

Furthermore, every broadcaster must satisfy a diverse audience. He is wholly dependent on great numbers of voluntary choices made hour by hour by viewers and listeners, who have a strong personal identification with the medium, and who will be alienated by obvious bias and distortion. Few Americans would admit they themselves need the protection of a Federal agency calling the shots on journalistic fairness.

Finally—and this is wholly a judgment factor—it seems to me that the public is endangered less by the possibility of a few irresponsible broadcasters in a responsible industry than by an increasing Government penetration into the operation and content of a news medium.

Such Government intervention has the most serious implications, and can contribute to an irreversible trend.

I am not a lawyer and cannot speak as an expert on the legal development of the Fairness Doctrine. I understand that the doctrine started as a statement of general principle applicable primarily to broadcast editorials. Now, only a few years later, it is already at the point of a set of detailed and restrictive rules of uncertain interpretation.

The matter started in 1949, when the Federal Communications Commission reversed its earlier decision holding that broadcasters might not editorialize. In reversing this ruling, the Commission declared that if a station presented views on one side of a controversial public issue, it should make time available for the opposing side, emphasizing that the particulars were for decision by the broadcaster, exercising "his best judgment and good sense."

By 1964—that is 15 years later—the Commission had applied this doctrine to a variety of presentations, not confined to broadcast editorials, but the standard it outlined was still a broad and general one, stated in these terms:

The licensee, in applying the Fairness Doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation * * * In passing on any complaint in this area, the Commission's role is not to substitute its judgment for that of the licensee * * * but rather to determine whether the licensee can be said to have acted reasonably and in good faith.

Only 3 years later, this general statement of principle had been expanded to an ever-growing code of practice, specifying procedures to govern various aspects of the Fairness Doctrine. To illustrate how rigid and difficult these restrictions have rapidly become, I'd like to mention a recent application of the so-called personal attack rule, one of several byproducts of the Fairness Doctrine.

A few months ago, a radio station broadcast a brief announcement containing a quotation from J. Edgar Hoover and a statement referring to the DuBois Clubs of America as a "new Marxist youth organization—founded at a special meeting in California dominated and controlled by American Communists." When challenged to give the DuBois Clubs broadcast time to respond, the station objected, citing a variety of findings by the Attorney General, the FBI, and two congressional committees confirming the accuracy of the statement.

The Commission overruled the objection, declaring that the truth of a "personal attack" was not a defense to the obligation to provide time to answer.