FCC defines that term, had a right to reply. Indeed, this right was recently upheld by a court of law, at the instancy of your Commission (Red Lion Broadcasting Co. v. FCC F.2d (D.C. cir. 1967)). In our previous letter, therefore, we directed your attention to the incompatibility of the August 2 exemption for "hard" news with the victim's right to reply. Clearly, if the victim has such a right, the FCC cannot waive it for him. Your reply, while silent on this point, by negative inference suggests that the victim has no sugh right, and that his reply is only a matter of administrative largesse on

the part of the Commission. As such, it may be granted or denied as the FCC sees fit, and may someday be eliminated altogether by further Commission rulemaking. We cannot accept this view.

It seems appropriate to observe here that Commissioner Loevinger, who has been understood by many as advocating a philosophy of minimal governmental control over program content, seems to have upheld both the existence of the right, and the duty of your agency to protect it:

> "It is submitted that law, logic and practically all support the principle that, subject to the strictly limited exceptions of 'illegal utterances' and the right to reply, government regulation of broadcasting should be completely content-neutral." ("The Issues in Program Regulation" by Lee Loevinger, Federal Communications Bar Journal, Vol. XX, No. 1 (1966), at page 15; emphasis supplied).

The purpose in quoting the above passage is not to endorse it in its entirety, but rather to indicate that the protection of the right to reply is considered a fundamental element of broadcast regulation even in the view of an authority who adopts a philosophy of limited regulation. If the Commission has determined to adopt a more laissez-faire philosophy of regulation, this is not the place to begin.

In order to clarify your agency's position, would you please inform us whether the Commission concedes the existence of a right to reply? If the answer is in the affirmative, how is the Commission order of August 2 compatible with such a right? If the Commission denies the existence of this right, how can this denial be reconciled with the result of the Red Lion case, above?

RIGHT OF THE PUBLIC TO HEAR BOTH SIDES

The broadcast medium has the unquestioned ability to destroy reputations. In the context of public issues, this can also be a technique for discrediting the views and associates of the victim. The public interest in hearing both sides in situations such as this is clear. When such an attack takes place, the victim hinself has become the subject matter; his reputation is the issue. If an effective response is to be made, he must make it. He may, it is true, designate a spokesman to reply for him, or waive his right to reply altogether, and rely on what the licensee may have presented to balance the picture. Moreover, his reply, however delivered, may be

inept or otherwise deficient, this appears unavoidable. In some cases there may really be nothing that can be said in the defense of the person or group attacked. But while the FCC cannot assure that an effective response will be made, it should not preclude such a response by rules such as those under discussion here.

The FCC has taken the inconsistent position that reply by the victim is necessary to uphold the public interest when a personal attack is carried over a news interview, news documentary, or other program, but that it is not needed when the attack is carried over a newscast or coverage of on-the-spot news. Our previous letter on this subject quoted from a number of FCC statements which clearly stated that the licensee is responsible for the content of his programs regardless of their source or his actual involvement in the broadcast, and that a licensee must give notice and make reply time available to victims of personal attacks. This previous position of your Commission was clear and unequivocal; no exemptions were asserted for "hard" news (see paragraph 23 of Fairness Primer, 1964). Your letter made no attempt to reconcile these inconsistent positions.

LICENSEE CONVENIENCE

Your letter confirms our original contention that it is the convenience, actual or assumed, of the licensee which is being served by the Commission's action. In attempting to explain why the requirements of notice and reply time are being eliminated in some situations (i.e., "hard news"), your letter indicates that this is because of the large number of stations which may be involved:

> "It (i.e., notice requirement) would mean that each time the wire services carry an attack (and such newsworthy attacks do occur with some frequency each year), thousands of licensees would have to dispatch letters to the person or group attacked . . ."

Obviously, neither the number of times an attack is repeated, nor the universality of the coverage given it, can serve as a basis on which to deny the victim his only effective avenue of vindication. It is a curious argument which excuses licensees from balancing a personal attack with the victim's reply by pointing out that a great many of the licensee's colleagues have also carried that same attack.

It should also be pointed out that each individual licensee must give notice only once for each attack; he

is not prejudiced by the fact that other licensees have incurred the same obligation. If anyone is inconvenienced it is the victim since he is the one who must ascertain the damage done to his reputation, and attempt to repair it.

