Western Kentucky University
TopSCHOLAR®

Honors College Capstone Experience/Thesis Projects

Honors College at WKU

5-1-1990

The Fairness Doctrine: Broadcaster's Friend or Foe?

Jill Miller
Western Kentucky University

Follow this and additional works at: http://digitalcommons.wku.edu/stu_hon_theses

Part of the Broadcast and Video Studies Commons

Recommended Citation

Miller, Jill, "The Fairness Doctrine: Broadcaster's Friend or Foe?" (1990). *Honors College Capstone Experience/Thesis Projects.* Paper 17.
http://digitalcommons.wku.edu/stu_hon_theses/17

This Thesis is brought to you for free and open access by TopSCHOLAR®. It has been accepted for inclusion in Honors College Capstone Experience/Thesis Projects by an authorized administrator of TopSCHOLAR®. For more information, please contact topscholar@wku.edu.

The Fairness Doctrine:
Broadcaster's Friend or Foe?

Honors Thesis

Jill Miller

Fall 1989-Spring 1990

OUTLINE

I. The Fairness Doctrine

   A. Explanation
   B. History

II. Arguments in favor of the Fairness Doctrine

   A. Legal argument
   B. Social argument
   C. Technical/ethical argument

III. Arguments against the Fairness Doctrine

   A. Legal argument
   B. Social argument

IV. Current assessment of the Fairness Doctrine

Broadcasting in the United States has become one of America's most established institutions. In spite of its fumbling, almost accidental, beginnings, it is now this country's foremost entertainment medium. Radio and television are held in high regard, not only for their entertainment value, but also for their powerful economic, educational, journalistic, and political uses in society. Because broadcasting plays such a prominent role, it is heavily regulated. The Federal Communications Commission was established in the early days of radio. Since then, it has formulated guidelines and regulations concerning creative as well as technical issues. Among these regulations, few have drawn as much debate as the Fairness Doctrine. Broadcasters, members of Congress, FCC commissioners, and others have voiced their opinions for and against that regulation, and have interpreted its effects on the broadcast industry.

The Fairness Doctrine requires that broadcasters fulfill two obligations in the coverage of controversial issues of public importance. First, they must devote a reasonable amount of their broadcast to these issues, and second, they must provide an opportunity for the presentation of contrasting views on controversial issues. The Federal Communications Commission hoped that this would ensure a diversity of attitudes and opinions on subjects of public

importance. The Fairness Doctrine was formally stated by the Commission in 1949:

> 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 public dissemination of news and ideas concerning the vital public issues of the day.
> And the commission has made it 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 contrasting views of all responsible elements in the community on the various issues which arise (Ellmore 208).

According to the FCC, the purpose of the Fairness Doctrine is to uphold First Amendment rights: "to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the government itself, or a private licensee" (Ellmore 209). General guidelines have been established by the commission to implement the Fairness Doctrine, but the issues that are covered and the amount of time spent on those issues are left to the broadcaster's discretion. The Federal Communications Commission did state in no uncertain terms that failure to comply with the Fairness Doctrine would result in non-renewal of the broadcast license. The FCC does not monitor stations for noncompliance; rather, it acts on complaints from the public.

Even though the Fairness Doctrine was not specifically enunciated until 1949, its development began in the late 1920's through statements made by Congress and the Federal

Radio Commission. In the Great Lakes Decision, the FRC (which later became the Federal Communications Commission) declared that "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 this principle applies...to all discussion of issues of importance to the public" (Ellmore 207). The major case which led to the formulation of the Fairness Doctrine involved the Mayflower Broadcasting Company and the Yankee Network, Inc., which owned WAAB in Boston. Mayflower had applied unsuccessfully for the frequency used by WAAB. The application was denied on the grounds of insufficient finances. However, the proceedings revealed that WAAB had been editorializing for some time, urging the election of various political candidates to public office or supporting and opposing certain public issues. WAAB's license was renewed on the condition that it would not broadcast editorials. In the FCC's words, "free radio cannot be used to advocate the cause 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 favorable...the broadcaster cannot be an advocate" (Rowan 31). The Mayflower Doctrine of 1941 was the first major action against the broadcaster's freedom of speech...It quickly became the subject of much controversy from within the broadcasting industry. Opponents claimed the ban on

