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PUBLIC SERVICE TIME FOR THE LEGISLATIVE BRANCH

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HEARINGS

BEFORE THE

COMMUNICATIONS SUBCOMMITTEE

OF THE

COMMITTEE ON COMMERCE
UNITED STATES SENATE

NINETY-FIRST CONGRESS

SECOND SESSION

ON

S.J. Res. 209

TO AMEND THE COMMUNICATIONS ACT OF 1934 IN ORDER TO REQUIRE LICENSEES UNDER SUCH ACT TO PROVIDE TIME, AS A PUBLIC SERVICE, TO AUTHORIZED REPRESENTATIVES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES

AUGUST 4, 5, AND 6, 1970

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PUBLIC SERVICE TIME FOR THE LEGISLATIVE BRANCH

TUESDAY, AUGUST 4, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
COMMUNICATIONS SUBCOMMITTEE,
Washington, D.C.

The subcommittee met at 10 a.m. in room 5110, New Senate Office Building, Hon. John O. Pastore, chairman of the subcommittee, presiding.

Present: Senators Pastore, Scott, Pearson, Griffin, and Goodell.

Senator PASTORE. The hour of 10 having been reached this hearing will come to order.

OPENING STATEMENT BY THE CHAIRMAN

Today the committee begins hearings on Senate Joint Resolution 209, a Senate joint resolution that would require all broadcast stations to provide a reasonable amount of public service time over their facilities at least four times yearly to authorized representatives of the U.S. Senate and House of Representatives to present the views of the legislative branch of our Government on matters of national concern.

In the judgment of many, television is unquestionably the most dynamic force of the 20th century. As we know it today, television is less than 25 years old, and yet the changes it has wrought in our society, indeed in our whole life style, are so vast we have yet to realize their full significance.

In its short lifetime, television has become the most accepted medium of mass communications in the United States. Ninety-five percent of all American homes have television sets; the average American spends about one-quarter of his waking hours watching it; and it has been estimated that the average child will have watched 22,000 hours by the time he reaches 16 years of age.

The subject matter of television is as universal as its appeal. Whether it be a political campaign, a news event, a drama, a documentary, a Presidential address to the Nation, or a trip to the moon, the television cameras are there, and we see it at firsthand.

Polls have indicated that for Americans television is their primary source of news.

Staff members assigned to this hearing: Nicholas Zapple and John D. Hardy.

Political parties and candidates for public office are relying more and more on television to present their case to the electorate.

A total of 115 million people heard or watched the joint Kennedy-Nixon television appearances during the 1960 presidential campaign.

And, in the 1968 presidential campaign, a candidate could, with a single message lasting 1 minute, presented within one program, on one television network, reach as many as 23 million viewers of voting age—a number equal to almost a third of the votes cast in that election.

Every Chief Executive from President Eisenhower to President Nixon has resorted to national television in order to explain his position to the American people on domestic and foreign issues.

Because of its unique capabilities, and because it has the impact it does, it is essential that television be used as an instrument of information and enlightenment for the people of our country, and that it not become the spokesman for any one person, any one ideology, or any one point of view, especially where issues of public concern are involved. It is the right of the viewers and listeners to be informed fully and fairly that is paramount, and it is by this principle that broadcasters must be guided.

The Communications Act of 1934 specifically provides that broadcast licenses shall only be granted or renewed if the public interest, convenience, and necessity will be served thereby. In administering this statutory requirement, the FCC has further particularized the public interest standard through the fairness doctrine. Generally, that doctrine makes it incumbent on a licensee to afford a reasonable opportunity for the presentation of conflicting views on controversial issues of public importance.

In recent months a number of elected officials and other public figures have raised questions concerning the obligations of licensees under this particular doctrine. The FCC has a number of petitions before it asking for declaratory rulings and orders concerning the availability and accessibility of broadcast facilities for the presentation of viewpoints on various issues of public importance. These include a number of proposals and counterproposals such as the request for a declaratory ruling that broadcasters may not, as a general policy, refuse to sell time to responsible entities for the solicitation of funds and for comment on public issues, filed by the Democratic National Committee on May 19; the May 25, request for an order directing a specific television station to permit the broadcast of opposing views when the President addresses the Nation on TV and discusses the administration's policies on Southeast Asia, filed by the committee for the Fair Broadcasting of Controversial issues; the petition filed by the Los Angeles Chapter of Business Executives Move for Vietnam Peace on June 12, requesting that time be provided by certain stations to answer the President's appearance June 3, when he discussed the Cambodian incursion; the July 8 petition of the 14 Senators and the Amendment to End the War Committee, asking the FCC to require the networks to furnish them with free time to answer the President's broadcast comments on the war in Vietnam; Senator

Dole's request of July 10 to order NBC to provide equal time to Senators opposed to the McGovern-Hatfield amendment; and the petition of the Republican National Committee filed on July 16, asking the FCC to require CBS to provide equivalent time to answer the chairman of the Democratic National Committee, who appeared on CBS.

While the issues raised in many of the petitions have been characterized as demands for "equal time," I think the record should be clear that what is mostly involved is a licensee's obligation to afford a reasonable opportunity for the presentation of conflicting views and not the more precise requirement of "equal opportunity" under section 315 of the Communications Act, which is only applicable to the "use" of broadcast facilities by legally qualified candidates for public office, and may only be invoked by a candidate or by his opponents.

As the FCC presently administers the Fairness Doctrine, discretion rests with the licensee to exercise his good faith judgment to assure full and impartial presentation of important public questions.

There are, of course, exceptions where political editorializing and personal attacks are concerned. In these circumstances the Commission has set out with particularly the procedures a licensee must follow to fulfill his obligations, and the rights that concerned parties have.

Senate Joint Resolution 209, which was introduced by our distinguished colleague Senator Fulbright, would add another category where licensees would be required to afford identifiable parties specific opportunities to present their points of view. It would require broadcast licensees to make public service time available to the Congress to present its views on national issues in its capacity as the institution empowered by the Constitution of the United States to enact the laws of the land. In other words, it would enable the Senate and the House of Representatives to report periodically to the public on issues of national significance.

No one, I believe, would seriously contend that the obligation of the broadcast licensees to program their stations in the public interest does not ordinarily include the full and fair coverage of significant issues before Congress affecting the national interest.

Whether or not this obligation should continue to be discharged as it is now by the licensee exercising his good faith judgment not only as to the significance of specific issues but also as to the adequacy and fairness of their coverage, or whether this obligation should be spelled out more precisely with specific legislative guidelines, is the major question involved in consideration of this resolution and is the main question before this hearing.

As I mentioned earlier, the numerous petitions before the FCC have also raised questions about a licensee's obligations under the fairness doctrine.

Should there, for example, be a uniform policy with respect to the accessibility of broadcast facilities for political purposes?

Should there be a single policy with respect to the sale of air time for the broadcast of views on controversial issues of public importance? And if so, should such a policy distinguish between the sale of time for spot announcements and the sale of program time?

Should there be a definitive policy regarding the sale of broadcast time to political parties for funds solicitation and comment on public issues?

And, what does fairness require when the President of the United States reports to the people in his capacity as Chief Executive, or as Commander-in-Chief?

All of these questions, and many others are currently at issue. Whether there should be one, uniform communications policy, regarding accessibility to the airwaves in these cases, or whether each licensee should formulate his own policy consistent, of course, with the public interest, is also a matter on which the committee expects to hear considerable testimony during the course of the hearings which begin this morning.

Now when I announced these hearings on July 23, on the floor of the Senate there was a colloquy among myself, Mr. Scott, and Mr. Griffin and I am going to ask that the entire record of that morning with relation to this resolution and these hearings be placed in the record at this point and that we insert in the record at this point a copy of the resolution that is before us now for consideration.

(The recorded colloquy and Senate Joint Resolution 209 follow:)

[S.J. Res. 209, 91st Cong., second sess.]

JOINT RESOLUTION To amend the Communications Act of 1934 in order to require licensees under such Act to provide time, as a public service, to authorized representatives of the Senate and the House of Representatives

Whereas the Constitution of the United States and the amendments thereto enumerate the rights delegated to the United States, and

Whereas all legislative powers enumerated in the Constitution of the United States are vested in the Congress of the United States, and

Whereas the Constitution of the United States and the powers enumerated therein are derived from the consent of the governed, and

Whereas the Members of the Congress of the United States are elected by the people of the United States, and

Whereas the bedrock of a democracy is a fully informed electorate, and

Whereas radio and television are the primary sources of information for the electorate, and

Whereas a license to operate a radio or television station is conditioned upon service in the public interest: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That section 315 of the Communications Act of 1934 (47 U.S.C. 315) is amended by inserting at the end thereof a new subsection as follows:

"(d) Licensees shall provide a reasonable amount of public service time to authorized representatives of the Senate of the United States, and the House of Representatives of the United States, to present the views of the Senate and the House of Representatives on issues of public importance. The public service time required to be provided under this subsection shall be made available to each such authorized representative at least, but not limited to, four times during each calendar year."

[From the Congressional Record, July 23, 1970]

ANNOUNCEMENT OF HEARING ON SENATE JOINT RESOLUTION 209 BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS

Mr. PASTORE. Mr. President, for the information of the Senate, I am today announcing that the Subcommittee on Communications will open hearings on Senate Joint Resolution 209 which would amend the Communications Act so

as to require broadcast licensees to provide public service time to authorized representatives of the U.S. Senate and the House of Representatives to present the views of their respective bodies on issues of public importance.

The hearings will begin at 10 a.m. on August 4 in room 5110, New Senate Office Building. In announcing the hearings I have stated that during the past few weeks numerous requests have been made by elected officials and other public figures for an opportunity to present differing viewpoints on issues of public importance. The issues surrounding these requests involves the FCC's fairness doctrine. I expect during these hearings to develop every aspect of this important subject matter so that the committee may be in a position to take whatever appropriate legislative action is necessary.

I am inviting all of my colleagues, and especially I would hope that all members of the Commerce Committee, whether members of the subcommittee or not, will attend the hearings. I expect to hear from the chairman of the Democratic National Committee. I expect to hear from the chairman of the Republican National Committee. I expect to hear from the FCC, the networks, and all interested parties.

I think in this area there is state of confusion at this time. I think it ought to be resolved once and for all. I am going to have the representatives of the public, the networks, the broadcasting companies, and anyone else interested in the matter present their views to the committee.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. PASTORE. I yield.

Mr. SCOTT. Mr. President, I congratulate the Senator for setting down this matter for hearings. There has been a great deal of controversy about it. Everyone has his own definition of what constitutes fairness. It is important that all sides be heard on national controversies.

It is not an exact parallel, perhaps, when a legislator replies to a President, no matter how important the legislator might be, or when the chairman of a national committee replies to a legislator or to a President. I do not know whether the principle would be evolved which would lead to some system or theory of matching up the matter of who ought to reply to whom. But I do think the whole thing needs to be clarified.

Charges have been leveled that one of the networks indulges in bias. I suppose that the networks will all vigorously deny it.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator be permitted to continue for an additional 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, I am sure that the public will, with equal concern and reaction, disbelieve them. However, here is a good chance to explore this matter and to find out whether there does exist any bias in the networks pro or con a political party or political individual and who would probably have the right to cite that situation and bring about a redress.

I am aware of the fact that sometimes the networks on Sundays feature almost entirely the members of one party or the other, and I am told the answer to that situation is that it is difficult to get members of one particular party on that Sunday. That may well be the reason.

It would be well to explore the matter. As a member of the Senator's subcommittee, I am very glad to join in this matter.

Mr. PASTORE. Mr. President, this is a very complex problem. The President of the United States is the President of the United States whether he be a Republican or a Democrat. Indeed, he is the President of all the people of the United States, with the right and responsibility to communicate with them. But there have been instances where certain very delicate areas have been intruded upon that actually create a dilemma for the networks and the broadcasters. Some people resent the particular things that are being said. They dissent and feel that they should be allowed to explain their side of the issue.

I think it is the privilege of the President of the United States to say, "I have sent a bill to Congress on such and such a subject, and the Congress has not done anything about it."

I think the President has the perfect right to express his opinion. But whether the President can make such a statement without someone answering him—that is the important question. Such a statement as "I have sent a bill to the

Congress, but the Democratic Congress has done nothing about is," involves getting into partisan politics. That raises a question. That is where the dilemma arises.

I would think that the President is perfectly free to say that if he wants to say it. I cannot stop him. But if we are going to follow the rule that the President of the United States is the President of the United States and speaking for all the people, then we get into an area that is more or less political. We get a popping up of people who resent it.

No one is more sensitive than a politician, especially when he is up for election.

Mr. SCOTT. How true.

Mr. PASTORE. Take the case of Senator MANSFIELD. He was given the opportunity to answer the President of the United States. He gave a very gentlemanly performance.

Mr. SCOTT. I agree.

Mr. PASTORE. Mr. President, Senator MANSFIELD'S opponent in Montana was immediately on all of the stations under the fairness rule for 25 minutes.

We ought to make some sense out of this. I do not know what the answer is at the moment.

Mr. SCOTT. Mr. President, the President of the United States is hardly in a position to get up and demand equal time any columnist or cartoonist tries to do him in. He could hardly do that. It is not compatible with the dignity of his office.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator be allowed to continue for an additional 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, there is this gray area. Every time the President speaks, he speaks as the Chief Executive of the United States. He speaks also at times as the Commander in Chief of the Armed Forces. At other times he speaks as the head of his party.

At times some Senators might see implications which some may think to be highly political. Most of it may not be.

That decision should not be left in the hands of network presidents, some of whom in my respectful opinion have not always been totally free of a little leaning themselves to one side or the other. Each of them has built for himself his President, as Commander in Chief, as party leader, or all three.

It is too much power to put in the hands of the presidents of networks for them to be the sole judge as to whether the President of the United States is speaking as President, as Commander in Chief, as party leader, or all three.

Mr. PASTORE. Mr. President, that is the reason why we have the fairness doctrine which has been substantiated and affirmed by the Supreme Court. We have section 315 that has to do with equal time. We have the Federal Communications Commission, which is Republican controlled. It has the supervision of the broadcast industry—not the networks, but the broadcasting industry.

I quite agree with the Senator from Pennsylvania. I know how fair the Senator from Pennsylvania is. He is a member of my subcommittee. I would hope that he would come to the hearings. I assured him that there is nothing politically partisan in what I am undertaking. It is bigger than the Senator from Pennsylvania or the Senator from Rhode Island as a Republican or a Democrat. It has to do with informing the public properly. It has to do with informing the President of the United States. It has something to do with maintaining the integrity of the Congress of the United States. All of these items are involved.

There are so many imponderables involved that I worry sometimes as to whether we can legislate on the whole thing. It comes down to the matter that we are all human beings. We all have our own dogmas, our own prejudices. Any strong-minded man must have an opinion of his own. It is hard for him to alienate himself from his opinion.

The Senator from Pennsylvania has been in public life longer than I have been—and I have been in it for 35 years. We know only too well that usually we have a life of responsibility and not a life of glory.

Mr. SCOTT. Not that alone, but I am trying—and there are days when I try more than others—to avoid the situation in which the public would get all their opinions from a great complex of invisible government of networks. The networks are not under the jurisdiction of the FCC as the rest of the broadcasting industry is.

I am just as anxious as is the Senator from Rhode Island to clarify it on a nonpartisan basis and try to make sure that everyone is fairly treated, because, after all, if discrimination and unfairness exist that erodies the whole concept of the democratic structure of Government.

Mr. PASTORE. I agree implicitly with the Senator from Pennsylvania. I hope we can be fair about this, and I expect to be fair. I have no ax to grind and neither has the Senator from Pennsylvania. We should straighten out this matter once and for all because there has been too much feuding going on in the newspapers, and it has solved nothing. We should solve it, if we can. This election is immaterial and the next election is immaterial, but for the future we should straighten out the entire matter.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. PASTORE. I yield.

Mr. GRIFFIN. Mr. President, as another member of the subcommittee, I wish to join in commending the Senator for scheduling the hearings. I am sure they will be useful.

The Senator referred to a bill which would allow TV time for Members of the House and Senate.

Mr. PASTORE. That is the Fulbright bill. Senator Fulbright introduced the measure.

Mr. GRIFFIN. I believe the intent is clear from the colloquy this morning that the scope of the hearings and the testimony would extend beyond that.

Mr. PASTORE. It is as broad as the distance between the Atlantic Ocean and the Pacific Ocean.

Mr. GRIFFIN. The whole subject.

Mr. PASTORE. That is correct.

Mr. GRIFFIN. The distinguished minority leader made reference to the fact that, of course, it is very difficult for the President, who is attacked politically all the time by various spokesmen, and some of them in Congress. The President is attacked on television and in other forums. Obviously he is not in a position to ask, or would not respond or ask for, equal time in each such situation. I think it is quite obvious—and some people are pressing for this kind of situation—that we could get to the point where every time the President speaks to the people as the President, equal time would be allotted for political attacks against him. That could push a President into a position of not communicating with people as the President, or putting him in the position of communicating only as a politician rather than as the President. I think that would be very unfortunate.

Mr. PASTORE. I do not want that.

Mr. GRIFFIN. We are moving in that direction, as I see it, with some of the demands that have been made.

Mr. PASTORE. That is why we are holding the hearings. We do not want to be pushed into that corner. I might say to my distinguished colleague that it is not only the President who carries this cross of people criticizing him and he has no way to answer every time. The Senator and I have lived that kind of a life for a long time. Let us face it.

Senator PASTORE. I want to say that this is a very involved complex problem. It is not going to be easily solved. But I would hope that we would develop some ideas here during the course of these hearings that would bring about a solution to the problem. Whether or not there is going to be a solution is another question and I am quite confident that the public will understand more and more as we proceed here how really involved this serious question is.

There is a large question here. Who determines at what point they should be told and under what right they should be told. These are very serious questions. No one here is disrupting the right of freedom of speech or is talking about censorship.

I think from my experience as chairman of this subcommittee the networks and the broadcasters have striven to be fair. There are certain restrictions upon them because of the law. And sometimes even though they will be willing to accede to a request it runs itself into

ramifications that could disturb the public interest. I would hope that we would have a spirit of cooperation and partnership developed here so we can resolve this very serious question.

I want at this point to say we are on order to have the distinguished Senator from Arkansas, William Fulbright. A very distinguished Member of the U.S. Senate and indeed a very, very dear and personal friend.

You may now proceed.

STATEMENT OF HON. J. W. FULBRIGHT, U.S. SENATOR FROM ARKANSAS

Senator FULBRIGHT. Thank you, Mr. Chairman.

I appreciate very much your making this time available and having hearings on this bill. And I also wish to compliment your very efficient staff counsel, Mr. Zapple, who has been most cooperative in the preliminary discussions about this bill and has given me the benefit of his advice.

I want it understood, I don't profess to be an expert in this field as the chairman is. I realize the chairman of this committee has long dealt with this subject and I do not presume to intrude upon the area which he has been discussing.

There is, however, another aspect of this subject and that is the impact of this instrumentality on the public mind and its effect upon my own constituents. So it isn't purely the technical aspects nor the professional aspects of television broadcasting that are involved.

Mr. Chairman, with your permission I have a rather brief prepared statement and then I have some other material that I would like to submit to the committee, if I may.

Senator PASTORE. You may proceed in any fashion you desire.

Senator FULBRIGHT. Mr. Chairman, "Television," writes the Commissioner of the FCC, Mr. Nicholas Johnson, and the author of "How To Talk Back to Your Television Set," "is," and I quote:

> The greatest communications mechanism ever designed and operated by man. It pumps into the human brain an unending stream of information, opinion, moral values, and esthetic taste. It cannot be a neutral influence. Every minute of television programming—commercials, entertainment, news—teaches us something.

Television is the principal source of information on public affairs for most Americans. No other medium of communication in history has permitted the transmission of ideas and viewpoints to so many people simultaneously, so graphically and convincingly, whether the idea concerns environmental pollution, the war in Indochina, civil rights, poverty, or student dissent. According to recent surveys, the American public has more faith in the information it gets from television than from any other source, and it goes to this source more frequently and for longer periods of time than to any other. By latest count there are nearly 60 million television homes in the United States, and their sets are tuned for an estimated average of 6 hours a day—which means approximately 360 million man-hours per day.

Obviously and inevitably, an instrument so powerful must have profound effects upon our political system. As Marshall McLuhan has put it:

> A new form of "politics" is emerging, and in ways we haven't yet noticed. The living room has become a voting booth. Participation via television in "freedom marches," in war, revolution, pollution, and other events is changing everything.