ABSENCE OF PREMEDITATION

As we also pointed out in our previous letter, the Commission order of August 2 seems to lose sight of the reasons behind the personal attack principle. In the FCC Memorandum which accompanied that order, your Commission adverted to the premeditation, or lack thereof, of the licensee in broadcasting the personal attack. It was suggested that, in those instances where the victim is still to be accorded his right to reply, it is based upon the fact that the licensee has "chosen" to present a personal attack (see Paragraph 3 of Memorandum). As we pointed out previously, however, and your letter does not deny, the deliberation of the licensee, or lack thereof, cannot be used as the determining factor in affording reply time to the victim of a personal attack. Such an approach incorrectly presupposes that the victim's reply is intended as a form of penalty imposed upon a licensee who has shown bad faith. It is also incompatible with the FCC's previously held position, mentioned above, that the licensee is fully responsible for all matter, including attacks, broadcast over his station, regardless of his actual involvement (see Fairness Primer, 1964, paragraph 23).

SEVEN-DAY NOTICE REQUIREMENT

Your letter, and the FCC Memorandum Opinion and Order of August 2, 1967, both stress the alleged unwieldiness of the seven-day notice requirement when applied to fast-breaking or "hard" news situations. Assuming arguendo that there are sufficient difficulties in such cases so as to make the seven-day notice impractical, the remedy, in our view, is to grant an appropriately longer period of time for the notification. The answer is not to throw out the baby with the bathwater by eliminating entirely the victim's right to reply.

As to the confusion which you foresee arising from thousands of offers of reply time converging on the victim, transmitting video tape and summaries, etc., surely the Commission can devise something to help in this situation without silencing the victim. One possible procedure which comes readily to mind is to require that the licensee carrying the personal attack notify the Commission directly. This notice, which need not be elaborate, would

identify the victim, and note the date and general substance of the attack. The victim need not be deluged with identical scripts, video tapes, and the like. He need only be notified by the FCC that one or more licensees have reported the broadcast of an attack. If he chooses, the victim can then consult the FCC files on the matter, note the stations carrying the attack, and make orderly arrangements with them for such reply as he may wish to make.

Such a procedure should not add materially to the Commission's workload. On the contrary, it would elemi-nate completely any future disputes between victim and licensee as to whether proper notice was given. As you recall, your Commission was recently forced to devote much time and effort in attempting to ascertain the real fact situation in such a dispute (Station KTYM, 9RR 2d 271 (1967)).

Finally, this procedure would serve to automatically call to the Commission's attention those licensees who regularly lend their facilities to hate-mongers of various stripes whose only recourse to support their views seems to be the techniques of smear and character assassination.

The above, we repeat, is only one possible method of dealing with the notification difficulties predicated in your letter. Nevertheless, it seems clearly superior to the Draconian solution ordered by your Commission on August 2.

TIMELINESS OF RESPONSE

This brings us to the subject of the "timeliness" of the reply to a personal attack. Both the Commission's Memorandum of August 2, and your letter of October 2, call attention to the passing panorama of news events which is brought to the attention of the broadcast audience. The inference is invited, especially in the Commission's Memorandum of August 2, that by the time the victim has had a chance to marshall his facts and compose his reply, the parade may have passed him by. His story may have become stale, and no longer deserve the title of "hard" news. Under these circumstances, it seems to be suggested that the licensee may wish to go on to other matters and not be bothered with the victim's response. For example, your letter calls our attention to the fact that "some substantial time period might lapse before the response material was received, which might also create problems in the context of this "'hard' news area." Similarly, the August 2 Memorandum, in paragraph 2, states:

> "To import the concept of notification within a week period, with a presention of the person attacked on some later newscast when other news might normally be broadcast, is impractical and might impede the effective execution of the important news functions of licensees or networks." (emphasis added)

Mr. Chairman, does a person's reputation go out of date? Cannot the American public be relied upon to recall recent assults on reputation, and weigh them, and perhaps their authors as well, against the victim's response? We think that the answers to these questions are self-evident. While some reasonable time limit for the victim's reply may be appropriate, it is clearly unjust to foreclose his reply entirely on the theory that it may not be prepared in time to satisfy the licensee.