editorializing interfered with the First Amendment rights of broadcasters. The controversy and confusion created by the Mayflower decision prompted the FCC to conduct hearings to formulate an editorializing policy. That policy later became the FCC Report on Editorializing by Broadcast Licensees (1949). It did not forbid editorializing, but it required broadcasters to present contrasting views on issues of public importance. The report became the basis for the Fairness Doctrine, stating that the "paramount right" is for 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" (Rowan 32). In establishing a two-fold obligation for broadcasters, it called upon both the First Amendment and the public interest standard of the Communications Act of 1934. A decade later, Congress amended Section 315 of the Communications Act to incorporate the Fairness Doctrine. That portion stated that "nothing in the foregoing sentence (concerning legally qualified candidates for public office) shall 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" (Ellmore 208). Suprisingly, that ratification of the Fairness Doctrine failed to create any burning controversy over broadcast

fairness. Debate on the amendment was extremely one-sided, based upon the assumption that fairness was a worthy goal which should be codified.

The Fairness Doctrine regulates two areas of broadcast opinion. The first concerns controversial issues of public importance. The regulation contains no mathematical requirement for coverage of each side of an issue. It only insists that contrasting views be fairly represented; the station determines and selects what constitutes fair balance. The Fairness Doctrine was intended to promote long-term balance and fairness on a variety of issues, not minute-for-minute coverage of every viewpoint. According to the FCC's 1974 Fairness Report, the first policy statement of guidelines for Fairness Doctrine implementation, licensees were entrusted with determining what constituted a "controversial issue." The commission chose to rely on a broadcaster's good faith and judgement rather than detailed criteria by which to judge fair balance. However, the report did include some general suggestions on determining "public importance" and also on defining "controversial." The FCC determined three factors which should be considered in determining if an issue is of public importance: the degree of media coverage, the degree of attention given the issue by government officials and other community leaders, and a "subjective evaluation of the impact that the issue is likely to have on the community at large" (Simmons 155). The third

factor is the primary test for public importance, but the less significant factors become essential in defining "controversial." These factors should be used by the licensee to gauge whether the issue at hand is the subject of vigorous public debate, with a significant faction of the community supporting various opinions.

The second area of regulation addressed by the Fairness Doctrine involves personal attacks. The personal attack rule, 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" (Kahn 390-391). The licensee must take all appropriate steps to see that the person or persons attacked receive an opportunity to respond. There are several exceptions to the personal attack rule. Aliens, persons attacked on a live show, politicians, public figures, and attacks on bonafide newscasts are all excluded from the equal reply-time considerations. By the same token, several factors tend to work in favor of the offended party. Free reply time is likely if an attack occurs against a U. S. citizen, if an attack occurs during an editorial, if an attack occurs during a scripted or videotaped show, if an attack occurs during a documentary, or if free air time was granted to other candidates in the case of a political campaign. In general, the primary consideration for reply time under the personal attack rule is premeditation, because "the more opportunity a format provides for deliberation,

planning, and editing before airing, the more responsibility there is for the consequences of releasing it to the public" (Wicklander 182).

The landmark case in support of the Fairness Doctrine was the 1969 Red Lion Broadcasting Company, Inc. vs. FCC. Red Lion was purposefully brought to the courts to test the constitutionality of the Fairness Doctrine. The Supreme Court upheld the Fairness Doctrine on the grounds that the airwaves belonged to the general public, not the licensees. According to the court, "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount" (Rowan 17). Even though that case showed definite favor for the Fairness Doctrine, it was not the last word. In 1979, the 96th Congress met to consider legislation which would include dropping or drastically toning down the Fairness Doctrine. No legislation was enacted. In 1981, the U. S. Supreme Court ruled in CBS vs. FCC that the Fairness Doctrine's "right to access" principle does not violate broadcasters' First Amendment rights; rather, it balances the rights of broadcasters, political candidates, and the public. That same year, the FCC recommended to Congress the repeal of the Fairness Doctrine, and President Ronald Reagan expressed his support for deregulation of the communications industry. In the 1984 case of FCC vs. League of Women Voters, the Supreme Court stated that if the Federal Communications Commission could prove the Fairness Doctrine had the effect