The President of the United States does not have exclusive access to television but, to a greater extent than most of us have appreciated until recently, he has something close to the functional equivalent of exclusive access. Whenever he wishes, he can command a national television audience to hear his views on controversial matters at prime time, on short notice, at whatever length he chooses, and at no expense to the Federal Government or to his party.

Senators and Congressmen, on the other hand, are compelled to rely for the most part on news spots and interview programs. The news spots give us a moment of glorious recognition and, with luck, may even convey a fragment or two of our thinking on some public issues. As likely as not it will be an extraneous fragment, but at least we are given the chance to make a contribution to public discussion—even if it isn't exactly the contribution we would have liked to make.

The interview programs serve a different purpose: they are a kind of modern, somewhat less lethal equivalent of the Roman arena. From the interviewers' side the object of the game is to provoke the politician into an indiscretion or maneuver him into a contradiction. This process gives the journalistic lions an excellent chance of scoring because politicians, like other human beings, do sometimes say indiscreet or contradictory things. Since it is absolutely against the rules for the interviewee to dismiss the question as stupid or malicious, or confess that he had changed his mind about something or, worse still, never thought about it, his best hopes for escaping the lions' fangs are in changing the subject, obfuscating, filibustering, or piously pretending that obvious incongruities in his own viewpoint are really quite compatible.

The entire process is a test of mental agility, in no way—in no way—to be confused with a serious effort to exposit or examine ideas. Only when the interviewee happens to be President of the United States is the usual Christian-and-lions format altered; on those uncommon occasions the reporters appear in the role of suppliants at Nero's court.

There is nothing in the Constitution which says that, of all elected officials, the President alone shall have the right to communicate with the American people. That privilege was a gift of modern technology, coming in an age when chronic war and crisis were already inflating the powers of the Presidency. Communication is power and exclusive access to it is a dangerous and unchecked power. I think it is a fair assumption that, if television had existed in the 18th century, the framers of our Constitution would have written something like the FCC's "fairness doctrine," or the bill which I commend to you today, into the basic law of the land. As matters now stand, the President's power to use television in the service of his policies and opinions has done as much to expand the powers of his office as would a constitutional amendment formally abolishing the coequality of the three branches of Government.

Whatever the arguments for or against broadcast time for political parties, there can be no justification for denying equal time to the coequal branches of Government. Under our Constitution there is no paramount branch of the Federal Government; if indeed the framers regarded any branch as primus inter pares, it was not the Executive but the Congress, whose powers are spelled out in the Constitution at greatest length and in the greatest detail. If the President is regarded as having the right to communicate with the people through the mass media whenever he wishes, the spirit and intent of our Constitution require that no less a privilege be accorded to the Senate and the House of Representatives—or, if it should claim it, to the judiciary.

As a step toward redressing the communications imbalance, I have introduced and commend to this committee, Senate Joint Resolution 209, which would amend the Communications Act of 1934 to require licensees under that act—both radio and television—to provide as a public service a reasonable amount of broadcast time to authorized representatives of the Senate and House of Representatives to present the views of the two Houses on issues of public importance. The broadcast time would be made available at least, but not limited to, four times a year.

Although the bill does not say so explicitly, it is implicit in the proposal that congressional access to the media would not simply be a matter of responding to Presidential speeches or interviews. It might of course be used for that purpose, but, under this bill, Congress would also have the right to report to the Nation on its own initiative in its capacity as a coequal branch of our Federal Government. On those occasions I should think it appropriate for the President to reply if he cared to. As strongly as possible, it should be emphasized that the focus of this bill is institutional and not partisan. Its purpose is to help restore constitutional balance between the executive and legislative branches in the field of communications and, in so doing, to guarantee the right of the people to hear diverse and opposing views regardless of party.

The practical question which immediately arises is how the broadcast time provided could be equitably allocated within the Congress. In the first instance, it would of course be understood that the time would be divided equally between the two houses and that each house would select its own spokesmen. Beyond that I should think that each house, acting perhaps through its majority and minority leaders, might accept the FCC's "fairness doctrine" as an appropriate guideline for the designation of spokesmen. The "fairness doctrine," with which members of this committee are more familiar than I, does not impose rigid or mechanical criteria for the allocation of broadcast time but simply establishes a rule of reason to afford a "reasonable opportunity" for all sides of an issue to be heard.

I do not think the Senate would have any great difficulty applying the "fairness doctrine" to the designation of spokesmen to appear on television. We apply a "fairness doctrine" of our own in the daily proceedings of the Senate and its committees. We function through comity because the rigid enforcement of our written, formal rules would soon result in the breakdown of the legislative process. To prevent this we conduct our proceedings under unwritten rules which serve to give every viewpoint a fair hearing regardless of party and region.

With this experience and frame of reference the "fairness doctrine" could be applied without rigid and self-defeating rules. Obviously, it would be self-defeating to allocate broadcast time equally between party leaders or senior committee members if both happened to be on the same side of the issue. The choice of spokesmen could best be made on an ad hoc basis. In the first instance the entire Senate might be asked to vote on a motion to utilize broadcast time for some particular issue. Then, if the mater were judged important enough to warrant a public presentation, the choice of spokesmen would in many cases be self-evident. On a matter such as the Cooper-Church amendment, for example, in its original form, it would seem appropriate to have designated either of the sponsors on the one side and the junior Senator from Kansas on the other. On the McGovern-Hatfield amendment that simply grew out of the circumstances, again it would seem logical to invite presentations by one or more of the sponsors on the one side and one or more of the outspoken opponents on the other, including, for example, the senior Senator from Colorado, who has already demonstrated his eagerness to vote on the proposal. If, to take another example, the issue were the District of Columbia crime bill, which is a pending measure, recently before the Senate, a logical choice of spokesmen would be the senior Senator from Maryland in support and the senior Senator from North Carolina in opposition.

These are only examples that come to mind on how the Senate might apply its own "fairness doctrine." In practice it might be useful to define and codify rules for the selection of issues and the designation of spokesmen for public broadcast. Having made a very valuable study of the FCC's "fairness doctrine" 2 years ago, the Commerce Committee's Subcommittee on Communications would seem to me to be eminently qualified to spell out the specifications of a "fairness doctrine" for the Senate.

But I was impressed, Mr. Chairman in contemplating this matter with the fact that in any of the great issues before the Senate, in almost every case, a sort of natural spokesman evolves from the events. It develops that there are two or three people who—the Senator himself on many occasions—are the obvious speakers on certain issues.

Senator PASTORE. Who would decide who the spokesman should be; should we leave it to the majority leaders?

Senator FULBRIGHT. I think so. Unless you got into a very serious disagreement, and when that happens as in other issues we have to decide by votes. But I would think 95 percent of the time, who would do it would develop out of the issue.

Senator PASTORE. This wouldn't necessarily have to be a debate, would it?

Senator FULBRIGHT. Not necessarily. Much of the time we rely on these majority and minority leaders to run our business now. Occasionally—the Senator knows of certain issues of which I participated in—we cannot rely on our rules, I mean on the rules of comity. We have to resort to the formal rules and we have extended debate. How often does that happen? Very rarely.

So I think that this is the approach. Because when we look at the way we actually conduct our business, it works out this way. And the

greatest mass of work of the Senate is done without rigid rules, without following rigid requirements of Jefferson's manual.

Senator PASTORE. Would you leave it separately up to the House to make its own determination and separately up to the Senate?

Senator FULBRIGHT. Yes.

Senator PASTORE. In other words, there wouldn't have to be a committee there.

Senator FULBRIGHT. Absolutely. Actually, right now under the Constitution, each House goes by its own rules. I certainly would not wish to depart from that principle. I think it is a good one. In this case——

Senator SCOTT. On that point then, with the chairman's permission, since you refer to the selection being made by the minority and majority leaders, would you conceive, Senator, that perhaps it might be well to have a joint caucus of the two parties in each House to select a spokesman for the Congress since the spokesman is speaking for the Congress or one House of Congress as a collective body?

Senator FULBRIGHT. If it was deemed appropriate to have only one spokesman. I would imagine in many cases there would be two and this would not entirely depend upon party matters. In the case I gave just now, both happened to be Democrats. But they were the obvious leading proponents of different views. That is, I speak of the District of Columbia crime bill. Here were two Democrats, Senator Tydings on one side, Senator Ervin on the other. Would anyone really contest the decision that they were the leading proponents of the opposing views?

Senator SCOTT. I had in mind a slightly different situation. The Cooper-Church amendment. How would you choose between Cooper and Church.

Senator FULBRIGHT. That is between the two of them. That is a matter of comity, too.

Senator SCOTT. It arises again with Senators McGovern and Hatfield.

Senator FULBRIGHT. Yes. But the question then is who takes the other side? It seems to me in the course of that debate the Senator from Kansas took the other point of view. If, as in Cooper-Church there were joint sponsors, I would leave it up to them to decide. This is what I meant by the majority leader informally asking which of them wished to carry the burden.

Senator SCOTT. I understood you to say the majority and minority leaders.

Senator FULBRIGHT. That is right.

Senator SCOTT. What about the shades of opinions between outright support and outright opposition which develops with respect to most issues. How could any one spokesman, in a body composed as the Senate truly say "I represent the Senate"?

Senator FULBRIGHT. Well, in the literal sense I don't think that is true but when we have a decision by a vote—whether it be 15 to 49 or 9 to 10—there is always that minority which is not represented. I mean the decision has to be made, and it is the majority rule under our system. We reflect it through the leadership. I don't think that is a matter that should be——

Senator PASTORE. What the Senator is actually saying is this because the Congress of the United States is definitely under our Constitution an entity of its own, just as the executive branch is an entity of its own. And the courtesy of appearing on national television is extended to the President of the United States, at his choosing and on his own initiative, when he feels it is in the public interest that he should address the American people. And when he does he does so without being interrogated or leaving it to some newsmen or anybody else to siphon out, to ferret out what he considers to be important. The Senator from Arkansas takes the position that it is up to the President to explain to the American people without interruption what he has to say. And he would extend that same courtesy to the legislative branch of the Government whereby if there were two sides to the question, the two sides could be shown without any newsman or anybody else trying to interpret what was important or unimportant and leave it up to the American people to have each side say without interruption how they feel about a particular issue so the public can be informed about it.

Isn't that correct?

Senator FULBRIGHT. That is correct. The Senator has expressed it very well.

Senator SCOTT. My concern was, and I won't belabor this, that the President regardless of which party he may be a member as times goes on, makes a statement to which Members of Congress think should be replied, or that the view of Congress and its philosophy as to that particular aspect of the President's assertions should be heard.

It seems to me that a fairness doctrine would at this point consider the Congress as an entity and would provide in any legislation that both political parties in the Senate, both political parties in the House, would arrive at an agreement as to who the spokesman should be and that is why I said there might be circumstances under which it would have a joint caucus of the two parties to determine it.

Senator FULBRIGHT. I didn't mean to exclude that. Anything that the leadership feels appropriate to arrive at it is certainly envisaged. This is a matter I don't think you can put into legislation and say you must have a caucus or not. You leave that to the leadership in the Senate to determine. If you wish, you and Senator Mansfield can have a caucus on any of these matters. You two talk some of your business over all the time now.

Senator SCOTT. We get along very well. With the consent of the other 98 we manage.

Senator PASTORE. I want to say the Senator did on page 3 use "to authorize representatives of the Senate." It would have to be authorized to do this.

Senator FULBRIGHT. Yes.

In conclusion, Mr. Chairman, I wish to refer once again to the purposes of this bill. In the first instance, it is designed to reassert the legislature's equality with the executive in the exceedingly important field of communications. Beyond that, I believe that this bill, by helping to guarantee public access to diverse and fully exposited viewpoints, would advance the broader purpose of the framers of our Constitution in devising a Government based on checks and balances and

the separation of powers. That purpose, in the words of Justice Brandeis, "was, not to avoid friction, but, by means of the inevitable friction incident to the distribution of thet governmental powers among three departments, to save the people from autocracy."

(Senator Fulbright's prepared statement follows:)

STATEMENT BY SENATOR J. W. FULBRIGHT, CHAIRMAN, COMMITTEE ON FOREIGN RELATIONS, UNITED STATES SENATE

Within the last year or so Senators have become increasingly concerned with the growth of Presidential power at the expense of the other, constitutionally co-equal branches of our Government. That concern was expressed in the National Commitments Resolution, adopted by the Senate last year by the vote of 70 to 16. Despite that overwhelming vote and an unassailable constitutional basis, the National Commitments Resolution has had no discernible effect upon the Executive and, as a result, we are compelled to grapple with the issue once again, now under more urgent and agitated circumstances. The initiation of a constitutionally unauthorized, Presidential war in Cambodia has brought the issue to a crisis, compelling the Congress to act in defense of its constitutional war powers. That is the principal significance of the Cooper-Church Amendment and of other pending legislative proposals.

Unfortunately, Congress is at a great disadvantage in the war powers debate, as it is in discussing most issues, because the Executive has a near monopoly on effective access to the public attention. The President can command a national television audience to hear his views on controversial matters at prime time, on short notice, at whatever length he chooses, and at no expense to the Federal Government or to his party. Other constitutional officeholders are compelled to rely on highly selective newspaper articles and television news spots, which at most will convey bits and snatches of their points of view, usually selected in such a way as to create an impression of cranky carping at an heroic and beleaguered President.

The problem for a Senator or Senate Committee is not simply one of being heard. Anything that has the color of scandal, sensation, accusation or prediction will command eager attention from the media. What you cannot easily interest them in is an idea, or a carefully exposited point of view, or an unfamiliar perspective or a reasoned rebuttal to a highly controversial Presidential statement. In recent weeks, for example, the Foreign Relations Committee has heard thoughtful and significant statements on the war by eminent businessmen, political and military leaders, and theologians but, owing to the lack of interest of the media, these proceedings have remained a well-kept secret between the witnesses and the members of the Committee. Why this is so is beyond my understanding. All I do know is that the only reliable way of getting the media to swallow an idea is by candy coating it with a prediction or accusation.

Take for example the issue now under discussion about the war powers of the Congress as against the President's authority as Commander-in-Chief. The whole country heard the President hold forth in his recent press conference about how *he alone* as Commander-in-Chief was responsible for the conduct of the war, the expansion of the war into a neutral country, and the safety of our fighting men. The very words "Commander-in-Chief" are intoned with a reverential awe appropriate to eighteenth century courtiers speaking of "His Most Christian" or "Britannic" or "Imperial and Apostolic Majesty." Millions of people heard the President expound his inflated concept of his role as Commander-in-Chief, but virtually no one outside of this chamber has heard the thoughtful and learned expositions of Senators on constitutional doctrine and the intent of the framers. The result is that the country is suffused with the constitutional theories of Lyndon Johnson and Richard Nixon, while the contrasting views of Jefferson, Hamilton and Madison remain buried in history. As fast as they are called up by members of this body, they are laid again to rest in the pages of the *Congressional Record.*

There is nothing in the Constitution which says that, of all elected officials, the President alone shall have the right to communicate with the American people. That privilege was a gift of modern technology, coming in an age when chronic war and crisis were already inflating the powers of the Presidency. We all remember F.D.R.'s fireside chats on radio and his use of these to win the

people to his viewpoints. I am not sure anyone ever did find out whether that battleship really was sent up to Alaska to pick up the President's "little dog Fala." No one cared after the President's skillful use of radio to ridicule the allegation.

Communication is power and exclusive access to it is a dangerous, unchecked power. If Roosevelt had had television, he might have been proclaimed emperor by acclamtion. None of F.D.R.'s successors have matched his genius for mass communication, but each one has found television to be a powerful tool in the service of Presidential policies and opinions. Television has done as much to expand the powers of the President as would a constitutional amendment formally abolishing the co-equality of the three branches of Government.

Because the Presidency is institutional and the political parties are not, the networks have not only denied the opposition equal time to reply to Presidential statements, but will not even permit the Democratic National Committee to purchase broadcasting time at commercial rates. CBS has said that it has a general rule against selling time for the presentation of controversial views except during election campaigns. The network of course sets itself up as the sole judge of what is "controversial." In my opinion the moon flights are controversial—I think them an extravagant waste—but the networks provide millions of dollars worth of time to permit us to view every last boring detail of these space flights in living color.

Whatever justification there may be for denying broadcast time to political parties, there can be no justification for denying equal time to the co-equal branches of Government. Under our Constitution there is no paramount branch of the Federal Government; if indeed the framers regarded any branch as *primus inter pares*, it was not the Executive but the Congress, whose powers are spelled out in the Constitution at greatest length and in the greatest detail. If the President is regarded as having the right to communicate with the people through the mass media whenever he wishes, the spirit and intent of our Constitution require that no less a privilege be accorded to the Senate and the House of Representatives, or, if it should claim it, to the judiciary.

With these thoughts in mind, Mr. President, I have recommended to the distinguished Chairman of the Committee on Commerce [Mr. Magnuson] that he and his colleagues consider legislation which would require all television stations licensed by the Federal Communications Commission to provide broadcasting time on demand both to the Congress and the President. The current practice is that the networks provide free time to the President whenever he wishes it, but no statute or FCC regulation requires them to do so. Appropriate legislation might require the networks to provide broadcast time to the President whenever he wishes it and might give the same right to Congress, perhaps to be divided equally between the two Houses and the two parties.

The details of this proposed legislation might best be worked out by the Commerce Committee should they judge that it has merit. My purpose today is to develop and commend the general principle of a Congressional right of access to the mass media. No less than the Executive, the Congress has the right—indeed, one could say the responsibility—to report to the Nation on matters that affect the national interest. The means of exercising that right should exist along with, but entirely independent of, the parallel Presidential right. Broadcast time should be available to the Congress at all times and not simply in order to reply when the President speaks to the nation. The purpose is not to facilitate the expression of partisan views on national issues but to guarantee the right of the people to hear diverse and opposing views regardless of party.

Television is the most potent information medium in our country today. No other medium of communication in history has permitted the transmission of ideas and viewpoints to so many people simultaneously, so graphically and convincingly, whether the idea concerns environmental pollution, the war in Indochina, civil rights, poverty, or student dissent. According to recent surveys, the American public has more faith in the information it gets from television than from any other source and it goes to this source more frequently and for longer periods of time than to any other. By latest count there are nearly 60 million television homes in the United States, and their sets are tuned in for an estimated average of six hours a day—which means approximately 360 million man-hours per day. This is too powerful and dangerous an instrument to be left to the exclusive use of the Executive.

Senator FULBRIGHT. Mr. Chairman, I asked Mr. Lou Harris to give me an analysis of the effect of Presidential speeches, as best he could, on recent important issues. If the chairman would allow me I would like to call attention to a few instances and insert the entire analysis in the record. I think it's quite interesting and it demonstrates, I think, what the chairman has already said about the power of communications through television. These are some examples. I won't read them all. Before the speech by John F. Kennedy on July 26, 1963, announcing the Nuclear Test Ban Treaty, the polls had shown 73 percent favored it. Immediately after his speech on television this jumped to 81 percent. A most dramatic one was in August of 1964. Before the speech of President Johnson with regard to the alleged Tonkin Gulf incident, 42 percent showed a positive position on President Johnson's Vietnam policy. Immediately after that speech on the Gulf of Tonkin it jumped to 72 percent; from 42 to 72 percent, a very dramatic affair. Presenting it on television in that fashion obviously made a tremendous impact.

On the intervention in the Dominican Republic, Mr. Harris did not have a poll immediately prior to the television appearance by President Johnson before the intervention in the Dominican Republic, but immediately after it, 77 percent supported it, although it later became a highly controversial matter.

This is an interesting one: in 1969 President Nixon on May 14 announced on television the policy of phased withdrawals from Vietnam. Prior to that Presidential speech on television 49 percent favored phased withdrawals. Right after it, it jumped to 67 percent.

There are two more.

Senator SCOTT. It was very good news, wasn't it?

Senator FULBRIGHT. Well, it is made to appear so. If you have exclusive access to television time. This is what we're really talking about. You can make anything appear the way you like it if you are the only one who presents the views.

Senator SCOTT. You don't mind if two-thirds of the public were so recorded as favoring a phased withdrawal. You wouldn't quarrel with the right of the public to believe that, would you?

Senator FULBRIGHT. No. I would favor complete withdrawal, phased or otherwise. The difficulty is whether or not it really is designed to achieve its announced purpose.

Two more examples, Mr. Chairman, on April 30, 1970, the President announced on TV the sending of U.S. troops to Cambodia. Before that was announced the poll showed 7 percent favored sending troops into Cambodia, 59 percent favored staying out of Cambodia altogether, 23 percent favored sending advisors only. Remember that, 7 percent favored sending troops in. But after the President's speech on television, 50 percent supported the President sending U.S. troops into Cambodia.