CONCLUSIONS

The damage which the new FCC rule may accomplish is underlined by your statement that "newsworthy attacks do occur with some frequency each year." That statement, parenthetically, does much to discount the following statement from the FCC Memorandum of August 2: " . . . the number of personal attacks occuring in on-the-spot coverage of bona fide news events is unlikely to be large in number . . ."

We are mindful that when the FCC talks of personal attack it refers to an assult made "upon the honesty, character, integrity, or like personal qualities of an identified person or group" in the context of a controversial issue of public importance. In view of the damage which such an attack may inflict upon the victim, and the public in the final analysis, we cannot agree with any Commission rule which deprives the victim of his right to reply.

Serious personal attacks should not be considered as merely routine events of the news day. Nor should we consider the personal attack as an essential part of the stock-in-trade of news-gatherers, and therefore seek to preserve its ready marketability at the expense of private rights and the public interest. The public interest will be better served by providing the disseminators of news with a motive for being discriminating when they are asked to transmit such material to the public. Fortunately, the relative number of broadcasters who need such motivation is small. Unfortunately, however, the damage that can be done by such broadcasters is very great. Many real examples of such damage could be set beside the fictional example which you presented in your letter.

Your letter seeks to draw a parallel between the action of the Congress in enacting the 1959 Amendments to the Communications Act, and the present action of the Commission which abolishes the right of reply for certain personal attacks. Unfortunately for this asserted parallel, it was just those amendments which imposed the standard of fairness on the news programs under discussion here. Why and on what statutory authority, has the FCC decided that "fairness" in the case of some personal attacks requires that the victim be given a forum in which to respond, while in other situations--situations where the substance of the attack, the damage to the victim, the effect on the public interest, and even the number of stations carrying the attack, may be identical--the victim is now said to have no such forum?

We are still awaiting satisfactory answers to the above questions.

With best personal regards.

Sincerely,

John Dingell
House of Representatives
Interstate and Foreign Commerce
Committee

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

December 6, 1967

The Honorable John D. Dingell
House of Representatives
Washington, D. C. 20515

Dear Congressman Dingell:

This is in reply to your letter of November 24, 1967, with further reference to the Commission's action of August 2, 1967, exempting newscasts and on-the-spot news coverage from recently adopted regulations on personal attack.

First, as you know, the Communications Act "is not designed primarily as a new code for the adjustment of conflicting private rights through adjudication" (F.C.C. v. Pottsville Bctg. Co., 309 U.S. 134, 138). Therefore, the paramount consideration here, as in other situations, is "the public interest in the larger and more effective use of radio" (Section 303(g)); NBC v. U.S., 319 U.S. 190), and that in turn means the public's right to be informed fairly concerning controversial issues of public importance, including personal attacks broadcast during the coverage of such issues.

As to the basic question raised at the conclusion of your letter, we appreciate your concern on this important matter. You may be interested to know that our action has also raised concern on the other side, as evidenced by the petitions for review filed by the Radio Television News Directors Association, CBS, and others. See Radio Television News Directors Association, et. al. v. United States of America and Federal Communications Commission, Case Nos. 16,369, 16,498, 16,491, C.A. 7. (For your further information, I have enclosed copies of briefs just filed by the petitioners, and will send you copies of the Commission's brief, when filed). We can only state that we believe that we have properly balanced the considerations in this area and that for the reasons set forth in our opinion and amplified in our letter of October 2, 1967--and particularly so as to not "impede the effective execution of the important news functions of licensees or networks" (par. 2, FCC 67-923)--our action, pursuant to Sections 4(i), 4(j), 307(a), 303(r), and 315(a) and (c) of the Communications Act, holding that the fairness doctrine generally rather than the personal

attack rule is applicable to newscasts and on-the-spot coverage of bona fide news events, best serves the public interest.

We shall of course keep you and the interested Committees informed of developments in this area.

Sincerely yours,

Rosel H. Hyde
Chairman

Enclosure

APPENDIX D

EXCERPT FROM BRIEF FOR PETITIONER

COLUMBIA BROADCASTING SYSTEM, INC.,

(PAGES 23-32 OF BRIEF)

In The

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

NO. 16,498

Columbia Broadcasting System, Inc., Petitioner,	Petition for review of an order of the Federal Communications Commission
vs.	
United States of America, and Federal Communcations Commission, Respondents.	