of reducing free speech, then the Court would reconsider its constitutional basis. The FCC reported to Congress in 1985, claiming that it restricted, not enhanced the First Amendment right of free speech. Meredith Broadcasting Company vs. FCC in 1987 resulted in a U. S. Court of Appeals remanding the constitutionality of the Fairness Doctrine to the FCC for additional consideration. The Commission found that the Fairness Doctrine was no longer enforceable on constitutional grounds, and voted to abolish the doctrine (Congressional Digest 256). Still, the controversy surrounding the Fairness Doctrine has not been abolished. Many critics predict that the Fairness Doctrine will come and go with changing administrations and new members on the Federal Communications Commission. Another opinion is that broadcasters are still bound by the Fairness Doctrine and any violation would result in its being reinstated.

According to supporters of the Fairness Doctrine, the broadcast medium is unique in that the electromagnetic spectrum by which television signals are transmitted is a valuable public resource which remains scarce relative to demand. Because broadcast channels are limited, the government must maintain an oversight role. In the early days of radio broadcasting, no government controls existed, and the result was chaos. So many stations were broadcasting at once that none could transmit a clear signal, and the public was left with interference rather than information and entertainment. As use of the spectrum has increased over the

years, so has demand. However, in the top fifty television markets, only about ten fullpower UHF channels are available; all totalled, 136 commercial television channels are vacant (Hollings 236). The nature of the print medium is often incorporated in the scarcity argument because the government exercises little control over newspapers; anyone can freely enter the newspaper market. Proponents use this condition to reiterate the uniqueness of the television and radio industries and the limited availibility of broadcast licenses. According to U. S. Senator Ernest Hollings,

> The truth of the matter is that (television stations) are not like newspapers. You can go in and organize a newspaper any time you want to, if you have the money. You can have all the money in the world. And the state of Delaware, the very first state in our Union, has yet to get a broadcast license because of the scarcity or lack of availability for broadcast licensing (Hollings 234).

Perhaps the scarcity argument in favor of the Fairness Doctrine is weakening because of the growing number of other video and audio services available to the American public, services that provide a wide range of information. Even so, there are still more applicants for radio and television licenses than there are available frequencies, and according to U. S. Representative Edward Markey, " a basic tenet of economics is that whenever demand exceeds supply, you have scarcity" (Markey 250).

A second argument in favor of the Fairness Doctrine is that because broadcast licenses are limited, the "lucky few" who have access to the airwaves assume the roles of public

trustees, entrusted to operate in the public interest, convenience, and necessity. In essence, the licensee actually controls the content of what is transmitted over a limited amount of the electromagnetic spectrum. This leads proponents to argue that the Fairness Doctrine is a necessary measure to prevent a broadcaster from abusing the public trust that accompanies a broadcast license. The goal of the Fairness Doctrine is to provide balanced information about important issues. The public interest standard set forth by the Fairness Doctrine is frequently cited as nothing more than sound journalistic practice. Markey voiced this opinion, saying "The Fairness Doctrine only requires broadcasters to do what any good broadcaster would do anyway: address important issues in a fair and impartial manner" (Markey 250). Even though there is no similar regulation for print journalists, the Fairness Doctrine prompted editors to create what is now a standard in ever newspaper: the opinion-editorial page. The goal of op-ed pages is to give balanced viewpoints on editorial comments, which usually center around controversial issues.

Some say the Fairness Doctrine is the only sure-fire way to construct an informed public and, more importantly, an informed electorate. According to basic Jeffersonian Democracy, "if the American people know the issues, they can make informed decisions about those issues and can guide those who are elected to public office" (Danforth 244). Supporters of the Fairness Doctrine insist that it is in no

way a form of censorship; instead, they say it promotes free speech because it requires balanced views to be aired. "The licensing scheme created by Congress provides a unique opportunity to vindicate competing First Amendment values" (Ferris 254). However, many Fairness Doctrine foes claim that the regulation causes broadcasters to completely ignore certain issues for fear of retribution for failing to adequately present a balanced broadcast, a point that is often referred to as the "chilling effect" of the Fairness Doctrine. Former FCC chairman Charles Ferris repudiated that argument, stating,

> A chilling effect can only arise among broadcasters who are unwilling to air both sides of an issue, who are unwilling to act as public trustees for those with opposing views on an issue, but who lack the money needed to buy time on the airwaves (Ferris 254).