I'm not raising the merits of these issues here. I am only demonstrating the effectiveness of access to the public mind by this medium. That's all. I am not trying to argue about whether he should or should not have gone into Cambodia. But look at the tremendous change from 7 to 50 percent within the course of 8 to 10 days.

On a domestic matter—this is interesting because it still is controversial—President Johnson in 1968 went on television in support of strong gun control legislation. After he made his speech, the percentage went up 10 percent, from 71 to 81 percent, even on an issue like that. This analysis, I might say, shows that the impact on foreign policy measures of various kinds is far greater than on domestic measures. My own view is it is because people feel they are more familiar with the domestic. They are harder to influence directly on particular issues with which they feel they are very familiar. I think you will find it an interesting study and there is a little analysis accompanying the——

Senator SCOTT. May I ask one question on that?

Senator, do you have any information from Mr. Harris on the impact of a television appearance by a Senator or Member of the House following a speech by the President? Does it have any impact at all?

Senator FULBRIGHT. I don't have any study of that. We might ask someone. But quite obviously it wouldn't have much because the exposure would be far less, wouldn't it? Does the Senator know of a case where a Senator is given the same exposure in prime time following the President?

Senator SCOTT. I am curious as to what the Senator thought would be accomplished by having equal time for the Senators? There is no evidence that when this has happened in the past that it has or has not had impact on public opinion.

Senator FULBRIGHT. I have no study of that. I want to reiterate, I don't visualize this simply as an opportunity to contradict or reply to any President, this one or any future President. I think effectiveness of this means of communication has been demonstrated—and I don't by any means wish to denigrate the newspapers. This is no place to argue about it, but Sir William Haley recently had a most interesting article on this subject in the Columbia Journalism Review, on the relative accuracy and effectiveness of television and newspapers—not effectiveness in the sense of influencing the public mind but in seriously explaining news.

I think that the President ought to have the opportunity and be under the responsibility of explaining some of these very important issues. It is not only in foreign relations; just because I happen to be on that committee I tend to talk about it. But take the current issue before the Finance Committee on the family assistance plan. This is a most complicated issue and there ought to be a way, in prime time, to explain this to the American people. There ought to be established ways to do that because it's not only confusing to the members of the committee, I am sure it is to everybody else. It is one of the most complicated proposals I have ever seen.

Senator PASTORE. The Senator is not looking for a quarrel, he is just asking for exposure.

Senator FULBRIGHT. That's right.

Senator PASTORE. That is all it amounts to.

Senator FULBRIGHT. As Justice Brandeis put it so well, it is out of the friction and conflict—if you want to call it the quarrel—the different views out of which we hope to protect ourselves from autocracy. This is the essence of a democratic system.

And as I said yesterday on the Senate floor, it is very strange that we are tending to use in our system much greater secrecy in some areas than countries like Spain. In the Spanish Parliament they submitted a treaty with the United States. But in our Government, they think that is too sensitive for Congress to deal with; they don't want to submit it at all. This is the kind of issue that demonstrates what I'm talking about, if we intend to preserve our constitutional system.

I think there is no doubt, due largely to television influence, that the Office of the Executive overshadows and in a sense dominates the Legislature. This is not new. I don't want you to take this as a partisan matter. I think it became quite evident with the predecessor of the present President. His predecessor had a most unusual understanding of the Congress and coupling his understanding with his domination of the airways, he did dominate the Congress. He certainly dominated and hoodwinked the Congress at the time of the Tonkin Gulf. This is a most dramatic demonstration of how the public mind was completely taken over, just with a television program. There wasn't anything anybody else could do about it. It was long after that we learned enough even to assert the contrary facts about the case. We didn't know it at the immediate time. But what a tremendous power it gave a man with his understanding of the Congress and the use of television, and he used it to a very great extent.

Mr. Chairman, I assume maybe Mr. Zapple has already given you the data about the use of the television by Presidents. But President Johnson used it most vigorously.

Senator PASTORE. Do you desire to put any of that in the record?

Senator FULBRIGHT. I don't want to complicate your record.

Senator PASTORE. How long is it?

Senator FULBRIGHT. This is material that I had as background. I don't want to put it in the record. I'll submit it by reference.

Senator PASTORE. We will incorporate it by reference.

Senator FULBRIGHT. You use it for whatever you find use for it.

Senator PASTORE. We will incorporate it by reference.

Senator FULBRIGHT. There is a great deal of data here, how many times it was used and under what circumstances. I don't want to bother you with presenting it. I made it available to Mr. Zapple and you can use it as you see fit.

(The above-mentioned analysis follows:)

IMPACT OF PRESIDENTIAL TELEVISED APPEARANCES

Ever since John F. Kennedy became President of the United States, much has been made of the use of the medium of television as the dominant vehicle through which a president can communicate with the electorate. Back in the early 1960's it was speculated that a youthful, glamorous presidential figure had a substantial advantage over his opposition due to the inbuilt use of the television medium.

However, an examination of the findings of public opinion research surveys before and after major televised presidential speeches since late 1963 seems to indicate that, regardless of the popularity of a president's stand at the time, with rare exceptions, any time the President of the United States makes a televised speech to the American public, his popularity with the electorate and support for his position is almost always enhanced.

This pattern appears to be the case both on domestic and foreign policy issues. In August 1963, before President Kennedy went on television appealing for a Congressional tax cut, 62 percent of the public were in favor of the idea despite the strength of the opposition viewpoint that the nation's budget should be balanced first. After the President's televised speech and, in spite of the increased attention given opposing points of view, 66 percent of the people were in favor of the proposed tax cut.

President Johnson, too, was successful in increasing support for his stands on domestic issues through the use of television. His plea, after Robert Kennedy's assassination, for stronger gun control legislation, met with 81 percent approval by the American public (versus 71 percent approval before his speech). Even in the controversial welfare area, President Nixon was able to gain the support of a plurality of 47 percent of the American public for the new welfare plan he proposed on television in August of 1969—a relatively high figure in view of past public reaction to welfare proposals.

As a matter of fact, the only example of a presidential television speech on domestic affairs that did not successfully bring a substantial rise in public support for a president's point of view, was President Nixon's plea in March 1970 for an end to the postal workers' strike because a national emergency was being created. In spite of his speech, by 61 to 25 percent the public expressed sympathy for the postal workers over the Federal Government, when questioned at the start of the strike.

An examination of readings of presidential popularity before and after major televised speeches on foreign policy issues produces even more evidence of the immense power of televised presidential appearances. Before President Kennedy went on television in July 1963 to announce the start of negotiations with the Soviet Union on the nuclear test ban agreement, 71 percent of the public favored such a treaty. After the president's speech, 81 percent strongly supported the idea.

In August 1964, at a time when President Johnson was vulnerable to Barry Goldwater's charge of a Democratic "no-win" policy in Vietnam and with Johnson's rating on his handling of the Vietnam situation at only 42 percent positive, the President responded on television in the Gulf of Tonkin episode. A high 72 percent of the American people rallied behind him after the TV appearance.

Later, in April of 1965, President Johnson again went on television to explain his sending of U.S. marines into the Dominican Republic. After his third televised speech in defense of his Dominican action, he was able to gain the endorsement of 77 percent of the public.

Public reaction to presidential speeches on the major foreign policy issue of the 1960's, the Vietnam war, shows a clear and distinct pattern of a rise in public support following a presidential TV appearance. Significantly, the positive response to a televised appearance seems to occur irrespective of whether the President wanted to escalate or de-escalate U.S. involvement.

Following the U.S. pause in the bombings of North Vietnam in early 1966, which failed to bring the communists to the negotiating table, 61 percent of the public favored resumption of the bombings. After President Johnson went on TV to announce a resumption of the bombings, support for such raids on North Vietnam rose to 73 percent.

In May of 1969, President Nixon announced on television the pursuit of a different course of action in Vietnam—that of phased withdrawals of American troops from the conflict. Before his appearance, a policy of withdrawal was favored by less than a majority of the public (49 percent). Following his TV speech, a high 67 percent of the public said they supported a plan of phased withdrawals. Again, in October of 1969, less than half of the public (46 percent), gave President Nixon a positive rating on his handling of the Vietnam war, but his televised plea for public support of his Vietnam policies on November 3rd of that year won him the approval of 51 percent of his electorate. Even in late March of this year, when President Nixon's rating on his handling of the war was at one of its lowest points (only 36 percent said he was doing an excellent or a pretty good job), the President's televised April pledge to withdraw another 150,000 U.S. troops from Vietnam boosted his job rating to 40 percent positive, a gain of six points.

The most significant incident of a president's success in enhancing his position with the public through television was President Nixon's speech announcing the sending of U.S. troops into Cambodia. In late April, just prior to the start of the Cambodian mission, only seven percent of the American public favored the sending of U.S. troops into Cambodia (59 percent favored staying out altogether). But within a matter of days after his speech, 50 percent of the people believed the President had done the right thing by sending American troops into Cambodia.

The only two occasions where a major televised presidential speech on foreign policy matters did not serve to enhance a president's popularity rating were President Johnson's announcement on March 31, 1968, of another bombing halt in Vietnam (and also of the fact that he would not seek re-election), and President Nixon's announcement in December of 1969 of a troop withdrawal of 50,000 men. Prior to Mr. Johnson's speech, his rating on his handling of the war was at a low 38 percent positive, and in May that rating remained exactly the same (38 percent). The failure of President Nixon's December speech to move public opinion can be seen by the fact that before the speech, a majority of the public (51 percent) gave him a positive rating on the job he was doing in Vietnam, but after the announced withdrawal, only 48 percent gave him a favorable rating.

Quite obviously there may be other extenuating circumstances surrounding the presidential speeches examined here, and on a number of occasions the mere fact of the President speaking to his electorate, briefing the people, explaining to them what he is doing, whether televised or not, might possibly have been enough to raise his standing in the public's eyes. Clearly the substance of what a president says is important in its own right. But there is evidence here of a correlation between televised presidential speeches and increased public acceptance of the positions expounded by presidents in those appearances.

FOREIGN POLICY

TV APPEARANCE	POLL RESULT
July 26, 1963—JFK announces nuclear test ban treaty on TV.	Before; 73 percent favored. After; 81 percent favored.
Aug. 1, 1964—LBJ on TV on Tonkin Gulf incident.	Before; 42 percent positive on LBJ Vietnam policy. After; 72 percent positive on LBJ Vietnam policy.
May 2, 1965—LBJ on TV to explain Dominican Republic action.	After; 77 percent supported.
Jan. 31, 1966—LBJ on TV to announce resumption of bombing of Vietnam.	Before; 61 percent favored resumption of bombings. After; 73 percent favored resumption of bombings.
Mar. 31, 1968—LBJ announced on TV limited bombing halt and not running for reelection.	Before; 38 percent positive on LBJ on war. After; 38 percent positive on LBJ on war.
May 14, 1969—RMN announced on TV policy of phased withdrawals from Vietnam.	Before; 49 percent favored phased withdrawals. After; 67 percent favored phased withdrawals.
Nov. 3, 1969—RMN plea on TV for support of Vietnam.	Before; 46 percent positive on Nixon on war. After; 51 percent positive on Nixon on war.
Dec. 15, 1969—RMN announces cut of 50,000 troops on TV.	Before; 51 percent positive on Nixon on war. After; 48 percent positive on Nixon on war.
Apr. 20, 1970—RMN pledges on TV to withdraw 150,000 troops from Vietnam.	Before; 36 percent positive on Nixon's handling of war. After; 40 percent positive on Nixon's handling of war.
Apr. 30, 1970—RMN announces on TV the sending of U.S. troops to Cambodia.	Before; 7 percent favored sending U.S. troops. 59 percent favored staying out of Cambodia altogether. 23 percent favored sending advisers only. After; 50 percent supported Nixon's sending U.S. troops into Cambodia.

DOMESTIC AFFAIRS

TV APPEARANCE	POLL RESULT
Aug. 18, 1963—JFK appealed on TV for tax cut from Congress.	Before; 62 percent favored. After; 66 percent favored.
June 7, 1968—LBJ on TV in support of stronger gun control legislation.	Before; 71 percent favored. After; 81 percent favored.
Aug. 8, 1969—RMN on TV urging overhaul of welfare system and his new bill.	After; 47 percent favored.
Mar. 23, 1970—RMN on TV declared national emergency in postal strike.	After; 61–25 percent opposed to government on strike.

Senator PASTORE. Senator Griffin?

Senator GRIFFIN. I don't want to seem impertinent, but since you used the Gulf of Tonkin resolution as an example, let us suppose that your legislation had been in effect at the time the Tonkin resolution was debated and there had been time available for a representative from the Senate to speak to the public, what would they have heard?

Senator FULBRIGHT. I just said, I didn't know enough to give a contrary view at that time. We later did and it would have been most useful after we had the hearings in the committee. We obtained the official documents from the Department of Defense to demonstrate what had happened and what had not happened. It did come later. It would not have been sufficiently timely to offset the effect at the time. But later on I think it would have been most useful. Even today the public and many of the Senators have not found out about what actually happened in the Gulf of Tonkin. A book has been written called, "Truth Is the First Casualty," but very few people have read it. I agree with you, the information was simply not available, no one suspected there had been such deception.

Senator GRIFFIN. Of course we know, and it might be just as well to emphasize, that for a number of years Senate committee hearings have been televised in instances where the networks or others believed there was news value involved. Now, I want to make a rather simple and what I think is a logical alternative suggestion to your legislation and get your comment.

Wouldn't the purpose be served better if the Senate were just to change its rules and to allow the televising and broadcasting of its floor debates? This would be a way, I would think, that the public could be informed of the various points of view without opening up a can of worms in trying to decide who is going to represent the Senate or who is going to represent the various points of view in the Senate. It seems to me that your proposal leads to the committee chairmen having perhaps a preferred status and maybe they should in this kind of situation; or perhaps if party considerations were involved in the selection of the spokesman, concentration would be focused on the attractive Senator to the exclusion of some of the most powerful and effective Senators in our body who I suppose would never have the opportunity to appear on television.

I'm going to use an example of one particular Senator since he is not up for election and because I don't think he would object. Senator John Williams of Delaware, I think we would all agree on both sides of the

aisle, is one of the most powerful, effective, influential Senators in the body. I don't see him on television very often. I suppose it is his own choice. He doesn't push himself—I suppose they gave up asking him, after a while, to be on television. And because he is not on television, because the debates of the Senate are not televised, I think the public at large may have a very distorted and warped impression of the Senate. I will not refer to any other Members, although there are others in the same category, who are very effective insofar as their colleagues are concerned, but not very articulate in front of a TV camera. This is a long way of getting back to the question, "Why don't we just televise the debates of the Senate?"

Senator FULBRIGHT. What you say about Senators—Senator Russell is even a more obvious example. He has never, even in years past, appeared on television. It is a matter of personal choice. He didn't care to operate that way. He is, as you know, the senior Senator and President pro tem. Senator Williams, to my understanding, doesn't care to use the medium either, and that's his privilege. But, as I said a moment ago, the more I think about it, in nearly every important debate a spokesman develops in nearly every case. Nearly always certain people take the lead. And in some cases, I'm sure if this were done in a serious way, in prime time, my guess is Senator Williams would reconsider. I mean, he doesn't want to go on many of these programs. Many of us have found out they're quite unimportant, really. The exposure is minimal. Usually these panel question programs come on at church time in most of the country, 11 o'clock Sunday morning or Sunday noon. Very few of them are prime time and very few of them are approached with the idea that you're going to really seriously examine important questions. Senator Williams and Senator Russell don't need exposure for more votes at home and they are not interested in that kind of a show. I think that is a matter of personal taste more than anything else.

If you're talking about broadcasting all of the Senate sessions, I think this would be inappropriate. Much of it is routine, much of it is of limited interest. For example, the Senate met this morning at 9:30, and there were a series of speeches. I don't know what they're about, but they enable Members to express themselves primarily on matters of interest to their own constituents. There is nothing wrong with that but I can't imagine it worth being televised.

I do not think that this modification is without merit. Possibly one night a week or two nights a month, we'll say, during a period agreed on by the leadership, perhaps from 8 to 10 or 9 to 10 p.m. TV cameras would be allowed in the Senate. There would be agreement to engage in a particular debate and the purpose here again is not to give advantage to a particular Member. Whichever ones—the leadership usually has no problem about it—are best equipped, based on their involvement in this particular topic, would expound on that particular point of view.

I have already given you one or two examples. There would be no problem in finding others. In most debates there emerges from the exchange of views a couple of fellows who are quite competent to speak for opposing sides. As I said a moment ago, it wouldn't be too

difficult. And I won't object if you wish the format of a debate on the Senate floor. To arrange to do that once or twice a month say from 9 to 10 on the Senate floor might be useful, but to do all of a Senate session, I don't think would be at all useful.

Senator GRIFFIN. I don't want to belabor the point, but I don't conceive of the likelihood that all the sessions of the Senate would be televised or broadcast by any means. I think it would be something like the United Nations; it would be available to be televised and broadcast. Obviously when there is something newsworthy going on on the floor the media would carry it just as the media carries the President's news conferences, not because the President demands it, but because they are newsworthy. Or when the President of the United States makes a statement on some subject, it is covered because it is news, and I think if the Senate has got a debate on an issue of public importance that is newsworthy and if it were possible to televise that debate, I think it would be covered.

Senator FULBRIGHT. Of course you say it is news—you are accepting the judgment of the media as to what is news. I think that we should have something to say about what is news. You mentioned a moment ago the broadcasting of committee hearings. Well, the networks just pick and choose. If it is controversial, if you have a highly emotional issue such as crime, for example, or when you had Lucky Luciano—that's very important. But if you have a hearing, a serious hearing——

Senator PASTORE. On the defense budget.

Senator FULBRIGHT. On the defense budget, with three or four of the world's leading physicists, there's nothing to it. They don't consider that news. They may have half a minute, a minute or two. They may have a half a minute of newsreel and all it does is show the man. It means that they are on their toes and they didn't miss the meeting. It is not sufficient to convey any idea at all. We have had Dr. Panofsky, and leading scientific authorities in this field, but the networks wouldnt' have any more than a news shot. They don't purport to follow the reasoning and the ideas presented by these men who are of the highest quality in their fields. The public doesn't get it. For the networks it isn't news in their sense. It doesn't have the drama, the excitement and controversy that is transferable into what they call news.

Senator GRIFFIN. A question about your bill, and it is generated I think by this discussion. I think we are getting pretty close now to what is news or what ought to be news. Does your bill require that all the networks carry the program that Congress or representatives of Congress would put on at the same time during prime time so that television viewers would have no choice, that Congressmen would have a captive audience?

Senator FULBRIGHT. It is intended that it be comparable to what the President has, that's the purpose of it. It is to preserve some degree of balance between the Executive and legislative branches of Government, so that the Executive does not overshadow and eventually destroy or dominate the legislature.

When you look around the world, the fact is that most of the people of the world today are ruled by a dominating executive branch. Their legislative bodies have very little to do in determining their future.

In other words, it is a form of authoritarianism. I would hope that we can preserve what I conceive to be the basic constitutional system by which the people of this country do preserve an opportunity at least to influence the decisions that effect their lives and fortunes. I think that is what our system was designed to do, and I would like to preserve it. The traditional constitutional balance which we enjoyed up until the last 25 years has been unbalanced.

I think television, because of its peculiar capacity and power, threatens to distort and to destroy that balance. This is all I am trying to get at.

You mention the President. I imagine that executives going back to the caveman days, that is the leader of the tribe and the emperors and the kings through history have a great advantage. And it was a very bold move for our Founding Fathers to try to create a legislative body that could check an executive. Of course they had gone through an experience that lead them to try that. Fortunately, it has survived. But even today with the use of television, the Executive will—even if you pass this legislation—retain the glamour of the individual who he represents or the father image, the god king, as they say. I can't do anything about that and I am not trying to destroy the Executive. I am trying to create a balance, a countervailing force. I am not actually trying to create; I am trying to preserve that which was created by the Constitution and I think this medium has unbalanced it.

There was a very interesting article in the Chicago Tribune, which demonstrates the point I make. I will quote one example from the President's recent news conference of how it can be done. I do not use this as any unusual example. I think it is done all the time. The Chicago Tribune, August 3, says this regarding his news conference:

> The final question was not only expected by the President, it was planted by White House aides with a friendly reporter and gave the President a chance to defend himself against critics who have suggested he is spending too much time outside Washington.