BRIEF FOR PETITIONER COLUMBIA BROADCASTING SYSTEM, INC.

. . . . . .

Unlike a newspaper, which has few practical limitations on the number of pages and columns that it can publish, a broadcaster is sharply limited by the finite nature of broadcast time. Any program material presented during the broadcast day forecloses the broadcast of other program material. Under the Commission's new rules, the number and length of the replies that must legally be invited if "personal attacks" are broadcast, and the many difficult practical problems involved in arranging and clearing the necessary time, are so burdensome that broadcasters will as a practical matter find it necessary to regard the reply requirement like the threat of damages for libel--a risk to be avoided even at the cost of abstaining from publications that engender the oppressive sanction.

The burden may be illustrated by the way it bears on three of the most highly regarded CBS programs subject to the rules--Eric Sevareid's commentaries in the CBS Evening News, the news interview program Face The Nation, and the CBS news documentary programs such as CBS Reports and CBS News Specials. In intrinsic quality and in the contribution they make to the level of public information,

these are among the most important programs broadcast by CBS.

Mr. Sevareid's daily commentaries have achieved more than transient recognition. Collections of them have been published in book form and have received wide critical acclaim. The Face The Nation interviews, usually conducted by Martin Agronsky and a guest journalist, not only illuminate the news; they frequently make news as well. Fifty-eight of 85 weekly Face The Nation programs broadcast from April 1966 to November 1967 resulted in news stories that appeared in the New York Times and/or the Washington Post the following day. Nineteen of these programs resulted in front-page stories in the Times or the Post or both. CBS Reports is the lineal descendent of Edward R. Murrow's See It Now series. CBS has also made journalistic history with many of its documentaries, a recent example being the four hour series on the Warren Commission Report.

. . . . . .

In the year ending October 12, 1967, CBS broadcast 134 of Eric Sevareid's commentaries. All were carried by the CBS Television Network; many were also carried by the CBS Radio Network. We have reprinted as part of the Exhibit the full text of 31 such commentaries containing statements that are at least arguably covered by the Commission's new rules. The 31 programs contain more than 50 such statements concerning identified individuals or groups.

Similarly, in a high proportion of Face The Nation programs, Mr. Agronsky and his journalistic colleagues ask questions that either contain a statement defined as a personal attack under the new Commission rules, or may result in a reply containing such a statement. From March 1966 to October 1967, some 85 weekly Face The Nation programs were broadcast over the CBS television and radio networks. Thirty-four of these programs contained 75 or more statements collected in the Exhibit that at least arguably fall within the Commission's definition of personal attack.

Statements within the Commission's rules also occur with frequency in CBS documentary programs. We have reprinted in the Exhibit only a few typical examples of the many statements made on such programs that fall under the sweep of the Commission's broad personal attack definition. From the titles of these programs alone ("Black Power-White Backlash," "Murder and the Right to Bear Arms," "The New Left," "The Warren Report," "Robert F. Kennedy," "Civil Rights: The View From the South"), it is apparent that programs on these subjects must necessarily contain numerous statements now defined as personal attacks.

As the Commission itself has said broadcast journalists faced with an inflexible right of reply requirement

have essentially two "choices." First, they can delete particular items of "offending" program material. If broadcasters are induced to make this "choice", the rules are clearly unconstitutional as an indirect form of government censorship. Second, the licensee can continue to broadcast "personal attacks" and seek to comply with the Commission's reply requirements. We believe that in many if not most cases the burdens imposed in trying to comply will require broadcast journalists to choose the first alternative.

Given the appetite of persons involved in public controversy for personal radio and television exposure, a high proportion of those invited to reply may be expected to accept. But whether or not all invitations are accepted the problems are substantial. The Eric Sevareid commentaries are an example. On the basis of the Exhibit on over 50 occasions per year--almost once for each two Sevareid programs broadcast--the CBS owned and operated stations and the 400-odd CBS television and radio affiliates would be obliged under the new rules to find and notify the individual or group mentioned, furnish a tape, script or summary of the attack, and, if the offer of reply time is accepted, displace some other scheduled program or program material to provide the necessary time.