The Fairness Doctrine only prosecutes those broadcasters who sell their editorial time slots to factions representing only one side of an issue. Advocates claim the doctrine has actually increased rather than squelched the airing of controversial issues. Senator Hollings cites the onslaught of programs such as "Nightline" and "60 Minutes" as evidence that the Fairness Doctrine has actually enhanced free expression. "The responsible stations over the land, rather than getting lockjaw, have been expressing their opinions and offering equal time. It has all been to the public good" (Hollings S5218).

Fairness Doctrine supporters also argue that the extra

responsibility it places on broadcast licensees is so minimal that it should not be considered a burden. U. S. Senator Daniel Inouye supports the conditions of the measure: "The Commission and the Courts have carefully circumscribed the scope of the doctrine in order to minimize intrusion into the editorial discretion of broadcasters" (Congressional Digest 242). The FCC does not monitor broadcasts in search of Fairness Doctrine violations. It investigates a license only if a complaint containing prima facie evidence of Fairness Doctrine violation is received. According to U. S. Senator Larry Pressler, the doctrine imposes a public interest obligation, not a burden, on broadcasters. Pressler says, "(the Fairness Doctrine) provides important guidance to those entrusted with a scarce resource, while allowing broad latitude in its implementation" (Congressional Digest 246). Supporters of the Fairness Doctrine say the minimal burden it places on broadcast licensees is exemplified by statistics: only one-third of one percent of all Fairness Doctrine complaints have resulted in sanctions against a broadcaster (Rowan 71).

Many proponents of the Fairness Doctrine feel that it is especially needed in small markets to protect stations from being taken advantage of by single issue special interst groups. These groups often attempt to infiltrate these small, relatively inexpensive markets to influence public opinion in their favor. The reports are purchased and aired as commercial advertising, but are often crafted to look like

newsworthy programming. The result is that facts are presented in a very misleading manner. Underfinanced groups with varying viewpoints have no means of countering these advertisements. States with an abundance of small markets, such as Kentucky, are especially susceptible to this kind of advertising. An interest group could blanket an entire state by bouncing between small markets at a relatively low advertising cost. Pressler states "Without the Fairness Doctrine, (special interest groups) are emboldened---indeed, even encouraged---to distort the facts on complicated national issues, and present them in a very misleading manner" (Congressional Digest 24). Many broadcasters do not maintain national affiliates to promote balanced reportage in regular newscasts. Economic pressures also come into play with special interest groups because small stations often prefer requiring a commercial response to one-sided representations of a controversial issue rather than providing fuller access in order to balance coverage. Many small stations may opt for the most financially advantageous means of presenting or not presenting varying sides of certain issues. Some say the Fairness Doctrine is the only means available to guarantee a balanced flow of information, by alleviating pressure groups and economic pressures.

The primary argument against the Fairness Doctrine is that it has a "chilling effect" on broadcasters' First Amendment right of free speech. The National Association of

Broadcasters offers no statistical evidence of a chilling effect but has denounced the Fairness Doctrine in positions papers on the subject:

> (Broadcasters) are subjected to a subtle, continuous and strong incentive to avoid the experience entirely by sticking entirely with the safe and the bland, depriving the public of the kind of journalism that a truly free press is able to provide. The problem is greatly magnified where the station is small and management lacks the resources with which to defend its journalists against constant harassments by complainants who are able to invoke the power of the FCC (Rowan 121).