Now, it isn't easy for a Congressman to do that, I can't plant a question on "Meet the Press." At least I have never been able to, and I can't plant one on "Face the Nation" or "Issues and Answers," either. I am not given those opportunities, nor is any other Senator in my opinion. So it is in the nature of things. Even if you pass this I don't mean to say it is going to be nice and equal again. But at least there is an opportunity, if we have got enough wisdom to use it, for us to make an effort to enlighten the public on important issues which do not happen to be involved with crime and sex and drugs, that happen to be involved with the security of the country, whether it be the ABM or the Poseidon, or on Vietnam or the Middle East. These are issues which do not have the kind of appeal that incite the news media to broadcast a hearing in a committee.

Senator PASTORE. But the Senator will admit, our real difficulty here, and I think this is a good idea, I don't think anyone can question the fact that the Congress is an equal branch of Government and should be rendered the same courtesy as the judicial or the executive. The Senator will admit that our real problem here, the real complex problem is just how we go about implementing this.

Senator FULBRIGHT. I do. But I don't believe we will grapple with it until you give them the opportunity and time and occasion to do it.

Senator PASTORE. That is why we are interested to hear from all parties to see if we can't come up with ideas.

Senator FULBRIGHT. When I look at how the Senate operates, it really operates by comity except when you get into something controversial, then you decide it by vote. That is what happens.

Senator GRIFFIN. I would like to resume my line of questioning with this observation, Senator:

I think you've made very important points and made some excellent arguments. I do happen to disagree with your approach, though, since, as you referred to our precious freedoms or important freedoms, one of the most important freedoms is freedom of the press. I am concerned that we are moving dangerously close in this legislation to try to legislate what is news or what ought to be the news. I frankly think that despite all the criticism the press receives from those who criticize, Vice President Agnew went about this in the right way. He criticized and asked the media to take a look at itself, but he didn't advocate any legislation that would restrict them or that would require them to determine what is news or what is not news. I think this is a can of worms that we're moving into now. With all due respect to you, I hope that it doesn't get into——

Senator FULBRIGHT. Senator Griffin, you inspire me. I must say, I have to respond in this way: I think Mr. Agnew, representing the executive branch with control over the FCC, doesn't have to propose legislation. I think by his threats that he has intimiated the media already and I think they already reflect it. I've noticed in many instances they seem to be very restrained in the way they approach these matters. They have certainly felt very shy of anything coming out of the Foreign Relations Committee or any other areas of criticism.

The Vice President, speaking for an executive branch that can do about as it pleases with the regulatory agency, doesn't need legislation. They have all the power they need. You've cited it. You have highlighted exactly the reason why we need the law, to provide some means by which the media can be protected from this kind of attack because if the law requires them to give time, then they have an answer to people like Mr. Agnew who say "You must not do this because it is not in the national interest." They can say the law requires it. They're exposed to this kind of intimidation and being businessmen primarily and not public servants, they do not wish the risk, the loss of their licenses.

I suppose you would say it is a coincidence but let me cite an example. The Washington Post was for a time giving voice to some criticism of the administration, but very shortly after Mr. Agnew's attack a question was raised as to whether or not the Post-Newsweek Co.'s license for a television station in Miami would be renewed, a station estimated to be worth some $20 or $25 million. Being businessmen they can't expose themselves to the loss of that kind of money just for the pleasure of writing an editorial criticizing Mr. Agnew. So they don't write them often anymore, nor does any-

body else. So you've demonstrated and given voice to the principle in my view of why the media need this legislation to protect them from that kind of tactic.

Senator SCOTT. Do you think there should be some limit on the number of times during which public interest would have to be provided. Your resolution only provides not less than four times. The media might have to construe that they had to respond every time the Congress wished to speak.

Senator FULBRIGHT. Well, Mr. Leader, maybe I have greater respect for the Congress than you do. I do not think the Senate is made up of a bunch of irresponsible boys who want to go about to speak on every subject.

Senator SCOTT. The Senator hasn't been on the floor recently.

Senator FULBRIGHT. Yes. I was on the floor. In fact, I made a speech yesterday, but I noticed the Senator wasn't there.

Senator SCOTT. The Senator is there so often when the Senator from Arkansas isn't. He should have the opportunity to enjoy his absence when the Senator is speaking.

Senator PASTORE. All right. This is serious now. We've had our fun.

Senator FULBRIGHT. The Senator suggests that the Senate would act irresponsibly in asking for time. I don't believe it would. We thought about this most seriously. It seems to me that four times is a minimum and there would certainly be an opportunity or a need for that many times. Now above that, it is left to the discretion of the leadership, if you like, or a welling up of sentiment which would influence the leadership. I don't think that it is likely that there would be many more than that. If the President continues to use television more and more and makes the kind of impression that he has and precipitates the kind of questions that have been precipitated in recent years, the need might be greater. I think it would be a great mistake to put a limit on it. However, I don't anticipate that the Congress, or certainly the Senate, is going to abuse this privilege. The public would react against them if they do it in a frivolous manner. A Senator may make fun of some Senators and their peculiarities, but on the whole I would say that they act fairly responsibly.

Senator PASTORE. On this point, the President by law does not have any right given to him under the statute——

Senator FULBRIGHT. Correct.

Senator PASTORE (continuing). To have the opportunity of this time that we're talking about. And there's no suggestion here that we should pass such a law. Time is given by the news media or network only because of the prestige of the Office of the Presidency. And no one finds any fault with that. No one finds any fault with that. The President of the United States should speak to his people on the issues he deems necessary, but the Senator from Arkansas is saying that the Congress of the United States, which represents directly the people, should have the same opportunity. Will he be satisfied if this extension of courtesy were given to the Congress by the networks on their own initiative as they do it for the President without statutory findings?

Senator FULBRIGHT. Would the President be satisfied?

Senator PASTORE. No. Would you be satisfied? In other words, if the President asks for the time, the networks don't have to give him the time but realizing the fact he is the prestigious President of the United States, they don't question it. They give him the time at his own choosing, on his own subjects, in his own ways, to discuss whatever he deems necessary.

What if by the same token there was a voluntary agreement in the broadcasting industry to do the same for the Senate of the United States? Would that satisfy the Senator from Arkansas or does he see a flaw in that? In other words, by his bill we would be dictating something for Congress that hasn't been dictated for the Presidency.

Senator FULBRIGHT. As I said a moment ago, this is a complicated question. These networks are basically business organizations. Their stock is sold on public exchanges and they are in it for profit. This custom of allowing the President to use television has grown up. We have inherited the tradition of the divine right of kings, which we are struggling to control through our constitutional processes. This is not new and we have always had the glamorous figure of the leader going back to our caveman days. So I don't criticize them for that, but I can't see them willingly equating a body as diverse as the Congress. The Constitution provides for it, and in our more sober moments most people, I think, certainly do believe that Congress serves a great purpose, a great restraint. But many people harbor a certain kind of contempt for Congress, for all legislative bodies, not just this one and not just these people, I mean as a group. Because even as the Senator from Pennsylvania makes fun of it, about the irresponsible talk——

Senator SCOTT. I picked up the remark of the Senator from Arkansas.

Senator FULBRIGHT. The Senator is not alone. All legislative bodies are a favorite butt for comics. They are always making fun of them. This has happened throughout history. And in other countries they do the same. In many countries they have abolished them as an effective instrumentality. There is no other body in the world comparable to the Congress of the United States. Upper chambers in particular have become ceremonial and we will, too, if we don't perform a function that is worth while, because that's happened in other countries: Canada, England, France. wherever you like. They are ceremonial, honorary bodies with almost no power.

I don't think in all honesty that the networks as business people are going to willingly come along and offer this. It doesn't increase their prestige. This is a public service. I am asking them to do something they don't want to do, something that is not going to enhance their income in any way. It is an educational venture and it is a public service that will probably cost them.

I remember when there was a great flap in 1966 about broadcasting one of the hearings of the Foreign Relations Committee. Mr. Fred Friendly wrote a book about his experience when he wanted CBS to broadcast it. Instead of the hearings, CBS ran "I Love Lucy." It was the fifth rerun, but nevertheless they had a sponsor. They would lose thousands of dollars if they put that aside and broadcast that hearing.

They didn't do it. And Mr. Friendly was so furious, as the head of their news division, that he resigned, or perhaps he got fired. One way or another, it was over the controversy of whether they should show "I Love Lucy." That is what happened with an important congressional hearing. That has never happened with the President. No head of CBS or anybody else has ever declined a Presidential—even when the President says the particular appearance—as he did recently—is not newsworthy. They are not going to do that.

Senator PASTORE. But they do have problems, Mr. Fulbright, for this one reason: We are invoking here the fairness doctrine. Now, you'll recall when Mike Mansfield made his speech as a rebuttal to the President's news conference——

Senator FULBRIGHT. Yes.

Senator PASTORE. His opponent requested time and had to be granted time, equivalent time in the State of Montana, only because he was a candidate against Mr. Mansfield. So you run into that problem that has to be considered. And under your plan, any person who is delegated to speak for the Congress under the fairness doctrine, if that particular person is running for office and has an opponent, his opponent is entitled to equal time on the same basis. As a matter of fact, only a few days ago I ran into it myself. I was invited to speak for cystic fibrosis on television, asking for funds to help these unfortunate children that need some help. And I was told categorically that if I did that, my opponent would be entitled to the same amount of time, not on cystic fibrosis but on any political question that he desired to discuss. Now, you see how this gets complicated. We have to look into these matters and we have to unravel the complexities that lead to very serious problems in order to do justice. Otherwise, your opponent is going to say under the guise of him being an encumbent in the Congress of the United States, he is getting an exposure I am not getting and am entitled to it. The reason I raise these points is, somehow in this whole panoramic discussion, we have to look into the details and the preciseness of what we are doing so that we don't get ourselves into a can of worms.

Senator FULBRIGHT. Mr. Chairman, I couldn't agree with you more. That is what I am sure your very efficient staff of your committee can work out, just that sort of thing.

Senator PASTORE. It is not that easy.

Senator FULBRIGHT. I have the greatest confidence that is the sort of thing you can work out.

My purpose is to convince you, if possible, that the Congress needs this if it is to preserve any real function in our system of government. Otherwise, you're more and more cut off from any access to the public mind and we might as well turn it all over to the executive. That is the drift——

Senator PASTORE. We have got to find an answer for it, Mr. Fulbright, and you have been very, very helpful.

Senator SCOTT. Could I ask a couple of questions here?

Senator, the FCC, as you know, is a creature of Congress, not under the control of the executive branch. We can govern whatever legislative changes are pertaining to the FCC and, therefore, it would seem

to me that perhaps the fairness doctrine would continue to work. The networks have been willing to give time to matters of great national importance. I wonder why you want to legislate the right of Congress without legislating the right of the President?

Senator FULBRIGHT. They don't need legislation for the President. It is already given to him. You're saying the FCC is under the control of the Congress because it is created by the Congress. I would raise a grave question about this. I guess that Congress created the Defense Department, but if anybody thinks the Defense Department is under the control of Congress, he ought to have his head examined. The Congress is under the control of the Defense Department at the moment. I don't think the Senator is correct in saying that the FCC is under our control. There may be ultimate control if we wish to abolish it by law, but the President appoints these men. The people who are on that body are his appointees and through courtesy, as you have explained, unless a man has committed a crime, Congress doesn't turn him down. I would say the President certainly controls the character and nature of the policies of the FCC. However, if you want to legislate about the President, I have no objection to it. I just assumed that if I proposed that you would take it maybe in the wrong manner. I have no objection—if you're proposing we include the President in giving him only four times, I would support it.

Senator SCOTT. On the contrary, I am proposing we leave well-enough alone.

Senator FULBRIGHT. I know. The Senator likes it the way it is. But I'm trying to preserve it for the future, so that we have a Congress that still functions even after this administration.

Senator SCOTT. I rather think the Senator's pessimism is unwarranted. I don't make the same charges againt the Congress or against the Vice President or against the FCC. But suppose we had television during the time of the Founding Fathers. The most garruluous of those Founding Fathers were the Adams brothers and James Madison. How would the Senator have worked out the matter there when one considers if the choice had been between the Adamses and Madison? The names of B. Franklin, T. Jefferson, and G. Washington might have not reached the same proportional importance as history reports. The Senator seems to think television distorts reality. Does he see an analogy here between that situation and the President?

Senator FULBRIGHT. I don't quite know what the point is the Senator is making. It never occurred to me Ben Franklin couldn't hold his own on television or anywhere else, or certainly Jefferson. I don't know what point—are you suggesting George Washington wasn't as articulate and, therefore, would not have survived with television?

Senator SCOTT. I am suggesting the records of these proceedings show who did most of the talking and therefore they would have been the ones most likely to demand equal time.

Senator FULBRIGHT. Well, unfortunately, I am unable to follow what point the Senator is making.

Senator SCOTT. Then we had better leave it alone.

Senator FULBRIGHT. I don't get it.

I didn't say so much that television distorts reality. What I was talking about was the exclusive access of one branch of the Government to the public mind through this capacity, as the Senator from Rhode Island described it very well a moment ago. This is in contrast to the legislative branch, or you might say any conflicting view, the legislature being the coequal branch under the Constitution is the only institution I can think of that would play this role. Now, I think a great country of 200,000,000 should not be subject to—any word I use I suppose you might think is derogatory. I don't mean it that way—to having only one point of view. I mean I don't yet accept the infallibility of any man. It has always seemed odd to me that a man in the Senate is just another Senator, and yet you move him a few blocks away and he becomes infallible. This seems to be an oddity to me. Why is that true? Obviously it is not any doing of his. It is our own creation through the use of such things as television; we create this. No reflection upon him, he is simply a man who is under a system. He didn't create it. I mean no reflection upon this President or any other. He's not responsible for it. I say that technology has created a condition which we need to rectify if we wish to preserve our democratic system. That's really all I am saying. And it is not intended as any reflection upon this President or his predecessor, although his predecessor made great use of it. It happened through technology and it has distorted not reality, but the traditional relationship between the people and their Congress and their Government.

It used to go out in a diverse manner. It was siphoned through many newspapers and you didn't have this single impact at once on all the people. There is nothing comparable to this in history at all. Perhaps you could say in the town meeting, where you maybe have a hundred people, you can in that kind of a system have it. But not on a nationwide scale. That's the distortion, if you want to call it that. It is a new element that has grown up that needs to be taken into account if we really believe in our constitutional system.

Senator GOODELL. Mr. Chairman, I want to commend the Senator from Arkansas for his presentation.

I think your proposal, however, is oversimplified. I think it would cause a great many more problems than it would solve. I agree very strongly that there is no equal time or fair opportunity to debate the issues granted by present law. You certainly can't say that news programs and panel programs are comparable to someone speaking to the American people in the prime hours of the evening, where the individual who is making this presentation has complete control over the format.

I'm fearful, however, that if you came to the point of the Congress as an entity trying to determine who would be its spokesman, through joint caucus or something of this nature, we would never make a decision on it. We would go on and on and on. I think there would be major disagreement on this.

I do agree that in many cases there is an automatic accepted view of who would be a spokesman on an issue. It seems to me we have two problems: one is the partisan, political problem. Equal time is not guaranteed to the other party except during an election period, and

we want to have these debates continuing year round. If a President makes a partisan political speech, then the networks and FCC ultimately has to make a decision on whether the party, the opposite party, should have an opportunity to answer. I think it is rather unfortunate that if it is not a partisan political issue—perhaps the President speaking on economics—that the Democratic chairman is designated to answer in partisan terms. And that has raised a subsequent problem, that the Republican Party—because the Democratic chairman was so partisan—demands equal time to answer the Democratic chairman.

I think our second problem, aside from this partisan political aspect, when you come down to debating issues, is much greater. Back in 1965 I proposed—and we finally got the networks to grant us some time for the Republican Party—to answer the President's state of the Union message. It wasn't equal time; it wasn't the same prime time, and they didn't do it at the same time so they preempted the viewing audience. But the networks did grant us that time. I noted during that period that the Republicans were very unhappy with the situation. They were completely overpowered by the President, because of his access to television media.

Senator FULBRIGHT. So were the Democrats.

Senator GOODELL. There were Democrats at a later time; yes.

I think the problem of having Congress as an entity answering the President is that we are not a single entity as the President is. Clearly, when the President speaks, he speaks for himself and his overall administration. I think you would find it impossible to get a spokesman of Congress as an entity who would speak for the entire Congress. We have the difficulty, for instance, in trying to answer the President on the war. Five of us purchased time to answer the President, and the networks now raise the real question as to whether one has the right to purchase time to answer the President. It seems to me that a better approach than to just allow four times when a spokesman would be designated by Congress, with perhaps some additional time, would be to flesh out the fairness doctrine and give the networks and the FCC some guidance here as to what public policy is and guarantee there are spokesmen for opposing views on the great public issues that can answer the President.

Senator FULBRIGHT. Senator, I didn't offer this as a cureall for all the ills of this matter of public exposure. It is just a small part of it. It is one that I thought had appeal because of our constitutional system. There remains, of course, the question of partisan politics and elections and so on which have to be dealt with and you are aware this is not a substitute for those. It is simply an additional measure which could be adopted, I think, without too much inconvenience, to the networks. I don't know why they should anticipate this would be a terrific burden on them. It would give the Congress an opportunity to play a role and give it some dignity.

You're raising many other serious problems I don't intend to deal with. I don't see why that is a good reason why this isn't useful.

Senator GOODELL. Setting aside the partisan political aspects of the fairness doctrine, what we are concerned about more than anything

else is to see that the great public issues are debated on the television media with some degree of fairness and access——

Senator FULBRIGHT. Explaining to the public is one thing I think is our duty. They can go down any road they want but they ought to have the right to be informed. And if they make the decision, OK. But I feel badly if people are asked to make a decision and they don't know what they're talking about, what the facts are.

Senator GOODELL. Why wouldn't it be practical for the Congress to charge the networks and the FCC with the responsibility in their discretion of seeing to it that on the great public issues they give equal access to a spokesman for an opposing view of the President?

Senator FULBRIGHT. You want to delegate to them the same thing I want the Conrgess to decide.

Senator GOODELL. I think they are better able to make that decision than we are.

Senator FULBRIGHT. Lots of people agree with you. I don't think so. I think this is a responsibility of the Congress to preserve its role. I have nothing against the television business organizations, but they have a different function. It is their responsibility to educate the public, but they see their responsibilities, first, to the stockholder, to make money, and if they can do a little good along the way so well, all right. But if not they will have to show "I Love Lucy."

Senator GOODELL. I think the networks have done remarkably well over the years. I have been critical of them for——

Senator FULBRIGHT. Done well about what? What do you mean they have done well? About what?

Senator GOODELL. I think in——

Senator FULBRIGHT. They are extremely prosperous.

Senator GOODELL. I mean without having guidance from the Congress and from the FCC in this respect. We ought to define more precisely what their obligations are as a matter of law and let the FCC flesh it out with their interpretations.

Senator PASTORE. We know what their obligations are.

Senator GOODELL. They don't know if they have to sell equal time to answer the President.

Senator PASTORE. It is a difficult problem. As I have pointed out, the fairness doctrine is the fairness doctrine and when you expose one individual with a contrary view, you have to expose other responsible contrary views. I mean there is your fairness doctrine and that is the problem that is involved here. That they won't get themselves into these ramifications. This is a big complex problem.

Senator GOODELL. I think we all need to deal with it and give them the guidance.

Senator PASTORE. That is right.

Now, unless somehow you could make the entity of the Congress stand up constitutionally as a body that could be recognized to the exclusivity of other groups, like let's say the Nazi Party, or any other party that wanted to come along, unless you could declare the Congress of the United States to be a unique institution that has to be respected as such, and whether or not that could stand up under the Constitution, I don't know. After all the first amendment of the

Constitution is very explicit, it doesn't run to an individual, it doesn't run to anyone, it runs to all people, the right of freedom of speech. And the fact that the Congress feels that it should rebut the President, that opens the door that someone else can rebut the President and someone else can rebut the Congress. This could become a chain that would stop nowhere. And these are the problems.

Now, all that the Senator from Arkansas is saying, and I think we ought to understand his position, and we do, if somehow we cannot work out some system whereby the same courtesy is rendered to the Congress as it is to the President of the United States, where on its own initiative it can explain to the people of this country, without interrogation, on its own format, just what the issues are as they are considering them. That is what it amounts to.

Whether or not we can work this out is another problem.

Senator GOODELL. The point made by the Senator from Rhode Island is very good.

Senator PASTORE. I think it is excellent.