The average Sevareid commentary occupies approximately two minutes of broadcast time. Any meaningful opportunity to reply would have to be considerably more than one or two minutes in length. Thus, by broadcasting 134 Sevareid commentaries in the course of a year, occupying 268 broadcast minutes, CBS would have been required under the new rules to issue more than 50 invitations to identified individuals or groups, offering each of them time to reply. The amount of time that would have to be offered would be substantially greater than the time required to broadcast the 31 "offending" commentaries.

If an offending statement is made by Mr. Sevareid or in a CBS news documentary, or by Mr. Agronsky in asking a question on Face The Nation or by Mr. Agronsky's guest in reply, a burdensome sequence of events will be set in motion. Mr. Sevareid, Mr. Agronsky, and the CBS News Division will have to decide whether the statement is subject to the rules and may well have to consult with the CBS Law Department. If the decision is to offer time, the person or group attacked must be identified, located, given a tape, script or summary of the attack, and offered time to reply. The offer is likely to involve protracted negotiations as to the amount of time to be afforded, the format of the broadcast, limitations on subject matter, and a variety of other questions. Either CBS or the person or group affected may refer one or more of these questions to the Commission, and extended pleadings, conferences, and delays may result.

The questions that must be resolved may be extraordinarily difficult. Mr. Sevareid has said that Governor Romney's views on Vietnam are obscure and (with some sympathy) that the Governor's "brainwashing" remark created a "one-man, do-it-yourself credibility gap." This remark could be said to reflect on the Governor's "honesty, character, integrity or like personal qualities." If CBS must afford him time to reply, Governor Romney would undoubtedly feel he needed at least two minutes (the length of the original commentary), and probably much more, to state his views on Vietnam and on his "brainwashing" charge. Where would the reply be carried? If it is inserted in a subsequent CBS Evening News, it will necessarily displace either Mr. Sevareid's entire commentary on some more recent newsworthy subject, or some "hard news" portion of the program. If it is carried outside of CBS Evening News, CBS must displace some other program and must arrange separate additional clearances with some 400 television and radio stations, each of which will have differing scheduling problems of its own.

The duties imposed under the rules fall on each of these affiliated stations. At present a number of CBS public affairs programs have a lower rate of clearance than other CBS series. If affiliates' program schedules were disrupted because they were compelled to carry reply programs as well, it seems likely that even fewer stations would carry CBS public affairs programs.

Finally, the rules will adversely affect the quality of public affairs programs such as the Sevareid commentaries, Face The Nation and CBS Reports and make participation in them unattractive to the best broadcast journalists.

The men who write and edit these programs are men with high endowments of talent, intelligence and wit. But these attributes alone do not fully explain the great value of the programs. The quintessential added ingredient is the journalistic freedom these men possess. The manner in which they and other journalists exercise that freedom is what gains or loses them the public trust. And the public trust these particular programs enjoy is based on the public confidence that the men who prepare them will probe for the truth and report the whole truth as they see it.

An attack upon a person's honesty, integrity or like personal qualities should not be assumed to be an unnecessary injection of unwarranted personal considerations. The personal qualities of people, and particularly their honesty and integrity, are an important element in news reporting. It is not an accident that simple honesty in a politician has always been regarded as his most sought after quality in public life. A reputation for fair dealing and integrity is supposed to be the hallmark of American business

life. Thus, the responsible reporting and analysis by a journalist of a "personal attack" upon a person whose activities are in the public eye is not to be thought of as aberrational but rather as being entirely in the public interest. The publication of such attacks--when the publishing medium believes them to be well founded--is always important. It is of critical importance when, as had happened on occasion during the history of this nation, publication occurs in an atmosphere of official suppression or private fear that has inhibited some journalistic media.

At present Mr. Sevareid is free to interpret the news as he sees it, subject only to the high standards of journalistic objectivity and integrity that he and the CBS News Division maintain. Since he adheres to these standards and his commentaries are limited to matters of public importance, he presently need have no serious concern that he may be subjecting himself or CBS to a damage judgment or any other form of punishment or sanction.

If the Commission's new rules are upheld, however, Mr. Sevareid must then have a very serious concern about what he says in the future. When he selects his subject and chooses his words, he will have to bear in mind the Commission's admonition that "where he chooses to make such presentations [statements defined as personal attacks]" the stations carrying his commentary "must take appropriate notification steps and make an offer for reasonable opportunity for response. . . ." (July 5, 1967, Memorandum Opinion and Order, 5, R. 348).