Former CBS News President Richard Salant agrees that the Fairness Doctrine stifles rather than enhances the open exchange of information via the broadcast medium, simply by having a "brooding omnipresence" looking over the licensees' shoulders (Rowan 122). The effect of the Fairness Doctrine may actually be the opposite of what was originally intended. Instead of encouraging broadcasters to present a wide variety of issues and viewpoints, the Fairness Doctrine may prompt licensees to shy away from controversial issues altogether for fear of unfounded challenges. Fairness Doctrine opponents say it especially chills the expression of speech for smaller broadcasters because of their financial and technological inability to obtain varying viewpoints on certain issues. According to U. S. Senator Bob Packwood, several small broadcasters called it the "fearness doctrine" during the 1984 hearings "because of the ease with which it is used to harass and intimidate them to back away from the coverage of controversial issues" (Congressional Digest 237). This fear stems from the threat of litigation and the

loss of one's license. The latter possibility could be financially devastating, especially to a small station. Stephen E. Nevas, who served as First Amendment Counsel for the National Association of Broadcasters, has ascertained that the average Fairness Doctrine complaint costs from one to three-thousand dollars to defend. This is regardless of what further action stems from the initial complaint. Extra expenses can serve as a major threat to small and medium markets. The basis of the "chilling effect" argument is that "important and valid stories" have been ignored or "watered down" because of the Fairness Doctrine. A publication of the Radio Television News Directors Association (RTNDA) lists several "concrete examples" of the "chilling effect", including the following:

> It took NBC four years, two full-scale court hearings and eight separate judicial opinions to beat off a fairness complaint in which the FCC had not even viewed the documentary it held to be in violation.
>
> To defend a single editorial cost KREM-TV in Spokane twenty-thousand dollars in legal fees, 480 hours of executive time and a delay in license renewal.
>
> A Roanoke city councilman being interviewed suddenly declared himself a candidate for mayor. The station thought it would be in keeping with the Fairness Doctrine to offer time to all mayoral candidates, including an eighteen-year-old high school student and the publicity-seeding operator of a massage parlor.
>
> It took two and a half years to let NBC off the hook after a fairness complaint against the classic documentary "Holocaust". The complaint alleged there had never been a deliberate Nazi effort to exterminate the Jews (Rowan 123).

In spite of these and other examples, the real threat posed

by the Fairness Doctrine seems to be theoretical, not because of bad experiences with the application of the law.

As mentioned earlier, the "chilling effect" argument against the Fairness Doctrine is actually a constitutional one, centering around broadcasters' First Amendment rights. In arguments calling for a complete rewrite of the 1934 Communications Act, Van Deerlin predicted that "If Thomas Jefferson were writing the Bill of Rights today, he would make clear that the First Amendment applies to broadcast as well as print journalism" (Krasnow 243). Prior to the 1987 repeal of the Fairness Doctrine by the FCC, broadcasting had traditionally been afforded a lesser degree of First Amendment protection than the print press. According to some opponents, the Fairness Doctrine makes broadcasters vulnerable to Congress by limiting freedom of speech. Congress has always assumed an active role in framing communications policy, and has seldom been inclined to leave that responsibility completely to the FCC. The scarcity argument in favor of the Fairness Doctrine is often refuted on constitutional grounds. In 1791, when the First Amendment was added to the Constitution, there were only eight daily and a handful of weekly newspapers in the United States, but all of these outlets were accorded full freedom.

Many Fairness Doctrine foes are working to ensure that the regulation remains permanently in its present state of remission because they feel that it is simply unnecessary. Indeed, the Fairness Doctrine is often viewed as excess

baggage in a medium already overwhelmed by regulations. Newspapers operate in a very similar capacity without government control. U. S. Senator William Proxmire is convinced that the print medium has "improved vastly in fairness, objectivity, accuracy and relevance over the years" (congressional Digest 225) without governmental regulation. Senator Packwood argues that the Fairness Doctrine is unnecessary because so much diversity exists in radio and television programming. One of the goals of the regulation is to promote the "exchange of ideas" and to ensure that the public is exposed to a wide variety of opinions and information. However, says Packwood, "there is not a citizen in this country who is deprived today of diversity of opinion without the imposition by law of the Fairness Doctrine" (Congressional Digest 241). U. S. Representative Dan Coats agrees that the Fairness Doctrine is unnecessary, particularly because fairness is an issue which is taken into consideration during relicensing procedures. After all, the Federal Communications Commission was established as the chief regulatory agency of broadcasting and has the necessary mechanisms to protect the public from improper use of the airwaves without the Fairness Doctrine.

