

Nothing in the foregoing sentence shall be construed as relieving broadcasters, in connection with the presentation of newscasts, news interviews, new 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 Commission now also relies upon the language of the 1959 amendment as authorization for its fairness doctrine.

I am convinced that most broadcasters feel that the doctrine is (a) legally unsupportable and (b), in operation, impractical.

At the outset it should be noted that broadcasting, like other media, is protected by the first amendment. Thus, in *United States v. Paramount Pictures* (1948), the Supreme Court said:

We have no doubt that moving pictures like newspapers and radio are included in the press whose freedom is guaranteed by the First Amendment.

Freedom of the press has been consistently interpreted by the Supreme Court to mean that the press has a vital role to perform in assessing the activities of public figures and taking positions on public issues, and that it shall in no way be hampered in its performance in this role by governmental intrusion.

The Fairness Doctrine constitutes an abridgment of the right of free speech. The first amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: or abridging the freedom of speech, or of the press.

The word "abridgement" means a diminution, lessening, or reduction. In other words, neither Congress nor its creature, the FCC, may diminish, lessen, or reduce the right of free communication.

This is precisely the net result of the Fairness Doctrine. It discourages the use of broadcasting for the expression of opinion, and thus abridges the broadcaster's right of free speech.

Historically, there are several limitations on speech that have been held not to violate the first amendment. These are situations in which speech defames, is offensive to the basic mores of society, is injurious to the public health, or presents a clear and present danger to the Nation.

While conceivably a single program or editorial might fall within one of these categories, broadcasting as a whole obviously does not. Other arguments are advanced to justify the abridgment of freedom of speech by radio and television.

Some suggest that, because broadcasting is licensed, different considerations apply. For example, in the recent case of *Red Lion Broadcasting v. FCC* (1967), Judge Tamm, speaking for the Court of Appeals for the District of Columbia, gave voice to this concept by stating that since radio is inherently not available to all, "the compulsory granting of free time may, and probably does, impose a burden on the licensees" but not an unreasonable one.

This rationale, however, will not withstand close analysis. Since the early days of radio, when the concept of scarcity was first voiced, the development of broadcast technology has created more than 5,000 channels of broadcasting communications. During that same period, the number of daily newspapers has decreased from over 2,000 to slightly more than 1,700. Thus, broadcasting is more multivoiced than the daily newspapers—by a margin of about four to one—the comparable and competitive medium for the dissemination of current news and information.