Senator GOODELL. I think the problem is that Congress is not an entity. It is not a singular entity. Who would make a decision? When the President speaks on the war we want——

Senator FULBRIGHT. We make decisions every day.

Senator GOODELL. The House of Representatives might vote that they didn't think anyone ought to speak for Congress as an entity against the President, because they might have a majority that agree with the President. Then we are into that problem. It seems to me it is not always Congress that should be answering. It should be a major spokesman in opposition to the President. If the President is talking about the military success of the Cambodian intrusion it might be that the best person that could enlighten the public, giving the opposite view, would be a former military man, not a Congressman or Senator. He could talk about the ramifications of this decision in the longrun strategic picture. I think this is what should be placed as an obligation on the networks. To give prime time, fairness, and with all due respect to the Senator from Rhode Island, I have not seen that the networks understand the fairness doctrine clearly——

Senator PASTORE. I don't think anybody understands the fairness doctrine clearly.

Senator GOODELL. I think that is why we ourselves ought to face this responsibility in fleshing it out. I thank the Senator from Arkansas for his contribution.

Senator FULBRIGHT. The main object is not just to respond to the President in any case. It is to give Congress the opportunity to enlighten the public according to its rights. It is incidental to answering a President. I would hope that we would be in agreement with the President on many issues. That doesn't lessen the need for the requirement to have an opportunity for the Congress to speak. It isn't designed as an adversary relationship. It is incidental.

Senator GOODELL. I would like to ask the Senator from Arkansas: How would he cope with the problem of choosing a congressional spokesman to oppose the President on the war? The House of Representatives and the Senate might well end up—might well end up

in the greatest issue facing this country, voting that they didn't want to have a spokesman for the entity of Congress on this issue. I would think that then you would avoid the greatest issues at all times.

How would you deal with it?

Senator FULBRIGHT. It would depend on how you approach it. We recently had a very prolonged debate—prolonged primarily at the instigation of the administration—over the Cooper-Church amendment. While it was restricted to Cambodia, in my opinion it certainly reflected an attitude of the Congress as a whole. I don't know what you have in mind, the declaration of war, if that were the issue——

Now, in that case I think it was quite clear who the obvious spokesman was. If there had been time available, as I said before you came in, on the closest issue related to the war that we have had recently, it would have been either Church or Cooper versus Mr. Dole. Mr. Dole was the leading opponent of the Church-Cooper on the floor. The Church-Cooper amendment was the symbol of those who felt that the war should not be continued and certainly not be escalated.

It would depend on how your issue comes up. If it was a declaration of war there would be no doubt be the spokesman in the Senate for promoting it. It might be the majority and minority leaders who would take the two turns there. I don't think this is insuperable. I said in times where there is great division within the Congress it is difficult but not insuperable. When it is difficult we resolve questions by votes. If it is of that character, we have a vote. And I would assume———

Senator PASTORE. If you cannot agree you don't ask for the time.

Senator FULBRIGHT. If you cannot agree and make the decision you don't take the time. There is no compulsion on you taking it. If it is of that character——

Senator PASTORE. What the Senator is saying, in his particular case, without any interrogation, those who agreed with Mr. Dole of Kansas would have designated him to explain to the American public how he felt about it and those who agreed with Mr. Church would name him to explain to the American public how he felt about it so that the public would know why the Senate was hung up.

Senator FULBRIGHT. That is correct.

Senator PASTORE. Isn't that the point?

Senator FULBRIGHT. That is what this is all about. Take on the ABM. These issues have a way, when we talk about them without reference to the actual cases, of seeming much more difficult. When you examine nearly every important issue we have had, somebody has evolved in the course of that debate as the leading spokesman, and I think generally accepted as such by other Senators. Many times it's been the Senator of Rhode Island in the areas he is interested in. In some other, the Senator from Mississippi. Senator Gore, for example, last year was particularly interested in—and took a great lead on the ABM. Nearly every time, when we get down to the realities of it, somebody has developed as the leading spokesman.

In your case, you have been taking a great lead in a particular issue on ending the war yourself. You have a very special approach to it.

Senator GOODELL. I think you are characterizing this a little differently than I understood. In other words, you are saying that when the President speaks on a major issue there would be a spokesman in support of the President and a spokesman in opposition to the President afforded equal time or prime time to discuss both viewpoints?

I thought your original suggestion was that there would be a spokesman for the opposite side of the President?

Senator FULBRIGHT. All I am proposing is that the Congress, as an institution, be awarded a minimum of four periods, comparable to the President. I think——

Senator GOODELL. Used in what——

Senator FULBRIGHT. Used anyway you want. They don't have to answer the President. They may make their own elucidation of a particular problem.

Senator GOODELL. I think we would have the debate of the century in the Congress as to who had the time and who was going to speak——

Senator FULBRIGHT. That might be very enlightening itself.

Senator PASTORE. No one would answer.

Senator FULBRIGHT. No one would if you couldn't agree. You are no worse off, nobody does now. You haven't lost anything. I don't know of any prime-time opportunity for anybody, not only to answer the President, but even to discuss the most important issues. I think a very important issue now is the Spanish bases agreement. It is a followup on the commitments resolution, and I made a speech on it yesterday. There is not the vaguest opportunity, not a possibility that the American people will ever be informed about that subject. It isn't the kind of subject that is scandulous or emotional at all; no one is going to pay much attention to it. There will be a few esoteric political scientists who will take it seriously. But television only gets interested when people are dying, and the country is going broke. They are not interested when you are at the stage of making a commitment. There is no way to get them interested and inform the American public about it.

Senator GOODELL. The Senator from Arkansas and I don't disagree in our objectives. I think clearly that prime time should be made available for debates on the great public issues. There should be discussions on those issues, not necessarily in a debate format.

Senator FULBRIGHT. It is made available to David Frost under that format. It is prime time; they get paid for it.

Senator GOODELL. I am fearful that the institutionalizing of this—the Congress trying to make the decision as to who would be the spokesman—would not be a adequate solution. I think it would be better to keep it flexible, and make it clear to the networks and FCC what their responsibility is to provide this prime time to leading spokesman on the great public issues. In our instance right here with the debate on the war, I think you might well get the situation when you chose Senator Dole and maybe Senator Cooper or Senator Church that the House of Representatives would pass a resolution saying "we don't want anyone speaking for the House."

Senator FULBRIGHT. They are speaking for the Senate.

Senator GOODELL. You have a Congress here; the House is a part of Congress.

Senator FULBRIGHT. We discussed that before you came in. Each House makes its own rules and disposes of its time in accordance with its own rules. We should never attempt to tell the House what to do. They are very sensitive to the role and I wouldn't begin to suggest——

Senator GOODELL. Are we going to have to offer the——

Senator FULBRIGHT. I don't care whether the House uses it or not. They don't have to use it.

Senator GOODELL. You would say the Senate would have a right to the time and the House would have a right to the time. Each would have the minimum of four presentations?

Senator FULBRIGHT. Yes.

Senator GOODELL. You confused me in your answer to Senator Scott's question earlier when he asked if you conceive of a joint caucus working this out between the Senate and the House.

Senator FULBRIGHT. He meant between the two parties in the Senate. He means the Republicans and Democrats. That is what he was talking about. He was not talking about between the two Houses. I don't blame you, Senator, for having a rather pessimistic view about the capacities of the legislative body. I am frustrated, as you are. But I think what we are trying to do is resuscitate it, to give it a role to play and to give us—you, me, and all the rest of us—some idea that if we develop a view, an idea, and we feel we know what is in the public interest, there ought to be a way to communicate it.

One of the things I suffer from, I am sure all Members do, is the feeling that no matter what you do there is no way to commmunicate it to the people, generally, so that they can understand what you are talking about. And this would be a great psychological boost, I think, to the Congressmen, individually, and a great boost to the legislative body—which needs boosting, I might say. I think legislative bodies are in a very low state, generally, of the world; not just in the United States. I think you find that in your legislatures, in your States, how the Governors gradually, because of this same reason, overshadow the legislature. The legislative bodies feel less and less potent, less and less important, and they become more and more involved in triviality and less useful to the community. I don't think this is a good thing.

I still think that there is great merit in the collective judgment of a legislative body. I think that the Founding Fathers were quite correct in providing that the legislative body play a role, not because I think individual Senators are wise or above other people, or that they are any wiser than the President, but I think, collectively, through debate and examining matters from all angles, there emerges a little wiser decision than if it is just left to an individual. I think that was the basic concept of the Founding Fathers. I think it is still true and that is what I am trying to promote.

Senator GOODELL. I have a brief statement I wish to place in the record.

(The statement follows:)

STATEMENT BY HON. CHARLES GOODELL, U.S. SENATOR FROM NEW YORK

Television has the potential for allowing a tremendous number of Americans to make decisions on the fundamental issues of our time through a rational discussion of differing points of view.

There is, however, great peril in the realization of this opportunity. If television cannot provide a balanced presentation of the divergent views of responsible men, then it will contribute to an erosion of our democratic traditions.

The issue of war and peace has brought this problem to the fore.

At a time when our country is painfully divided over the course of our foreign policy in Indochina, the public is not able to obtain a full explanation of the issues involved.

The President has been able to command the airways to present his policies on the conduct of this war. I do not quarrel with the right of any President to speak directly to the people. As the elected leader of this Nation, the President must be able to express his views on questions of national importance when the situation demands that he do so.

Nonetheless, under the Constitution, the President shares responsibility with the Congress for the conduct of our foreign policy. As elected officials, the Congress must also have a similar opportunity to present its views on these issues. Access to the television media is a necessary prerequisite.

As a principal author of the Amendment to End the War—which would bring about complete withdrawal of all American troops from Indochina by a definite date—I joined with a bipartisan group of my Senate colleagues to purchase television time in order to respond to the President's televised addresses on the Indochina war. Our purpose was to fully present our views on this crucial issue so that the American public would have the benefit of hearing both sides of the case before deciding the issue.

The networks, however, have refused to even sell us this television time. It is inconceivable to me that a bipartisan group of United States Senators proposing the major alternative to the President's policy, cannot exercise the same right to purchase television time as the manufacturers of detergents.

The Constitution provides that the Executive and Legislative branches of our government are equal, but the technology of television has shifted the balance. We must arrive at a system whereby there can be a rational confrontation of ideas on the television medium, not Presidential domination of the airways and diffuse responses by different spokesmen on the major issues.

I am hopeful that these hearings will air these problems fully. No less than the very essence of our democratic government is at stake.

Senator PASTORE. I think you have made your point, whether or not it can be worked out remains for the committee, after we have heard our witnesses.

Now we do have a problem. I address myself to the other distinguished witnesses who have been invited here today. Namely, the president of NBC and the president of CBS. We have a vote coming up at 12:15 and directly after that I am the manager of the independent offices bill, some parts of which are rather controversial. How much time that might take this afternoon, I don't know. I was wondering if Dr. Stanton and Mr. Goodman would each tell me what their program is so we can work this thing out. I wouldn't want to keep you here and tell you at 3 o'clock I will be detained until 5 o'clock. On the other hand, I know the inconvenience of coming back. But if you did come back you would have to come back at your own convenience rather than that of the committee. I think, myself, these hearings will take, 3, 4, 5 days, maybe even go beyond that. I was wondering what your pleasure is.

The vote is coming up in less than 25 minutes. I wouldn't want you to stop this. As a matter of fact, you may be better off to meditate a little bit on everything that has been said so you will be in a position to rebut or agree, which I hope you will.

Mr. Goodman, let me address myself to you.

Mr. GOODMAN. I am available for your convenience. If you would like me to stay for tomorrow I will change that and stay. Are you saying there is not a possibility of a meeting this afternoon?

Senator PASTORE. Well, I am afraid I would be holding you up. Because, right after the luncheon period—well, there are certain phases of it, like the Veterans Administration, space, and that sort of thing, it could be prolonged. It could be short but, on the other hand, it could be taking a chance. Your time is too valuable to be hanging around to have an uncertainty established.

Why don't we leave it this way, Dr. Stanton and Mr. Goodman, the list that we have for tomorrow, the president of ABC, the Republican National Committee, you might want to hear these witnesses before you testify anyway.

Mr. GOODMAN. Tomorrow will be all right.

Senator PASTORE. Let's leave it that way. Ten o'clock tomorrow.

We will recess now until 10 o'clock tomorrow.

(Whereupon, at 11:55 a.m., the subcommittee was recessed to reconvene at 10 a.m., Wednesday, August 5, 1970.)

PUBLIC SERVICE TIME FOR THE LEGISLATIVE BRANCH

WEDNESDAY, AUGUST 5, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, at 10:05 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore, chairman of the subcommittee, presiding.

Present: Senators Pastore, Scott, and Griffin.

Senator PASTORE. I do not think there is any need of waiting any further. We have been assured that the Senators will come during the progress of the hearing. After all, we do have a lot of very busy witnesses here who have been kind enough to come at personal sacrifice, and I do not think we ought to wait any further.

Our first witness today is the distinguished Senator from the State of Maine, Senator Muskie. I need not tell you how pleased and honored we are to have you here.

You may proceed in any way you wish.

STATEMENT OF HON. EDMUND S. MUSKIE, U.S. SENATOR FROM MAINE

Senator MUSKIE. Thank you very much, Mr. Chairman.

I had an opportunity to attend briefly your session yesterday with Senator Fulbright, the sponsor of this resolution, and my impression is that the subject was covered very well, very thoroughly, and as one would expect very provocatively.

I enjoyed the hearing, and I appreciate this opportunity to appear to make my own comments which will cover some of the same ground, I think unavoidably, that Senator Fulbright covered.

All of us are concerned with the impact of television on our society in general and particularly on our governmental institutions. That impact I think deserves the kind of attention and consideration that it is getting in these hearings. I think the fact, Mr. Chairman, that you have undertaken this examination guarantees all Americans the kind of deep and comprehensive investigation that is required.

Television, as was emphasized yesterday, is the overwhelmingly dominant instrumentality in forming public opinion, not only in the marketplace, but on national issues as well.

I think the dimensions of the problem are graphically framed by Federal Communications Commissioner Nicholas Johnson in opening his book, "How To Talk Back to Your Television Set." There he said this:

> There are 60 million homes in the United States and over 95 percent of them are equipped with a television set. (More than 25 percent have two or more sets.) In the average home the television is turned on some 5 hours 45 minutes a day. The average male viewer, between his second and 65th year, will watch television for over 3,000 entire days—roughly 9 full years of his life. During the average weekday winter evening nearly half of the American people are to be found silently seated with fixed gaze upon a phosphorescent screen.
>
> Americans receive decidely more of their education from television than from elementary and high schools. By the time the average child enters kindergarten he has already spent more hours learning about his world from television than the hours he would spend in a college classroom earning a B.A. degree.

No longer can television be considered as a plaything, a novelty or as an entertainment device—if ever it could. Television is how the facts are provided, how opinions are formed, how judgments are made, how products are sold and—not least of all—television is how politics is played. Used to its fullest, television can determine the outcome not only of every political issue, but more importantly, of each and every national issue.

Television can organize public opinion, activate and mobilize public energies and in the end, become the most potent instrument through which the Government governs. After all, what happens is largely determined by what people think. And in today's world, television must be regarded as the greatest single influence on people's thought processes.

Television has changed totally the whole system of checks and balances. It has changed the nature of the political process, making the value judgment of the people on specific issues far more significant than ever before in history.

Heretofore, the entire governmental process has been largely indirect. This, of course, is the nature of a republican form of government. Its control over the purse strings kept Congress at least in a competitive position in relation to the executive. Both branches enjoyed the detachment granted by a benign electorate. Television has changed all that.

The electorate is now far from detached in its relationship to the issues that emerge at every level of government. That is a good sign. But unless the challenge is met responsibly, instead of stimulating a great rejuvenation of our democratic institutions, this phenomenon called television can virtually destroy the checks and balances so carefully established by our Constitution. The country, the Congress and the industry must accept the awesomeness of this responsibility.

What is the challenge at stake? What is the responsibility involved? Clearly it goes far beyond retaining the viability of the two-party system. It is also to maintain Congress as a "coequal branch." But most importantly, it is for Congress to be permitted to discharge its duty to contribute to the dialog out of which is determined the direction of this Nation on every front, and for television to be structured to contribute to a balanced national dialog.

This responsibility simply cannot be met by techniques of the past. It requires that we adapt to the present and that is the challenge. For Congress to meet its full constitutional obligations to the electorate, television must become part of the congressional formula. Today it is not. Tomorrow, it must be.

The very first article of the Constitution established the Congress. Its clear function was to provide a separate institutional filter through which the Nation's most important decisions must pass. It is important that television aid and not destroy that function. There exists today, however, a distinct imbalance in the use of this medium to communicate with the electorate.

In the circumstances, I believe the emphasis should be placed not on restricting its use but in providing wider use of television to inform the American people. That is the legislative goal of Senate Joint Resolution 209. It establishes a door-opening policy for the use of television by the Congress. In a nutshell, Senate Joint Resolution 209 says: The people have a right to be informed of the prevailing congressional attitude on the significant national issues.

The present disposition of the networks is to allow the President such television time as he requests. To my knowledge, he is never refused. It is given to him because of his office and because a statement by a President is considered newsworthy per se. On balance I think this is a sound policy. It is hard to envision the mechanics of any voluntary system that could refuse a presidential request. But it should be remembered that when the President addresses himself to the issues, he assumes the role of an advocate. This is a valid presidential posture, if not a responsibility. A democracy is predicated upon an informed electorate.

In the past the process of reaching the electorate with the facts and the arguments has been much slower and far less effective. Before the wide use of television, it actually took an immense effort on the part of the electorate to become informed, to obtain the information upon which to base a judgment. That was especially true when it came to the complicated issues of national and international affairs. A great effort is still involved in the process, but more people are arriving at quicker judgments after an almost exclusive diet of television information. What we must assure is that the viewer receive a balanced diet. And the question is, how to mold television into a medium that presents a balanced picture of national and international issues.

Unfortunately there is no precedent here. The famed fireside chats that dominated the Roosevelt era were different because of the difference in the persuasive capacity of the media involved and more importantly—because television commands an audience of enormous proportions.

The televised veto of the HEW appropriations bill in January of this year provides a splendid example. The entire viewing audience of one of television's most popular programs—the "Laugh In" show—sat captured while the President spoke.

He rebuked a congressional action and advocated a position on this issue on that weekday winter evening when Commissioner Johnson states nearly half the American people are watching. The position the

President advocated was contested by overwhelming majorities in Congress with equal access to information. That congressional position was never heard or seen by those Americans. If the President happens to be wrong, there is little that can be done to make that known to the people.

At an evening press conference on January 30, 1970, the President stated that the antiballistic missile system against China is now "virtually infallible." As a result, that statement was imbedded in the minds of millions although there is unanimity among scientists and admissions by the administration subsequently that the statement was dead wrong. The awesome potential of this use of television could be brought home by other less striking examples.

In the circumstances, the question is what steps must now be taken to permit an evolution of television as it affects the national dialog. A far better balance must be achieved. If differing viewpoints exist, a more competitive position must be assured. Leaving the American people open to the total and unquestioned impact of a presidential pronouncement is simply wrong.

What is missing is the perspective added by public officials representing a coequal branch of government even if they happen to be of the same political party. The selection of the personalities and the format of the congressional viewpoint should be left to the Congress. The networks might well appreciate this exercise of responsibility on the part of the Congress—preserving to the networks the detachment they seek.

But the televised response to presidential pronouncements that is so necessary to provide balance and perspective is not enough. Congress takes many initiatives on national questions that deserve direct electorate participation and involvement.

The tax relief and tax reform measure developed last year by Congress would be a recent example. What Congress conceived and achieved single-handedly with that issue was of such importance to the American people that a national airing of its many facets on television would have been highly justified. It closed $6.6 billion in tax loopholes. It was conceived in the Congress and weaved its way through a plethora of roadblocks—many imposed by the executive branch itself.

To put it simply—the law would not exist today were it not for a congressional demand for reform before granting the President's request to extend the income tax surcharge.

Tax reform, said the Congress, had to accompany any surtax extension. The administration badly needed that surtax. But the country badly needed tax reform. This was the message Congress had for the people.

If Congress could have conveyed its message through television to the people, I am convinced that the roadblocks would have tumbled quickly. That this viewpoint prevailed anyway is a fact attributable more to the actions of Senate Majority Leader Mike Mansfield's personal determination and insistence than to the direct insistence and determination of an informed electorate.

The electorate deserved to be better informed on such an important issue. All I am saying is that the allocation of television time to Congress should be afforded as the need is justified. The issue will establish that need and when it does, then Congress must have the ability to determine its own format and its own participants. It is the only way.