Opponents also claim that scarcity is irrelevant in consideration of the legitimacy of Section 315. The scarcity argument in favor of the Fairness Doctrine was first documented in National Broadcasting Company vs. the United

States in 1943. The Court stated that "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 government regulation" (Congressional Digest 251). Such inavailability may have been the case when the only existing broadcast outlets were about one-thousand radio stations. Today, though, there are more than ten-thousand radio stations and almost thirteen-hundred television stations, reaching ninety-eight percent of all U. S. households. Over ninety-six percent of television households receive five or more television signals, and more than seventy-one percent receive nine or more television stations (Congressional Digest 251). There are approximately 7,300 cable systems, and cable is available to roughly two-thirds of all Americans. Even if scarcity existed at one time, it is no longer a valid justification for the Fairness Doctrine. Such an imposition on broadcasters is unnecessary to protect the public from infringements upon a scarce resource.

The Fairness Doctrine has often been criticized as self-defeating. One of the original intents was to stimulate the free expression of diverse ideas. However, it may actually promote the "sameness" of ideas when stations avoid airing controversial issues because they are threatened by action against their license or expensive litigation. U. S. Representative Dan Coates confides that "many broadcasters tell me that they shy away from controversial topics, despite

the public's need to be fully informed, for their fear of unfounded challenges under the Fairness Doctrine" (Congressional Digest 245).

A final argument against the Fairness Doctrine is that it grants the government too much control over the broadcast medium. The regulation has been called "dangerous" because of the immense power conferred on federal officials as the final arbiters of "fairness." Packwood asserts than "under the doctrine, the Fairness Doctrine, the federal government is, in essence, saying to itself we have the right, the power, and the wisdom to tell radio, television, cable, and all other broadcasters what it is they shall program. Packwood also says danger exists when the possibility that the federal government would use that power for political reasons:

> If I have discovered anything in my eighteen and one-half years in the Senate, it is that philosophical extremes, the far right and the far left, both support the power of government to use the mass media to achieve their ends. They are not hesitant about it at all. They regard it as a natural corollary when they are in power in government to be able to tell the news media how to portray the news, that the news is as they see it (Congressional Digest 241).

Many broadcasters fear that the power embodied in the Fairness Doctrine could fuel the fire for future regulations or possible legislation aimed at the broadcasting industry.

As it now stands, the broadcasting industry is expected to exercise its power with responsibility regarding fairness. However, this leaves several questions unanswered. Will the

broadcasting industry accept this responsibility and maintain necessary levels of fairness? Will future commissions work to reinstate the Fairness Doctrine? Will Congress continue its fight to pass legislation which would make the Fairness Doctrine a law? These questions are, for the most part, unanswerable. Performance regarding fairness is difficult to gauge to everyone's satisfaction. Federal law in the electronic communications field is constantly changing, along with the conditions of performance and technology and the interest shown by Congress in the issues surrounding the controversy over the Fairness Doctrine.

The Bush administration's stance on the Fairness Doctrine appears to be firm. According to White House press spokesman Steve Hart, "We're opposed to legislative imposition of the Fairness Doctrine" (Broadcasting, April 17, 1989). Many observers interpret that statement as meaning Bush would, if necessary, duplicate President Reagan's 1987 action of vetoing a Fairness Doctrine bill. Whether the next Fairness Doctrine will be waged by Congress, the FCC, an angry viewer, the courts, or the President is unknown. Still, most everyone agrees that there will be more battles...many more. When those battles do arise, it is doubtful that the arguments from either side will have changed much. The future of the Fairness Doctrine depends on many factors, including the amount of interest shown from both supporters and opponents of the regulation.

Though the Fairness Doctrine is currently not being

formally enforced, many say it has been remanded in theory only; in practice some broadcasters confess that they still feel hampered by the regulation due to the possibility of reinstatement hovering overhead. It is easy to find current examples of attempts to comply with the Fairness Doctrine, even though it is not a formal regulation.