Whether or not CBS or any of the hundreds of stations concerned express themselves to him on the matter, Mr. Sevareid is not likely to subject his network and the stations carrying his commentary to the burdens described above some 50 times a year.

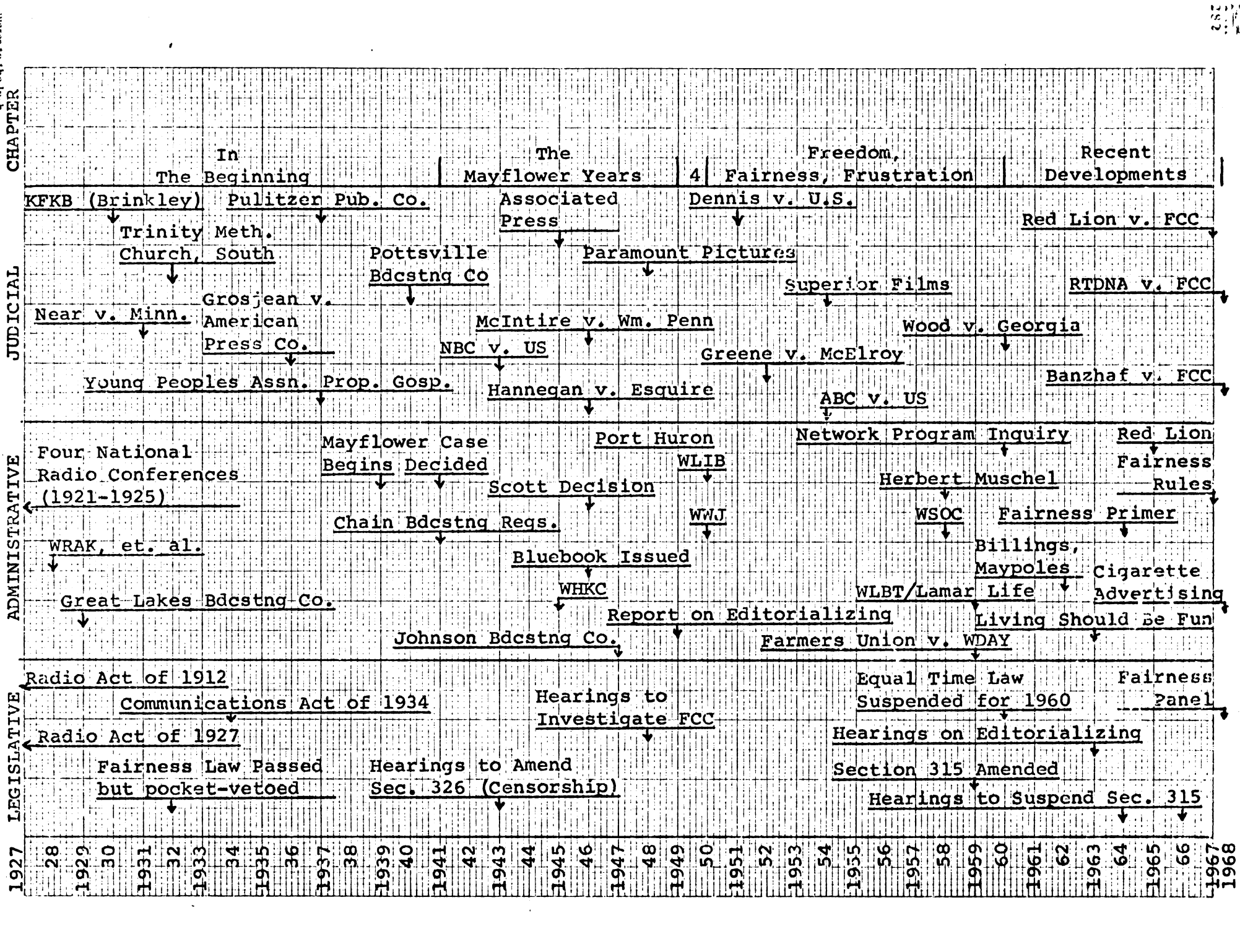
The inhibiting effect on Face the Nation would be equally damaging to the integrity and purpose of that program. The central idea of Face the Nation and similar news interview programs is to question an important public figure about the important public issues in which he is currently involved. The essence of good interviewing is to ask provocative questions, questions that relate not merely to abstract issues of public policy, but also to the "honesty, character, integrity or like personal qualities" of individuals or groups which figure in such public issues. As in the case of the Sevareid commentaries, the new rules would thus have an inhibiting effect not only on CBS and its affiliated stations, but also on Mr. Agronsky and his colleagues. Their dilemma would be even crueler than Mr. Sevareid's. They cannot judge whether the rules will be brought into play solely by what they themselves may say; before saying it, they must also take into account the many possible answers their questions may produce.