If the American people are to be assured a balanced diet of viewpoints, we must act now.

Of course, there are serious hurdles involved; questions like how much time should be made available; who shall speak for the Congress; what issues justify this procedure, and so forth. But these are problems that can and should be met on an ad hoc basis.

Clearly the test would be met on any significant national issue where there is a substantial and prevailing viewpoint in the Senate or the Congress that differs from the Executive. In those cases the opportunity to provide the congressional viewpoint should be afforded and the selection of the who, and the how, should be left to the Congress.

I am certain in most cases that the differing viewpoint will be shared on a bipartisan basis. On almost every issue, a congressional majority is composed of members of both parties.

The party identification of a majority of that bipartisan view could provide the identification of the institutional leadership through which the networks could work.

In many other cases, the leadership of the prevailing congressional viewpoint is easily identified. On the recent national debate over the Cambodian invasion the natural selection in the Senate would have been obvious. The leaders of that prevailing and bipartisan Senate viewpoint were Senators Cooper and Church. So it is no answer to say that making time available to congressional viewpoints creates too many internal problems for the Congress.

Congress is capable of working out these problems and I am sure it will, if afforded the opportunity.

Our goal is to assure the American public its right to know—to know in much greater depth and from more varied perspectives the full impact and ramifications of the day's most vital issues. To be sure, the so-called hard news programs of the networks—wherein the world's happenings are compressed into 28 minutes in any 1 day—attempt to present a fair balance.

But the limitations of time prevent in depth coverage of the complicated national issues. It is the use of television beyond the hard news programs that presents the great imbalance. The American people have a right to know and there is thus a deep and abiding responsibility on the part of the Congress to make every effort to correct the communication imbalance and grant them that right.

In addition, we cannot ignore the special role that must be played by the Senate in setting the tone for the issues as they emerge in the national dialogue. The original concept of the legislative branch with the House of Representatives being elected every 2 years and the Senate every 6, presupposed that the House would remain closer to the pulse of the people and the issues of the day. It was intended, on the other hand, that the Senate have an added degree of insulation from temporary changes in public attitude, precipitous acts of a transient

majority or demands based upon the superficial whims of the electorate. Television has changed all this.

Toward the end of the 1960's, it became clear that the Senate of the United States was very sensitively attuned to issues, especially the issues that were drawing national attention on television.

Perhaps it is because Senators, when they campaign, use the medium of television much more. They must be far more conscious of the tone and response attached to an issue by a larger statewide segment of the population. Senators set the tone of their own elections through the use of television. They in turn respond to the tone set by a national administration.

The reaction of the Senate on crime legislation, the reaction of the Senate on school busing and countless other matters are examples of this phenomenon at work. These were responses to the tone set by the Executive on these issues. They were national responses; not pitched to parochial biases but paterned to answer a national problem in a broad and comprehensive manner.

As of now, the Senate has no way to participate fully or fairly in setting the tone to which it responds. I believe that the Senate has a special interest in assuring that the present imbalance is corrected.

Our final point, Mr. Chairman, that I don't think was touched upon yesterday and is rarely touched upon in the discussion, the fair sharing of television time.

I would like to emphasize a dimension that goes beyond the viability of the two-party system—beyond the maintenance of the Congress as a coequal branch of Government and even beyond our obligation to assure a national dialog on the great issues that confront society.

We must decide here and now that television will not become the established medium designed to preserve the status quo.

Providing a fuller expression of the two major parties is not enough; providing a medium through which the Congress may report to the American people directly is a major start but still is not enough. We must guarantee that television can adapt as quickly as the times can change. We cannot always identify what the most pressing challenge will be 3 or 4 years hence.

We must not structure our answer today that might conceivably deprive the airing of any viewpoint in the future. I don't know if a structured response to the use of television can accommodate this most important dimension. I hope it will receive serious attention as these hearings develop.

In conclusion, Mr. Chairman, I must admit that I have raised more questions than I have answered. That is the nature of this subject. I have attempted to speak to the issues raised by Senate Joint Resolution 209. As my remarks should have indicated, the thrust of Senate Joint Resolution 209 is one that I wholeheartedly support.

As to the formula proposed, the heritage of the equal time and fairness doctrine has made me hesitant about structured solutions. I am not unmindful of the difficulties faced by the networks, competitive among each other both for audiences and revenues.

They are asked to reach for the less lucrative public service formats without assurances that the other networks will do the same.

The legislative approach embodied in Senate Joint Resolution 209 may be the only answer to a beginning. These hearings will give a basis for making that judgment. Above all I trust that these hearings will stimulate the networks, the Congress and the public to find ways to make television a more effective instrument for informing the electorate.

The viability of our form of Government may well depend upon it, and even more importantly, the opportunity for our people to respond to the needs of our society and the pressures upon our role in the world may depend upon it.

I believe it must evolve this way to meet the national responsibility for the public to know; for the Congress to fulfill its responsibility; and for the Government to assure its viability.

Senator PASTORE. I want to thank the Senator from Maine for what I consider to be a very brilliant presentation of the problem that is confronted in this situation.

Your remarks are very cogent. But in full fairness I must say this: The fairness doctrine is not only a protective instrumentality and it should be preserved without question, because without the fairness doctrine, we could get ourselves into a position whereby—and I don't say that this is the situation—the control of the media could fall into the hands of a very few.

And that, of course, would be just as disastrous. I don't think anyone can challenge the reasoning that you have presented to this committee that the activity of the Congress must better be projected to the people so that they will better understand the issues.

Like every coin has two sides. There are many issues that are controversial and they, too, have many facets, and they should be discussed from every angle. Now you have said here that you believe in the objective of the resolution that is before this committee. And so do I. The dilemma in the case is how do we go about implementing this.

Frankly, from my association with the broadcasting industry, I don't think we are going to find too much reluctance on the part of the broadcasting industry to cooperate in any way it can in bringing these issues before the public.

The dilemma that confronts them is the dilemma that confronts this committee, how you go about doing it. You will recall at the time we discussed in the policies committee the question of whether or not the Congress should present its side of the question after the President held a press conference, it was I who suggested that if anyone should do it, it should be Senator Mansfield.

Well, Senator Mansfield undertook that, and I think made a very fine presentation, I listened to it and I think you did as well. But what resulted?

His opponent in Montana under the law, under section 315 demanded and was granted, rightfully so, equal time on all of the options who carried Senator Mansfield in his own State.

Now if you were designated by the Congress of the United States——

Senator MUSKIE. May I say incidentally that I appeared shortly thereafter on a national program and my opponent asked for equal time also.

Senator PASTORE. That brings me right down to the point. Would you make a distinction, a distinction that is envisioned under section 315, as regards this resolution. That the individual who is speaking is not the initiator for the request for the time, but merely the designee of the Congress in one form or another, whereby an exception would be made? What is your thought on that subject?

Senator MUSKIE. I suppose I couldn't be said to be making an unbiased judgment on that question if I were to respond.

Senator PASTORE. I mean forgetting the fact that you are a candidate, because we have to look at this thing objectively. I mentioned the other day that I was asked to make an appeal for cystic fibrosis in my State, and I knew that under the law that if I said yes, that my opponent would be entitled to the same amount of time to speak on any political subject he wanted to.

Now, that is section 315 and the requirement of equal time.

Senator MUSKIE. My response I think would be this, and I am not giving that particular suggestion——

Senator PASTORE. How do we overcome this?

Senator MUSKIE. My response, and I have not had the opportunity to give it the thought that you have, would be this: I think one of the problems that we face now is that we have got ourselves tied to a formula. I am not suggesting throwing it over the side at this point. But since we are tied to a formula, these perhaps sometimes irrational consequences result. So we are going to live with that formula.

My disposition would be to interpret it liberally. I have no objection that my opponent in Maine was given time, because as far as I am concerned, the more, the better. So I would interpret it liberally under this policy. But at the same time I think we have to be developing new approaches to this problem.

And this hearing I think is one of the beginnings.

The constrictions of the existing law are, of course, very obvious.

Second, the constrictions of time are even more limiting than the 24 hours of the day. Prime time, which everyone wants, makes it even more limiting.

So the strictures are obvious. I have spent a great deal of time in the last few weeks and months discussing this with the television people as well as with Senators. Senator Mansfield asked me some months ago with the assistance of Senator Proxmire and Senator Jackson to develop some approaches to this whole problem, not in conflict with your effective leadership, but as a supplement to it.

So I have had occasion to talk with them.

Senator PASTORE. I am glad he didn't ask me.

Senator MUSKIE. We rely upon your experience here. But what we need is a positive effort on the part of the networks as well as the Congress to experiment and innovate and reach out for new ways of meeting these responsibilities.

Although I think the networks are tending to break out of it, at least in the top leadership, I think there has been a tendency for a

while to rely upon the formulas written into the law, and upon the strictures of time to protect their present policies. It is safer to remain within the confining limits of present policies and strictures. That is understandable.

Now, I think what we need to do is reach out and be experimental. As the chairman knows, one of the points that our committee has focused upon is the responsibility of the Senate to make it easier for the networks to give Senators and the Senate exposure. So we have developed some programs designed to make the Senate more newsworthy and better organized in taking advantage of the television time that is available.

And that is our responsibility. And we ought to meet it. But we also think that the networks and the stations, which aren't wholly under the control of the networks, ought to reach out to make themselves more flexible, to innovate, even though it means for a time they may be flooded by requests for time from unreasonable sources. They are going to have to find ways to manage that. Then after a period of experimentation, I think we can perhaps develop some wiser public policies.

Statutory formulas are going to be tough to work with. I know the chairman has pointed this out in meetings of the policies committee, and in informal discussions I have had with him.

Senator PASTORE. Of course I am looking for answers, too, as you very aptly put it. I must admit I have raised more questions than I have answered. When you say that this has to be left to the Congress, you know the prime responsibility is with this subcommittee, and principally myself.

I am looking for answers. I believe in the objective of what we are trying to do here. But the thing that creates a dilemma here is how we go about doing it.

In the final analysis it isn't going to be decided on the floor of the Senate, you know that. It is going to be decided by this subcommittee and I am looking for ideas. I hope that some ideas would evolve here that would be of assistance to this committee.

I mean it is the implementation that bothers me. It isn't the objective. The objective is noble, good. But how do I implement it, how do we implement it, how do we preserve fairness, how do we preserve the statutory requirements of 315? How do we modify them in order to carry out this objective so we don't get ourselves into more problems than we are trying to solve?

For instance, under the present law if a Member of Congress spoke on a subject and you were granted that time under the Fairness doctrine as a public service, a member of the Nazi party could ask for the same time and under he law he would be granted that time. A member of the John Birch Society would be granted the time. That, of course, is the dilemma, where you begin and where you stop.

That leads me to this question: Do you think that because the Constitution created the Congress of the United States that it would be in a unique position of its own that would absolve itself from this responsibility that if you hear the Congress, you must hear every other person on the subject?

Senator MUSKIE. On that point I would say I find that problem much easier to meet than the broader one that you first stated. If the network attitude toward the Presidency is that he ought to have the network at any time he requests the time, without their being obligated to give time to anybody else who wants to speak in reply to him, and I support this, then they ought to take the same attitude with respect to the Congress.

In other words, I think this institutional question is a much easier one to answer than the broader one that you pose.

Senator PASTORE. In other words, you have a strong feeling that the Presidency, being a constitutional office, and the Congress of the United States, being a constitutional office, that they ought to be placed in the same category insofar as this fairness is concerned?

Senator MUSKIE. Yes.

Senator PASTORE. Which would exclude all of the other groups from coming in and saying, well, we have the same right.

Senator MUSKIE. As a matter of fact, it goes to the third branch also.

Senator PASTORE. The judiciary as well, I know.

Senator MUSKIE. No; I understand the Chief Justice is going to speak to the American Bar Association this year, giving what might be labeled an official state of the judiciary report to the Nation. I understand that the networks are going to cover that in full and use it in full, not live but filmed.

So we may have the beginnings of a new development there that could be very healthy. There has been discussion in the Congress for some time that the Chief Justice be given the forum of the Congress once a year to report on the state of the judiciary.

So these concepts are changing. And it is easy with the Chief Justice or easier with the President, because they are single men and it is easier to give them time and to control and limit it. But it is more difficult with the Congress, since we have 535 voices and two branches.

So I think it is the logistics and mechanics of the things that are more difficult and that perhaps stand more in the way of implementation of what you and I are talking about than otherwise.

Senator PASTORE. That is a big problem, too. But I guess that could be worked out, you could do that in conference.

Senator MUSKIE. Mr. Chairman, with respect to this institutional point, it may be easier to plow new ground here than to settle the broader question all at once.

In a sense if we plow this new ground, if we find a way, legislatively or in the development of network policies, to give the Congress a more effective voice on television, this, of course, would give voice to many points of view that are not now heard and that may tend to meet the broader problem as well.

Senator PASTORE. What have you to say to the suggestion that we allow the television cameras to come into the Senate Chamber?

Senator MUSKIE. I think a few selectively might not be a bad approach, but not to the point where it would bore the American people and most of the time it would do that. But I don't think it is a substitute, or a real answer to the broad problem that we face.

The congressional point of view ought to be given a different kind of exposure, in the same way the President has. You don't limit the President's television exposure to his press conferences. Or to his day-to-day activities. You give him time that he controls and programs.

That is a lot different than covering simply the hit-or-miss debate on the Senate floor, which may or may not be enlightening. Most of the time it is not enlightening.

Senator PASTORE. And it is a judgment of the person running the camera.

Senator MUSKIE. That is right. The networks decide when they are going to cover the U.N. The networks or institutions decide when they are going to cover hearings like this. We are talking about controlled time to present a rational, easily defined congressional point of view on issues.

Senator PASTORE. Well, thank you very much. I would hope if you come up with any ideas as to how the mechanics can be worked out, you will let us know.

Senator MUSKIE. I hope to develop some in the course of these hearings, though I am not a member of the committee. May I say this in addition on that point, Mr. Chairman? I think these hearings are a way of getting at the problem.

The networks are aware we are holding them; they are aware we are considering new legislation; they would like to avoid new legislation, so this is a good prod, you know, to develop the ad hoc solutions to this problem that may work better than the legislation.

Senator PASTORE. And Dr. Stanton, Mr. Goodman, and Mr. Goldenson are here.

Senator MUSKIE. I saw them here yesterday; I thought that was a very useful development.

Senator PASTORE. That is fine.

Thank you very, very much.

Dr. Stanton, it is always a pleasure to have you here.

STATEMENT OF DR. FRANK STANTON, PRESIDENT, COLUMBIA BROADCASTING SYSTEM

Dr. STANTON. Thank you, Mr. Chairman.

Senator PASTORE. You may proceed.

Dr. STANTON. Mr. Chairman, my name is Frank Stanton; I am president of Columbia Broadcasting System, Inc.

I appreciate very much this opportunity to discuss with you the perplexing questions involving broadcasts of the views of governmental officials and party leaders. This is the most appropriate forum to bring out and discuss the issues involved and the problems that arise. The question is too important, I believe, for it to be the subject solely of contentious exchanges between partisan spokesmen or between rival branches of the Government.

Certainly the answers should be reached—not in the interests of the political parties or of the branches of the Government or of broadcasters—but in the interests of the American people. The com-

mittee and its staff are experienced in the critical but subtle implications that lie behind problems that often seem, on the surface, uncomplicated and consequently invite dangerously simplistic solutions. I am strongly convinced that Senate Joint Resolution 209 constitutes such a solution.

I am further convinced that the recent flood of other formulas and proposals—a summary of which is attached to this statement—offers no solutions that are either theoretically in accord with our traditions as a free people or practically susceptible of sensible administration.

All the measures that have been suggested, introduced, or petitioned for revolve around somebody's feeling that someone else is getting a more effective hearing on television that he, his party, his branch of the Government, or those who associate themselves with his views.

Senate Joint Resolution 209 is the legislative variant of these proposals. It would require broadcasting licensees to provide "a reasonable amount of public service time to authorized representatives" of the Senate and the House of Representatives to present the "views" of the two Houses on issues of public importance.

This institutional approach to broadcasts from the Congress is, I think, one of those propositions that seem highly plausible until you really look at it. What are "the views of the Senate and the House of Representatives"? Are they determined on the basis of recorded votes? Are they the views of the majority and of the minority as such? Are they the views of the committees to whom specific legislation is referred? Are they the views of the policy committees? And who would speak for an institution not conspicuous for its unanimity of expression even in the rare cases when there is near unanimity of view? Is it contemplated that, when a House is controlled by Democrats, only Democrats will be afforded time to respond, and, when it is controlled by Republicans, only Republicans will have this privilege? If, in the language of Senate Joint Resolution 209, the broadcasts in fact present "the views" of the two Houses, would those views not be, on specific issues, merely an elaborated rationale of the winning vote on each issue? And wouldn't those who voted against a measure demand a hearing, too?

The very variety of the proposals now before the Federal Communications Commission demonstrates the inappropriateness for governmental intrusion in this most sensitive area. The effect of these proposals would be to engraft an equal-time concept on the fairness doctrine. The breadth of these proposals is startling, raising substantial and completely unmanageable problems for everybody.

The Democratic National Committee, on June 22, 1970, for example, proposed that the FCC adopt a rule specifically requiring that, whenever the President appears on radio or television, equal time be afforded to all "responsible persons or entities" with opposing views. Such a rule in effect would require that, when the President next delivers a state of the Union address, "equal time to respond" would have to be given to groups with views contrary to those expressed by the President with respect to each of the many issues upon which he touched. Under such an approach, the grant of time to the congres-

sional leaders of the opposition to respond to a state of the Union address would not suffice to satisfy the proposed rule. Equal time would also have to be given to other significant contrasting views—whether from the principal opposition party, the President's own party, or other segments of the general population—just as long as they were "responsible." There would obviously be no end of "responsible persons or entities" eager for broadcast time.

No more practical is the proposal of the Senators sponsoring the amendment to end the war, which would supply time to "any substantial group of Senators opposing the President's views." Fourteen out of 100 Senators represented themselves as the first "substantial" group. By this quantitative standard, the Senators opposing virtually every administration-sponsored bill (or portion of a bill) would constitute a "substantial group," since relatively few bills pass the Senate by a majority of 86. And would not "substantial groups" of Representatives immediately seek a similar provision? Moreover, if the same ratio applied, this would mean that any 60 out of the 435 Members of the House of Representatives could claim the time—with any number of combinations making up the 60 providing only that they oppose the President.

An incumbent President's party, however, seems always to take the view that, except in a campaign, the President never speaks as a party leader and that, therefore, when opposing views are expressed after a Presidential broadcast, the ball is whacked back across the net again, and they should get time to oppose the opposers. Such chain-reaction proposals demonstrate the total impracticality of the concept they embody: That somehow a universal formula can be contrived and made into a rule or law and that the problem thereafter will be neatly solved. It will not. It will simply generate a dozen, a score, or a hundred other problems.

The proposals also suggest that the Government should, by administrative rulemaking or by legislative action, determine whose views would command broadcast time and under what conditions. This affronts at least the spirit of the first amendment.

In considering the substantial questions under the first amendment, I am aware, of course, that there is some distinction between the power of the Government over the print media and its power, deriving from limitations of the spectrum, over the broadcast media. But that power is not absolute, and the necessary regulation of broadcasting does not deprive the broadcast media of all protection of the first amendment. Compelling the broadcast media to make time available to specific spokesmen of the Government—a requirement that would clearly be unconstitutional with respect to any other medium—would not only violate the intent and spirit of the first amendment (which is to make the press an auditor rather than a conduit of Government policy), but would also abandon the wise policy which Congress has heretofore set forth for the regulation of the broadcast media. That policy is exemplified by the strong prohibition against Government interference with program content and selection, which is provided by section 326 of the Communications Act. (Section 326: "Nothing in this act shall be understood or construed to give the Commission the power

of censorship over the radio communications or signals transmitted by any radio station, and no regulation of condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communications"), and which this Committee, despite the inevitable difference of opinion on the merit of that content, always have respected.

Surely a legislative requirement which would afford to officials of the executive branch of the Government, and only to such officials, compelled access to the broadcast media, would be widely regarded as discriminatory and improper. It seems to me that a legislative enactment which would provide such mandatory access to radio and television only for members of the legislative branch of the Government is hardly less objectionable. Such an enactment would presume—for the first time in American history—that incumbent members of the Federal legislature have a privileged status over all other American citizens, in or out of office, in utilizing organs of information. This idea, I believe, would be highly repugnant to the American people.

Senator PASTORE. Do you mind an interruption there? I think I understand the problem that you are raising. As a matter of fact, I have raised it several times before.