On a recent broadcast of the ten o'clock newscast of Nashville's Channel Four, one reporter did a feature on fire safety. That evening's installment centered around the virtues of smoke versus heat detectors, and implied that the latter was often erroneously represented to consumers. At the end of the roughly two-minute package, the anchor commented that several manufacturers of heat detectors had been contacted for comment, but had refused the opportunity. This kept the station within the boundaries of fairness because a reasonable attempt had been made to find an opposing viewpoint. Examples such as this one can be found on every level of television news and public affairs programming. On ABC's "Nightline" program, half of the show is often devoted to one opinion and the other half allows the comments of an opposing party when controversial issues are being discussed. Often, two or more people appear at the same time discussing various sides of a topic. Likewise, even small stations strive to maintain balanced viewpoints on issues of public importance. On a recent edition of a program entitled "Outlook 24", originated from the public

television service of Western Kentucky University, the topic was abortion. The program's content was divided between interviews with persons on both the pro-choice and the pro-life sides of the abortion issue, as well as neutral comments by a local attorney about the legal issues surrounding abortion.

The Fairness Doctrine should be permanently put to rest. The Federal Communications Commission was established as a regulatory agency to ensure that broadcasters use the airwaves properly. Embodied in this responsibility is the issue of fairness. With or without the Fairness Doctrine, the FCC has the power, through the television licensing procedure, to act against stations which do not observe overall fairness in their coverage of controversial issues. However, the FCC should review its relicensing procedures to ensure that fairness is objectively evaluated and to ensure that stations will not be exploited by outside sources bearing unreasonable fairness complaints. Any citizen can challenge a licensee through a fairness complaint to the FCC. Even though few materialize, every complaint must be investigated. Such an investigation can divert the attention of station managers, news directors, and other employees from program service to defense against possible litigation. The license renewal process has potential for abuse and may also prompt broadcasters to exercise unnecessary preventive measures such as extortionate consultation fees. Proponents claim the Fairness Doctrine emphasizes overall fairness

rather that the treatment of a single issue. However, it only takes one complaint, legitimate or not, to spark a lengthy and expensive fairness investigation.

Most arguments in favor of the Fairness Doctrine are legitimate, but outdated. The scarcity argument is a prime example. At one time, the general public was limited in the amount of information it received from radio and television. Today, those media offer virtually unlimited sources of programs and information, accessible to an overwhelming majority of the population. Granted, scarcity did exist at one time, but it would be a valiant effort indeed if all of today's broadcast outlets conspired to present only one side of a particular issue. Another aspect of the scarcity argument concerns newspapers. Today it is ludicrous to assert that newspapers are a more abundant and accessible medium than radio or television, and therefore should not fall prey to fairness regulations. This point is indisputable as statistics confirm that there are more broadcast facilities in operation that daily newspapers.

The idea that the broadcaster should operate as a public trustee is legitimate, but should not be used as an argument in favor of the Fairness Doctrine. The very notion of "trustee" indicates trust; the broadcaster should be trusted, not required, to incorporate fairness into daily news coverage. Newspapers operate under the discretion of owners and editors, and have, over the years, proven to be perfectly

capable of balanced coverage without direct oversight. Broadcasters should have the opportunity to truly operate as public trustees. The added pressure of the Fairness Doctrine does not allow the broadcaster to exercise his or her own news judgement; rather it dictates what will or will not receive news coverage. Broadcasters should be able to operate in accordance with unwritten journalistic standards, not stringent FCC regulations.

The Fairness Doctrine does appear to have a "chilling effect" on broadcaster's First Amendment rights. Often restraints that are beyond the control of news directors or reporters may prompt them to ignore a controversial issue completely rather than risk a fairness complaint. This occurs frequently in small stations where equipment, personnel and information sources are limited. The Fairness Doctrine is, in effect, a method of censorship. However, it is much more difficult for broadcasters to comply with the Fairness Doctrine than with the usual requests of censors. Censorship usually takes place before the fact. If something is deemed inappropriate for broadcast, then the censors order that the offensive material not be aired or printed, whatever the case may be. If the offender complies with the censor's wishes, then they are safe from further action. However, fairness violations and judgements are not rendered until after the fact. Broadcasters essentially delve into their coverage of particular issues not knowing until it is too late if it will spark fairness complaints. In lieu of this

"fear of the unknown", broadcasters may refrain from covering certain issues at all. This lends a self-defeating quality to the Fairness Doctrine.