Equally serious problems would arise in writing, editing and producing CBS Reports and the similar news documentaries broadcast as CBS News Specials. The writers and producers of CBS Reports and CBS News Specials would have grave difficulties in maintaining their journalistic standards under the Commission's new rules--difficulties different in nature but equally as burdensome as those that would be faced by Mr. Sevareid and the journalists who conduct interviews on Face the Nation. Each CBS Reports and CBS News Special Program consists of a carefully prepared distillation of what its authors believe to be the most significant aspects of the subject under discussion. In accordance with their own standards and those of the CBS News Division, they make every effort to present all sides of the controversial issue being examined. In so doing, they necessarily must be free to select from among several alternative methods and spokesmen to present each side. It would be extremely difficult to include within each such program a reply to every statement on the same program falling within the definition of "personal attack," particularly when the rules give the reply right to the individual or group attacked. Even greater difficulties in scheduling, continuity and clearance would be posed if the editors attempted to carry the reply in some later program. With these substantial prospective burdens before them, and with numerous other items of filmed and recorded material to select from in editing the final product, the editors will be induced by the new rules to discard particular items of material which, no matter how fairly and objectively treated in the program itself, might create a duty to broadcast a later reply. There is strong reason to doubt that journalists with the qualities of Mr. Sevareid, Mr. Agronsky and the men who prepare CBS Reports will be able to "choose" between the alternatives posed by the rules. They will find that to continue broadcasting "personal attacks" is impracticable and that to "steer far wider of the unlawful zone" is unacceptable. Thus, under the new rules, news commentary, news interviews and news documentary programs as we now know them could not continue, and "only the wholly inoffensive, the bland, could gain access to the radio microphone or TV camera." Pacifica Foundation, 36 F.C.C. 147, 149 (1964).

APPENDIX E

A FAIRNESS DOCTRINE

TIME-LINE


CHAPTER
In The Beginning
The Mayflower Years
4
Freedom, Fairness, Frustration
Recent Developments
JUDICIAL
KFKB (Brinkley)
Pulitzer Pub. Co.
Associated Press
Dennis v. U.S.
Red Lion v. FCC
Trinity Meth. Church, South
Pottsville Bdcstng Co
Paramount Pictures
Superior Films
RTDNA v. FCC
Grosjean v. American Press Co.
Near v. Minn.
McIntire v. Wm. Penn
Wood v. Georgia
NBC v. US
Greene v. McElroy
Young Peoples Assn. Prop. Gosp.
Hannegan v. Esquire
Banzhaf v. FCC
ABC v. US
ADMINISTRATIVE
Four National Radio Conferences (1921-1925)
Mayflower Case Begins
Decided
Port Huron
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Herbert Muschel
Scott Decision
Chain Bdcstng Regs.
WWJ
WSOC
Fairness Primer
WRAK, et. al.
Billings, Maypoles
Bluebook Issued
Cigarette Advertising
WHKC
WLBT/Lamar Life
Great Lakes Bdcstng Co.
Report on Editorializing
Living Should Be Fun
Johnson Bdcstng Co.
Farmers Union v. WDAY
LEGISLATIVE
Radio Act of 1912
Equal Time Law Suspended for 1960
Fairness Panel
Communications Act of 1934
Hearings to Investigate FCC
Radio Act of 1927
Hearings on Editorializing
Fairness Law Passed but pocket-vetoed
Hearings to Amend Sec. 326 (Censorship)
Section 315 Amended
Hearings to Suspend Sec. 315
1927 28 1929 30 1931 32 1933 34 1935 36 1937 38 1939 40 1941 42 1943 44 1945 46 1947 48 1949 50 1951 52 1953 54 1955 56 1957 58 1959 60 1961 62 1963 64 1965 66 1967 1968