Forgetting for the moment the aspect of implementation, which of course is a complex problem, very, very complex problem, but looking alone to the principle of it, is time given to the President of the United States on his initiative out of respect for the prestige of his office or because he is only one person speaking?

Dr. STANTON. It is a combination of factors, Senator Pastore. I think it starts with respect for the office. The President also has news value. Moreover, it is easier to treat with one leader than it is to treat with several.

Senator PASTORE. I am talking about the principle now, not expediency, because that will get me into the next question. You have raised the point of the complication that we have so many Members in the Congress and there are many divergent views. It would be difficult at times to decide what view should be expressed without granting equal opportunity to someone who has a contrary view.

I follow your argument there; it is rational and very logical, but I am leaving that out for the moment. I am getting down to the strict proposition of principle, the principle involved. Under our established system of government there are three coordinate branches of Government, each with equal integrity. One makes the laws, one enforces the laws and the other interprets the law. The judiciary interprets the law, the executive enforces the law and the legislative makes the law.

Now, considering each branch of Government as a sole entity, without going further back into the complication of how many members are reposed in one branch of Government as against another, do you see a distinction at this point between the privilege and integrity of the Congress to speak to the American people as an entity, a coordinate branch of Government as contrasted to the Presidency? Is there a distinction in principle?

Dr. STANTON. Not in my mind.

Senator PASTORE. Isn't that the point we are trying to establish here? That is exactly the point we are trying to establish here. I do not know how you are going to work this out, I must admit that. But the argument that has been made here, and I have not heard it refuted yet, is the fact that the position is being taken both by Mr. Fulbright and by Mr. Muskie, and there are a lot who agree with them—it might be when you work this thing out you get yourself into more trouble than you are trying to resolve, as you pointed out.

But speaking alone on the principle, I think the very thing that makes you accede as an American citizen to an invitation on the part of the President to allow him to speak to the American people, why shouldn't the same principle apply and the same integrity repose in the Congress as an entity doing it, beyond the confusion that might develop?

Can you answer that question?

Dr. STANTON. It is difficult to answer the question with the constraints that you suggest.

Senator PASTORE. I mean you asked the question here.

Dr. STANTON. This is the reason we are meeting. If you did not have these questions, we would have solved the problems a long time ago.

Senator PASTORE. In other words, can we agree that while we recognize the entity of Congress and the prestige of the Presidential office, the fact still remains that what deters us in reaching a solution to this problem are the complexities of implementation?

Dr. STANTON. Yes, sir. We have lived with that problem for a long time. When we were trying to develop the "Loyal Opposition," there was no ready place to turn in our form of government to find the spokesman to redress the political imbalance. This is awkward. But it does not mean that the American people are being denied balanced coverage of political issues.

Senator PASTORE. No; I am not getting into that. I am merely saying it would be a greater opportunity for the American people if they had this privilege. No one is speaking here about denial to the American people, at least I am not.

Dr. STANTON. I simply wanted to say that there is ample news coming out of the Congress that is reported on television. As I listened yesterday to Senator Fulbright and again this morning to Senator Muskie I got the impression that unless Congress were to be on the air as an institution, the people were not going to know what was going on in the Halls of Congress.

This is anything but the fact, because if you go back over the record of what is carried on network news and what is on local station news, and what is in newspapers, there is an enormous amount of information going out every day. Witness the fact that we have reporters and cameras in this room today.

Senator PASTORE. I know, but you as the president can command that camera to be here anytime you wanted to and I could not order it back. You are the one who decides whether or not that camera should stay here. That is the point he made.

Dr. STANTON. With a free press, I think that is the way it should be, Senator Pastore.

Senator PASTORE. That is from your point of view. On the other hand, you see, you are the one who is determining what is important that the public should hear. And Mr. Fulbright made the point that the chances are the Congress itself sometime ought to decide what the public should hear.

Dr. STANTON. There are things that I am going to say this morning that will not be reported on the CBS Television Network tonight, but I would not superimpose my judgment on what is news over the judgment of our news professionals.

Senator PASTORE. That may be so, but it will not be a blank screen; maybe it will not all be there, but some will be there and it should be. The point is, let's assume for the moment, merely hypothetically, let's assume for a moment the Congress could designate that one person to speak for the Senate; would you have any qualms about it?

Dr. STANTON. I have got to set up the answer——

Senator PASTORE. All right. I will give you all of the time you want. I am not trying to entrap anyone. I am merely trying to get this thing down to the possibilities. I know all of the problems involved even before you gentlemen came to testify. I know the Communications Act. I know all of the problems involved. But what I am trying to do is get myself down to a possibility here. If a possibility can be worked out.

If the Congress of the United States of America had the ability to choose one person who could speak for the Congress, would you pay that individual the same respect as you pay the President of the United States?

Dr. STANTON. Yes, but it would trouble me very much.

Senator PASTORE. What would your trouble be?

Dr. STANTON. It would trouble me because in my opinion you would be changing the whole format of the Congress if you did that.

Senator PASTORE. Why?

Dr. STANTON. Because——

Senator PASTORE. You mean we could never agree on one subject?

Dr. STANTON. That is one of the practical problems; yes. But I am setting that aside as you set it aside before. I do not believe that the Founding Fathers saw Congress as having a single leader. And that would trouble me as a citizen, not as a broadcaster.

Senator PASTORE. I am not talking about a single leader; I am talking about a single spokesman.

Dr. STANTON. In time, if he continued as the sole spokesman and if you attribute the kind of influence to television as Senator Muskie did this morning, then I would submit that such a man is going to be more than just a spokesman.

Senator PASTORE. You see, Dr. Stanton, what I am trying to establish here is Congress as an entity. Let me get it clear on the record, whether or not the Congress, in the concept of the Communications Act, can be classified as an entity, whereby all of these other attendant problems that arise under the fairness doctrine could be dispelled. That is our problem.

If you ever see the Congress of the United States as such a constitutional entity as to be regarded under the Communications Act with that exclusivity that is now being granted the President of the United States, it would obviate all of these other conflicting and controversial facets from pouring in.

Do you understand my question?

Dr. STANTON. I do understand your questions. I have great difficulty in divorcing my answer from the problems and from the structure of the Congress because I do not see how you can end up with a single spokesman for the divergent views and personalities that you have in your membership. This is as it should be. What you are formulating now is the very question that we as broadcasters had to face. I am talking now of CBS, but others have faced the same problem. How do you bring balance into the presentation of the news and issues of the day when the President has used prime time television as much as the incumbent President has.

We said to ourselves, what structure is there to which we can turn to get a spokesman to be, if you will, the "loyal opposition"? And we searched——

Senator PASTORE. You could not do it, I know that.

Dr. STANTON. We could not find it. We thought about the policy committees; we thought about the Congress. We would except, as a matter of fact that in the formula we did come up with, that the Democratic National Committee would turn to Members of Congress as spokesmen on such a series of broadcasts.

But it is exactly the same thing you are reaching for now. I sympathize with you, because we have been going through it for a long time. This is not something that just happened. We faced this before and tried to find an answer.

I have come down and talked with legislators and others about ideas for an appropriate solution.

Senator PASTORE. You have talked with me and I have talked with the presidents of other networks.

Dr. STANTON. Certainly. The way we have been able to handle the problem is by three different kinds of news and public affairs programing. We have our hard news broadcasts, for example, the evening news on the television networks. And we have hard news, of course, on the stations.

We try to have a balanced presentation of the news on important issues where there is controversy. When the President speaks, there are leaders on the Hill and elsewhere who will speak the following day and give contrary points of view. Those views are reported. They are reported on all of the important radio and television news broadcasts. But those are frequently brief bursts of comment.

Senator PASTORE. That is the argument that was made.

Dr. STANTON. That is right.

We go then from the hard news form to broadcasts where we have a single representative of a point of view who is questioned by a panel of newsmen. The procedure was referred to very colorfully yesterday by Senator Fulbright. Those are broadcasts designed to illuminate issues by the leaders who appear before the correspondents. A lot of news is

generated in that type of broadcast. That is another approach to the problem.

In addition we have special broadcasts. For example, on the Cambodian issue, which cut across party lines, we preempted an hour on a Friday night back in June and we invited six Senators to sit down and talk face to face about their various points of view on that issue.

The six were not selected along party lines. We had on one side Senators Dole, Stennis, and Gurney; on the other side of the table we had Senators McGovern, Cooper, and Hughes.

Within that hour there was a full review and discussion of the various issues surrounding the Cambodian problem.

Senator PASTORE. Of course, the argument was made here yesterday—and whether or not it is a very strong argument is another thing—but the argument was made the only fault with that was the network decided whom to invite. And the argument was made here that Congress itself ought to decide who should talk.

Dr. STANTON. I do not want to be impertinent, but I do not think we ever would have got that broadcast on the air if we had come to the Hill.

Senator PASTORE. You may be right about that, and you are not being impertinent, because I think we are talking about the principle here.

Dr. STANTON. I understand.

One other point, of course, is that while CBS did this special broadcast, the other networks did similar broadcasts. As a result you had a pluralistic approach rather than a monolithic report coming simultaneously from all networks.

Senator PASTORE. Let's assume for instance any President, whether he be Republican or Democrat, speaks to the American public and he becomes critical of the opposition party, again whether it is Republican or Democrat, what is the solution of your network with regard to that?

Don't you think the opposition party has a right to answer that? And who does? Is that a problem that has confronted you?

Dr. STANTON. Certainly. Let me give you an example.

In December of 1967 President Lyndon Johnson addressed the AFL–CIO convention in Miami Beach. We were told that the President was going to make an important statement and we broadcast the President's remarks. If you recall, he was pretty rough on Congress and on the Republican side of Congress in that particular address. The very next morning, we, CBS, without any request from the opposition, turned to the opposition party on the Hill and offered time to respond to the President.

We had something going then that we don't have today in the opposition party on the Hill. There were two spokesmen, one from the Senate and one from the House, for the Republican Party, in the persons of the late Senator Dirksen and Representative Ford. On frequent occasions when there were issues between the administration and the Republican side of Congress, Senator Dirksen and Mr. Ford were the spokesmen. A pattern evolved out of our freedom to solve the problem.

The Republicans gave the media, if you will, spokesmen to treat with the various issues that came up. That meant we did not have to turn to a party organization to redress the situation in Florida, because we had spokesmen to whom we could turn.

Senator PASTORE. Are you actually saying the integrity of the broadcasting industry requires that you do not use a subterfuge, but you do go to those who are the outspoken spokesmen for an issue in contradiction to any charges that are made? Is that what you are actually saying? In other words, what I am trying to say is on this question of whether or not you should seek out the spokesmen or whether or not the Congress itself should delegate the spokesmen, are you taking the position that the integrity of your industry requires that you go to what you consider to be the man who can best answer to the American people, otherwise you yourself will have to answer to the American people?

Dr. STANTON. That is right.

Senator PASTORE. Any questions on this subject, Mr. Griffin?

Senator GRIFFIN. As you were making that point, Dr. Stanton, I was wondering why under the present circumstances you wouldn't turn to the elected leader of the Democrats in the Senate and the House, as you did to Senator Dirksen, the elected Republican leader and Congressman Ford, the elected leader of the House on that other occasion. You seem to have a problem now and I don't understand what it is. The Republicans have elected leaders and you turned to them in that situation. I am not saying you should turn to the Democrats now. But I don't quite understand the problem. It seems to me you would turn to the leadership that the Democrats have elected in the two Houses of Congress.

Dr. STANTON. Let me give you a frank and practical answer. At that period in time, the Republicans welcomed that particular formula of turning to Senator Dirksen and Mr. Ford. From time to time when we have indicated that we planned to take such an approach on an opposition broadcast to the President by turning to specific Democrats, we could not get agreement among the Democrats as to whom we should turn. That is the practical problem

Senator PASTORE. Are you saying you did ask the leadership and they——

Dr. STANTON. We did not because in this particular instance it was not parallel to the situation I described with President Johnson in Miami Beach. There may be a difference of opinion across the bench on that, but we have not found that President Nixon has attacked Congress in any major television speech the way President Johnson did in that particular instance.

Senator PASTORE. I mean that is what led you to give time to Larry O'Brien?

Dr. STANTON. No.

Senator PASTORE. Then tell me why you gave him the time?

Senator GRIFFIN. I would like to have the answer to that——

(Laughter.)

Senator GRIFFIN (continuing). But isn't there also a point you made earlier that you have not repeated, and that is in President Johnson's

speech before the AFL–CIO, he was not only critical of Congress, but he was particularly critical of the Republicans in Congress.

Dr. STANTON. That is the reason there has not been a parallel. I did not mean President Nixon attacking the Republicans, I meant President Nixon attacking the Democrats in Congress.

Senator GRIFFIN. President Nixon's criticism of the Congress has not been directed particularly or directly at the Democrats in Congress. In many instances the blame can also fall on some of the Republicans.

Senator PASTORE. Now wait a minute. Wait a minute. I am not disputing his right to criticize——

Senator GRIFFIN. I don't think he has directed criticism.

Senator PASTORE. He used the words "the Democratic Congress." He used the word "Democratic." Why do you think we got all excited about it? Do you think he was criticizing the Republicans? I mean that is what raises the question. I said that on the floor of the Senate, you were there the day I announced these hearings. The President has a perfect right to get up and say that I sent bills to the Congress and the Congress hasn't acted. I don't think anybody in Congress can ask for equal time then. But if the President gets up and says I sent a bill to Congress and as a matter of fact the bill never came up here, and he is blaming the Democratic Congress for not passing the bill, I think the Democrats have a right to answer him. It is as simple as that.

You may proceed.

Dr. STANTON. Continuing with my statement, Senator Pastore, suggestions that the Commission be charged—here I am talking about the FCC—be charged with the function of making selective decisions, as to who should speak for groups opposed to administration policy, are no less unrealistic for practical reasons than they are disturbing for constitutional reasons. I assure you that the judgments that must be made in selecting spokesmen on public issues are very difficult for broadcasters. And we do make mistakes. But at least we do not act under the straitjacket of a rigid rule, and we retain the flexibility to correct our mistakes promptly and, we hope, effectively. Moreover, the consequences of our mistakes are somewhat less far reaching.

This leads us to the crux of this whole matter: The significant disadvantages of a uniform approach and the historic and demonstrable advantages of diversity. Any decisions preempted by the Government in this area must, of necessity, be uniform and must be equally applicable to all broadcasters, including both networks and individual stations. If the stations of CBS must present a particular reply to the President, so must these of ABC, NBC, the Corporation for Public Broadcasting, and every other broadcaster who presented the President's original address. At present, broadcasters are free to reach different judgments, and they do reach different judgments.

Recent experience in this respect is perhaps instructive. In addition to their numerous other news and public affairs broadcasts treating the issues brought up in Presidential appearances, the nationwide networks have provided time to various congressional spokesmen to reply to certain of the President's addresses. CBS also decided to offer time

through the Democratic National Committee to spokesmen for the "Loyal Opposition." And the committee—not CBS—made the decision to utilize its first broadcast to present its chairman as the representative of the Democratic party. Thus, a variety of answers to the President's views were presented on the air.

This kind of pluralism unfortunately would be foreclosed by any Government-imposeed reply requirement, whatever the formula or device used. If broadcast licensees cannot be allowed to determine the amount or nature of the coverage which is to be given to the positions that the branches of Government take on various issues, and if this determination is to be made by the Government itself, the broadcast press would be converted into little more than an official conduit of controlled information.

The argument is made, in support of such an extraordinary proposition, that judgment as to access to the media should not be left to the networks. The argument it seems to me is untenable.

First of all, by far the majority of the news seen and heard by the American people on television is on locally produced news broadcasts and not those produced by networks. In the top 50 markets, for example, 75 percent of news viewing is of locally produced news broadcasts. And this does not include radio news, although there are periods when radio news audiences far outnumber those of television. The vast majority of radio stations get their news from non-network sources; and in the case of network affiliates, they too have their own news broadcasts as well as those of the networks. Broadcast news is available, as a matter of fact, from far more numerous sources than the daily press.

Second, the volume of news carried by the broadcast media has grown immensely. Some of the most widely listened to radio stations in the country now carry news around the clock. Television, too, has expanded its news and public affairs broadcasts. Comparing CBS News broadcasts on the CBS Television Network for the years 1956 and 1957 with those of 1968 and 1969, for example, CBS broadcast more than twice as much news in the latter period (1,354 hours as against 675 hours). If we limit the comparison to evening hours, 6–11 p.m., there was 3½ times more news broadcast in 1968 and 1969 than in 1956 and 1957 (596 hours to 157 hours). This has made possible the inclusion of more numerous and more varied points of views on newsworthy issues.

It is clear that when the bill of rights was passed, its authors considered the multiplicity of publications the surest safeguard of a healthy and constructive press. There is no evidence that a similar pluralism is not the greatest safeguard of healthy and constructive broadcasting. Not only does rivalry within a free medium insure this, but it is further guaranteed by the rivalry among the various media. Even if we focus on network news alone, there is ample evidence both of independence and diversity in the treatment of differences of opinion between branches of the Government and between political parties as well as in all other phases of the reporting of political news. Each of the nationwide networks follows an entirely independent policy with respect to these matters as has been the case with regard to responses to Presidential appearances.

Since criticisms have been directed at the loyal opposition concept that CBS adopted for this purpose, let me digress briefly to describe that policy. I would emphasize that it is not a new policy, but merely the extension of a policy which we have followed on an ad hoc basis for many years, under both Republican and Democratic administrations. As you know, each major party, when not occupying the White House, has complained about what it conceives to be a disparity between Presidential appearances on television and the opportunities available to the principal opposition party. The loyal opposition time is simply one means of implementing longstanding CBS policy to achieve fairness and balance in the treatment of public issues, including the disparity between Presidential appearances and the opportunities available to the principal opposition party. Central to that policy is the belief that no single mechanism can afford a complete answer to the problem of assuring fairness and balance in the treatment of public issues; and we do not believe, and did not intend, that the loyal opposition concept should afford the sole vehicle for the presentation of opposing views. On the contrary, our approach to the matter consists of three types of broadcasts:

First, we endeavor, in the exercise of our best professional judgment, to insure that our regularly scheduled news broadcasts provide ample opportunity for presenting views differing with those of the administration, to the end that the inherent power of an incumbent administration to make news does not result in an imbalance in the discussion of public issues.

Second, when our regularly scheduled hard news broadcasts do not result in adequate opportunity for the full and effective discussion of issues raised by the President, we make television network time available—including prime time—for the discussion of such issues at length. This may be done either in regularly scheduled public affairs broadcasts—such as the Tuesday night "CBS News Hour" or the Sunday after "Face the Nation," or in specially scheduled preemptive broadcasts such as the recent prime-time broadcasts presented by the CBS Television Network in which the Cambodian issues have been explored and discussed at length, not necessarily along partisan lines.

Third, from time to time, as appropriate, under our loyal opposition concept, we furnish free broadcast time to the principal political party that does not occupy the Presidency for the direct presentation of the views of its leaders.

The recent criticism directed to the offering of time by CBS to the Democratic National Committee for the presentation of Democratic views, with respect to issues raised by the President, arose, not so much because we made time available for the expression of views in opposition to the President, but because some have contended that the Democratic National Committee is an inappropriate entity to administer a grant of broadcast time. The appropriateness of the national committee has been confirmed on a bipartisan basis for many years, and I do not recall any suggestion having been made, prior to Republican Chairman Morton's recent complaint, that a national committee should not be permitted to mediate the presentation of antiadministration views.

Previous Republican chairmen have taken a different position from Chairman Morton. For example, in 1963 Republican Chairman Willian E. Miller requested, and was granted, time on behalf of the Republican National Committee to respond to President Kennedy.

A close analogy to the various proposals for reply time is found in the equal-time requirements of section 315 of the Communications Act. The Fulbright resolution and the complaints now before the Commission, in effect, seek to expand this equal-time requirement to cover all presidential appearances, as well as all appearances by political candidates. As I have already stated, from a practical standpoint nothing could be more mischievous to the common goal of informing the public.

Congress, until now, rejected such proposals. Indeed, at this very time, Congress is considering revision of section 315 to exempt the President and the Vice President from its equal-time provisions, apparently because Congress believes that, in this area at least, broadcasters are capable of exercising a sound discretion, and that to permit broadcasters some latitude for journalistic judgments will best serve the interests of the viewing public. This committee has approved, and the Senate has now enacted that legislation. It would be a startling turnabout for the Senate now to seriously consider applying equal-time provisions to the President's every broadcast appearance while at the same time rejecting that concept when applied to the President in his capacity as a candidate.