It also seems that the intent of the Fairness Doctrine is not always clear. Broadcasters could easily be unsure about what kind of coverage is required on certain issues, what constitutes a "controversial issue" or to what extent a station must go to get a response. Failure to comply with the Fairness Doctrine may be completely unintentional.

What seems to be the biggest problem with the Fairness Doctrine is that it is largely controlled by politics. Views about the regulation change with new presidents, Congressional leaders, FCC commissioners, and members of the courts. This might be detrimental to broadcast licensees because it keeps them on a roller coaster on the issue of fairness. Hampered by the knowledge that the Fairness Doctrine could be reinstated, and even made into a law, at any time certainly does not seem to improve coverage. Most broadcast regulators are either elected or appointed by some government official. This creates the possibility that political figures could try to use the broadcasting industry to their own advantage by playing on the vulnerability of broadcasters in the area of fairness.

Obviously, the fate of the Fairness Doctrine revolves around many different factions both within and outside of the broadcasting industry. Though it is difficult to predict the

final resting point (if such a point will ever even exist) of such a controversial issue, the facts to seem to lead towards an eventual phasing out of the Fairness Doctrine. However, this does not mean that the issue of fairness will be phased out as well. Broadcasting has "grown up" in the sense that it is now an industry which recognizes its power and functions responsible to serve its public. In the early days of television, the news media's relationship to the newsmakers was described as a "master and slave" relationship, where the content was largely controlled by the subject, not the broadcast journalist (Berkman 227). However, it seems that the relationship has matured to a state of detachment, where broadcasters act, and are expected to act to consciously produce a product which best serves the American viewers.

BIBLIOGRAPHY

Bellacosa, Joseph. "Why the Fairness Doctrine deserves to stay dead." Broadcasting 15 February 1988:42.

Berkman, Ronald, Kitch, Laura. Politics in the Media Age . New York: McGraw-Hill Book Company, 1986.

"Bush seen as sending signal on Fairness Doctrine." Broadcasting 17 April 1989: 31.

"Court Upholds FCC's fairness repeal." Broadcasting 13 February 1989: 28.

Dyk, Tim. "Why broadcasters should continue the fight for full First Amendment rights." Broadcasting 1 August 1988:21.

Ellmore, R. Terry. Broadcasting Law and Regulation . Blue Ridge Summit, Pennsylvania: Tab Books, Inc., 1982.

"Fairness in Broadcasting Act of 1987." Congressional Record (3 June 1987). Daily Ed. H4139-4160.

Friendly, Fred W. The Good Guys, The Bad Guys and the First Amendment: Free Speech vs. Fairness in Broadcasting. New York: Random House, 1976.

Fritts, Edward O. "Should Congress approve the Fairness Doctrine?" Congressional Digest October 1987:247-249.

Kahn, Frank J. Documents of American Broadcasting. New York: Meredith Corporation, 1968.

Krasnow, Erwin G., Longely, Lawrence D., Terry, Herbert A. The Politics of Broadcast Regulation. New York: St. Martin's Press, 1982.

Rowan, Ford. Broadcast Fairness: doctrine, practice, prospects: a reappraisal of the Fairness Doctrine and equal time rule. New York: Longman, 1984.

Sens. Hollings (S. Carolina), Proxmire (Wisconsin), Packwood (Oregon), Inouye (Hawaii), Danforth (Missouri) and Reps. Coats (Indiana), Coble (N. Carolina), Pressler (S. Dakota), Markey (Massachusetts). "Should Congress approve the Fairness Doctrine?" Congressional Digest October 1987: 234-250.

Simmons, Steven J. The Fairness Doctrine and the Media. Los Angeles: University of California Press, 1978.

"The Fairness Doctrine can hurt." *Broadcasting* 3 March 1986: 67.