In closing, let me observe that broadcast news, like that of other media, is imperfect. But it is most certainly more satisfactory than it would be under any system in which news judgments are made by Government officials or dictated by legislative or regulatory formulas. With all respect, I strongly urge this committee to recommend against the adoption of the Fulbright resolution. And I most earnestly entreat this committee clearly to reassert its long-held belief that the broadcast press is, and should be, fully entitled to make independent decisions, free of governmental interference, subject only to the general requirement of overall fairness and balance.

That is the only way to make Government work at its best. It is the only way to make the media work at their best. It is the only way to make both serve the public interest at their best.

(The summary of recent political broadcast petitions follows:)

SUMMARY OF RECENT POLITICAL BROADCAST PETITIONS

1. On May 19, 1970, the Democratic National Committee sought a ruling from the FCC requiring broadcasters to sell time to "responsible entities" to express their own views on public issues and to solicit funds for carrying out political or other objectives.

2. On May 25, the "Committee for the Fair Broadcasting of Controversial Issues" filed a complaint with the FCC alleging the failure of two television stations to comply with the Fairness Doctrine in that the stations did not afford "equal time" for the presentation of "contrary views when the President of the United States addresses the nation on television."

3. On June 12, the "Business Executives Move for Vietnam Peace" asked the FCC to review the denial by the Commission's staff of a complaint which asserts that fairness can only be achieved with respect to Presidential addresses concerning Southeast Asia if a "comparable block of time in a comparable format" is offered to "a responsible spokesman for the opposing point of view."

4. On June 22, the Democratic National Committee proposed that the FCC

adopt a rule specifically requiring that whenever the President appears on radio or television for a press conference or speech, it is to be presumed that he is expressing a view on controversial issues, and licensees and networks are affirmatively required to seek out and provide "equal opportunities" to responsible spokesmen with significant contrasting views.

5. On July 8, a bi-partisan group of 14 Senators—sponsors of Senate Amendment 609, the "Amendment to End the War"—filed a complaint with the FCC seeking a ruling that the networks should "provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issue, and the President has initiated debate via nation-wide television."

6. On July 13, the Republican National Committee petitioned the FCC for time to reply to the July 7 "Loyal Opposition" broadcast by the Democratic National Committee.

7. On July 16, eleven Senators petitioned the FCC for "comparable time without cost to present contrasting and opposing views to a May 12 broadcast concerning the "Amendment to End the War."

Senator PASTORE. Of course, I don't think there is any attempt here, Dr. Stanton, to deprive the news media of its exclusive control in stating the news. I don't think that is intended at all. I think what is intended here, if it can be worked out, is a certain amount of time being alloted to the Congress of the United States primarily to bring the issues before the American people and not to say what the news is going to be.

You still would retain that authority. But let me ask you this question: You have a strong feeling that somehow it would be rather difficult to work out the mechanics of this because of the number of people involved in our Congress. Without answering the question immediately, but thinking about it, what would you say to a suggestion that the networks on their own initiative without legislative fiat, grant prime time to the Congress of the United States, say for a year, on the basis of seeing what the Congress could do to work out the implementation—if it didn't work out no one would be hurt—on the other hand if it could be worked out, it would be the basis for a better understanding later on.

I quite agree with you that if you legislate alone for the Congress that you run into the question that you are not giving it to the other branches of government and that is a problem to be considered by this committee. After all, we are not talking about all of the news time, we are only talking about some time. I realize all of the problems that are involved, all of the ramifications that are involved. I am wondering if somehow some system, either voluntarily or otherwise, couldn't be worked out whereby we could experiment on whether or not this could be done, and what the effect of it would be after it is done.

It might well be that you couldn't even get an audience to listen, I don't know. Maybe you could get an audience to listen, I don't know. I know a lot of people listen to the President. I think a lot of people would listen to the Congress. Maybe not as many, maybe more; I don't know.

These are all things that are conjecture at this point, but if the networks could voluntarily say, and this is merely a suggestion now, I don't know if it could be satisfactory even to the authors of this bill, I don't know.

I know this committee has been able to work out a lot of things. You will recall that when we had the Kennedy-Nixon debates in 1960, there was a proposal made that you be ordered to do that and you came before this committee and said, "Don't order us to do it, leave it up to us to do it," and you did it. And it worked out all right; so much so that this committee reported a bill only recently to the effect that the broadcasters would be relieved from the effects of section 315 during the presidential campaign, because we had confidence in what you did in 1960.

I am wondering if somehow you couldn't think about this—I don't want a fast answer on it; I don't want a commitment now; but as an alternative, if we have to get to an alternative, merely to experiment as to whether or not you are right, or Senator Fulbright is right, I am right, or Senator Griffin or anybody is right—if we couldn't put this on a trial basis, on a voluntary basis, to see if the Congress is competent to produce this one responsible man or to refine it in such a way you wouldn't get more confusion that we have now.

Dr. STANTON. It is a very interesting suggestion and one we will take under consideration. I would say, as a footnote to my response, that you have on the Democratic side, at least as far as Congress is concerned, an opportunity to work within the "loyal opposition" framework that we have offered.

It has not been clear to me, especially this morning, whether we are talking about Congress responding to the President, in which case we are talking about both sides; or whether we are talking about a partisan reply to the President.

Senator PASTORE. No; it is a slight combination of both, but I would rather approach it on the score that if the President did criticize an opposition party, in a news conference, then of course you would fall back on what motivated you in the President Johnson case.

I am speaking now of time to be allowed to the Congress to appear before the American people on its own invitation to explain to the people some of the important issues that confront the Congress at the time.

That is what I am talking about. As I said yesterday, let's not look for a quarrel, if this is exposure, let it be exposure. I don't think it would be in the interest of the Nation to set up the implication that there is a hostility between one and the other. I would hope the spirit of America would be more cooperative than that, and we were all working in the public interest.

Of course, different people look at different issues in a different way. But, frankly, I am not concerned with a quarrel with anybody. All I am concerned with is, if there is an opportunity here to better express to the American people what the position of the Congress is, and what the problems of the Congress might be on certain very important subjects, they ought to be given an opportunity to explain it in their way.

And that is all I am talking about. I don't think anyone should impugn the integrity of the Office of the President of the United States and I don't care whether he is a Republican or a Democrat. I have served under five Presidents; I have disagreed with all of them.

I have admired and loved all of them, because I always felt they were trying to serve the United States of America in the best way they knew how.

Whether or not I disagreed with them in judgment is another question. As far as I am concerned, as long as a man sits at 1600 Pennsylvania Avenue, he is my President. If I want to criticize him, I am going to criticize him, but I never question his motives.

Your witness.

Senator GRIFFIN. Dr. Stanton, you made a reference at one point in your testimony to the use of television by incumbent Presidents. I asked the staff for some statistics about the use of television by Presidents during their first 18 months in office.

The information I have is that during his first 18 months in office, President Kennedy was on network television 27 hours and 12 minutes.

During the first 18 months of President Nixon's administration, he was on network television 16 hours and 17 minutes. In other words, President Kennedy was on television not quite but almost twice as much during the first 18 months as President Nixon.

I don't know whether you want to take issue with those statistics or not——

Dr. STANTON. I do not take issue with the statistics as you stated them. I do not have my figures at hand, but I will take your figures.

The only point I would make in commenting upon those figures is that the name of the game is reaching people. For that very reason you talked about wanting prime time for the Congress to reply to the President because prime time is where the action is. And if you look at the figures in terms of prime time, you will find that President Nixon has had as many appearances as Presidents Eisenhower, Johnson, and Kennedy, in total, had in the first 18 months of their terms in office.

Senator GRIFFIN. Don't you think it would be reasonable, however, if we are going to cite statistics, that we have both statistics?

Dr. STANTON. No question about that.

Senator GRIFFIN. As I understand it, those who advised President Kennedy suggested that maybe there was more coverage involved in an earlier televised appearance, because excerpts would then appear on the news programs at 6 o'clock and 11 o'clock at night, in addition to whatever live coverage there was. Incidentally, the figures that I have given here do not include coverage during regularly scheduled news programs which the President gets much more of than we are talking about. So each President makes a choice, of course, as to how he wants to communicate to the people. During that period you make reference to one occasion, where CBS gave time to Chairman William E. Miller to respond to President Kennedy. I don't know what the circumstances were, but I take it there was a political aspect in President Kennedy's appearance on that one occasion?

Dr. STANTON. I had not reread President Kennedy's statement at that time, but as I recall it, it had to do with his economic message and Chairman Miller asked for time to reply.

Senator GRIFFIN. I will go back and check, but I would rather bet my hat that President Kennedy probably had some direct partisan content in his remarks.

Dr. STANTON. I would not deny that.

Senator GRIFFIN. During that period when President Kennedy used television, in terms of actual hours almost twice as much as President Nixon, CBS gave the loyal opposition on one occasion some time to respond.

Dr. STANTON. We have given it on other occasions also.

Senator GRIFFIN. I see. The chairman of the national committee. Do you think that the President of the United States, whether he be a Democrat or a Republican, always speaks as a leader of his party when he speaks?

Dr. STANTON. Not at all.

Senator GRIFFIN. Isn't it conceivable he could speak a good deal of the time as President of all of the people of the United States?

Dr. STANTON. There is no question about that.

Senator GRIFFIN. You gave equal time to what you call the loyal opposition, to the hatchetman of the other party to make political attacks. Who is going to answer that?

Dr. STANTON. Senator Griffin, we have not given equal time to the "Loyal Opposition." Nobody has talked about equal time. This is not a tit for tat situation.

Senator GRIFFIN. Under what you call loyal opposition time, you alloted an hour, was it, to Larry O'Brien?

Dr. STANTON. 25 minutes.

Senator GRIFFIN. A half hour?

Dr. STANTON. 25 minutes.

Senator PASTORE. He is not a hatchetman either.

Senator GRIFFIN. To make a hatchet, political attack on the President of the United States, a purely partisan political attack, who is going to answer that on free time on your network and when?

Dr. STANTON. Unless ordered to do so by the Federal Communications Commission, CBS would not propose to give time to the Republican National Committee to answer the Democratic National Committee.

Senator GRIFFIN. A purely partisan political attack by the chairman of the Democratic committee is not going to be answered as far as you are concerned? On your time?

Dr. STANTON. Not in the format that you are talking about.

Senator GRIFFIN. Do you think that is fair?

Dr. STANTON. If this were to persist, if this is the way the "Loyal Opposition" broadcast series develops, I think we would have to reconsider.

Senator GRIFFIN. That is progress. I am glad to hear that anyway. I am not necessarily against you giving Larry O'Brien some time to make a free political attack. But I would think you would at least give equal time to the chairman of the Republican Party to make a purely political presentation.

Senator PASTORE. But that would be the second bite at the cherry. The President did it once, now you want the other fellow to do it again.

Senator GRIFFIN. That is assuming the President spoke as head of his party, on a political partisan basis.

Senator PASTORE. That is right. And that is assuming Larry O'Brien is a hatchetman. If we are going to begin to assume, let's assume.

Dr. STANTON. Senator Griffin, if I can get the ball back on this side of the net for a minute, if that is the way it ends up, that the President speaks and then someone answers the President, then someone answers the man who answered the President, then we have not redressed the imbalance that I described.

Senator GRIFFIN. You sure haven't. You didn't have this sort of a format when President Kennedy or President Johnson was President.

Dr. STANTON. Will you grant that there is a different order of magnitude in the use of television today by the President than there was before?

Senator GRIFFIN. No, I will not.

Dr. STANTON. Then you don't believe the numbers. I am sorry, but I have to disagree with you on that.

Senator GRIFFIN. But aside from that, aren't you forcing the President of the United States into refraining from communicating with the American people as President? Or if he is going to communicate with the American people and subject himself to a partisan attack, then he has got to use the time for political purposes himself, and speak as the head of his party, rather than as President of all of the people of the United States? Do we really want to do that?

Dr. STANTON. Senator Griffin, if that is how the "Loyal Opposition" concept will end up, then we will find another formula.

Senator GRIFFIN. That is where we are on the first program. I don't know what your requirements are on the second program. Maybe you can tell us.

Dr. STANTON. I don't intend to tell you, sir, because we don't have those definitions at this time. The "Loyal Opposition" is an occasional, time to time, experimental series. We have tried once. I don't think we ought to judge the whole concept on one experience.

Senator GRIFFIN. Well, I agree with you on your evaluation of the Fulbright statement, I think your position is exactly right. But I certainly disagree with you very sharply on your analysis of the so-called loyal opposition time, which you suddenly give when a Republican is in the White House, but you weren't very concerned about when the Democrats were in the White House.

Dr. STANTON. That is not quite accurate, because we were the ones who gave the Republicans time to reply to the state of the Union.

Senator GRIFFIN. Yes, that was one occasion, that is true.

Dr. STANTON. Let's not dismiss it, because we are only talking about one occasion concerning the "Loyal Opposition." And it has not been just one occasion in the case of replies to the state. We have provided time to the opposition over a number of years.

Senator GRIFFIN. It seems to me I read where you are going to give them a lot more time on the same basis.

Dr. STANTON. You may have read it, but we haven't announced it.

Senator GRIFFIN. I see. That is good. Thank you.

Senator PASTORE. This is what I said on the floor when they announced it—

> Mr. President, this is a very complex problem. The President of the United States is the President of the United States, whether he be a Republican or a Democrat. Indeed, he is the President of all of the people of the United States, with the right and responsibility to communicate with them.

But there have been instances when certain very delicate areas have been intruded upon, that actually created a dilemma for the networks and broadcasters.

Some people resent the particular things that are being said; they dissent and feel they should be allowed to explain their side of the issue.

I think it is a privilege of the President of the United States to say, "I have sent a bill to Congress on such and such a subject and the Congress has not done anything about it."

I think the President has the perfect right to express his opinion. But whether the President can make such a statement without someone answering him, that is the important question.

Such a statement as, "I have sent a bill to the Congress, but the Democratic Congress has done nothing about it," involves getting into partisan politics. This raises a question. That is where the dilemma arises.

I would think the President is perfectly free to say that if he wants to say it, I cannot stop him. But if we are going to follow the rules that the President is the President of the United States and speaking for all of the people, then we get into an area that is more or less political. We are getting people who resent it.

No one is more sensitive than a politician, especially when he is up for election.

The point I am making is there is no intention of this committee to get into partisan politics. I don't care whether you gave Larry O'Brien the time or Mr. Morton the time. That isn't the question here.

It isn't a question of how much time we have given to one or another President. All we are talking about here is when we get into politics, and we all know what politics is, then there ought to be the application of the fairness doctrine.

That is about the size of it. And men will differ. But frankly I don't see the resentment on the part of the Republicans because after the President spoke, Larry O'Brien was given a certain amount of time, and now his counterpart will be given more time and somebody else should be given more time, and I will tell you very frankly all of this is getting to be a little confusing, and a little ridiculous. I think we ought to sit back as sensible and rational people to talk about this in a constructive way.

I am not here to blow the horn for the Democrats or deprecate the Republicans. What I am here for is to see that we resolve an important subject here. And it has arisen, television is a dynamic force. The big question here is exposure.

I repeat again we are not here to quarrel with anyone.

Senator GRIFFIN. Dr. Stanton, if we can go back to the merits of the Fulbright bill for a minute, I would like to develop a thought. If you were forced by legislation to grant equal time to Congress as an institution, which I take it is the purpose of Senator Fulbright's legislation, wouldn't it be just as logical and necessary for the Congress to include a provision that the judicial branch of Government be accorded time, as an institution?

After all, there is conflict not only between the executive branch and legislative branch, which is what we are focusing on now, but there is conflict among the legislative, executive, and the judicial branches of the Government as well. Doesn't that open up that question?

Dr. STANTON. It does open up that question and it was raised before you came into the hearing this morning. But the three networks, as Senator Muskie pointed out, are covering a very important address by the Chief Justice in St. Louis, at the American Bar Association meeting next Monday. We are not all three doing it at the same time.

I believe ABC and NBC are carrying the address live when it is made in St. Louis. On the other hand, we are recording it on videotape and will broadcast it at 10 p.m. on Monday. Why are we doing it that way? Because we think that diversity of treatment gives a greater exposure to the American people of the Chief Justice's remarks than all of us scheduling it as a live broadcast in the daytime.

It is that kind of freedom and flexibility that I do not want to see denied the American public. It is not for our convenience, it is to give the public a broader exposure.

There is one thing I wanted to mention on the question of exposure. When I said my numbers didn't agree with yours I was not disagreeing with the count of appearances. What I was talking about was in terms of the actual audiences achieved by President Nixon and by President Kennedy during their first 18 months in office. If you go back through the records and look at the audience circulation achieved by President Kennedy with the mixture of all of his broadcasts and compare it with President Nixon's, the audience circulation, not including the secondary pickup which you mentioned, but just taking the actual broadcasts, as far as the CBS Television Network was concerned, the average viewer spent almost 50 percent more time watching President Nixon than he spent watching President Kennedy.

That is why I said our numbers did not agree. I want the record to be clear that I was not disputing your count. I was taking it to the next step of what does the audience do with it. Because an appearance is for only one purpose, and that is to be seen and heard.

Senator GRIFFIN. As President or as head of the Republican Party?

Dr. STANTON. As President.

Senator GRIFFIN. You see, that is the crucial question. If he gave a speech at a Republican State convention or Republican National Convention, which was obviously a political speech, or if in his appearance as President he made what was obviously a partisan attack, there isn't any doubt about what should be the appropriate response.

But we have now arrived at the point where if the President of the United States communicates with the people, as President of the United States, he subjects himself under your theory to purely political attacks, as was the case when Larry O'Brien was given a half hour to do that.

Now, I don't know what the answer for the President of the United States is. Does he not communicate with the people? Does he use his time to respond on a political basis to the head of the other party? That seems like a ridiculous situation.

Senator PASTORE. May I inject here and ask a question. What if President Johnson had said something derogatory of my good friend from Michigan? Does he think he is entitled to equal time even though Johnson was the President of the United States?

It all depends on what the President says. If he makes a political attack at a news conference, I think the other side has a right to answer him. If he is talking to the American people——

Senator GRIFFIN. Then you and I agree. What was the justification for giving a half hour to Larry O'Brien?

Senator PASTORE. Because he was critical of the Democratic Congress.

Senator GRIFFIN. When?

Senator PASTORE. In his last speech.

Senator GRIFFIN. Was he critical for 27 or 28 minutes?

Senator PASTORE. I don't care, a minute or an hour, what difference does it make, he was critical.

Senator GRIFFIN. All right. If that is fair, it is a different definition than mine.

Senator PASTORE. You can criticize an individual in 2 seconds and you can take an hour and a half to do it and still you are criticizing him.

Senator GRIFFIN. I don't have any further questions.

Senator PASTORE. On this question of the Chief Justice, that disturbs me. Why is he being covered this time? Is it because of that situation that occurred in Atlanta? I mean, in other words, do you get this exposure only because you have refused exposure before?

How does this come about? Why is this so important at this time? I realize the importance of the office of Chief Justice of the United States. I am not being derogatory. But I think I remember in Atlanta he refused to talk unless the newspapermen didn't take it down and the cameras were taken out.

Dr. STANTON. The restriction in Atlanta applied only to television cameras.

Senator PASTORE. All right. But now the TV cameras are going in?

Dr. STANTON. This is not the first time television has covered him. We covered him in New York; we covered him in Dallas shortly after he was sworn.

Senator PASTORE. It has nothing to do with Atlanta.

Dr. STANTON. Not at all. It is because when the Chief Justice speaks and indicates it is to be an important message to the American people, it is news and we want to cover it. Following his address we plan to have a distinguished panel of the American Bar Association discuss what the Chief Justice put before the American people.

Senator PASTORE. Well, I think it should be covered myself.

Dr. STANTON. This has nothing to do with any experience in Atlanta.

Senator PASTORE. Any further questions?

(No response.)

Senator PASTORE. Thank you very much, Dr. Stanton.

Now we will hear from the president of the National Broadcasting Corp.

What we are going to do here; we are going to go until about 12:30 and then come back at 2.

STATEMENT OF JULIAN GOODMAN, PRESIDENT, NATIONAL BROADCASTING CO.

Mr. GOODMAN. Thank you, Senator.

My name is Julian Goodman. I am president of the National Broadcasting Co.

I appreciate your invitation to present NBC's views on Senate Joint Resolution 209 as introduced by Senator Fulbright. I also welcome

the opportunity to comment on the general issues raised by proposals for a new system of rights to appear on broadcast facilities, under the fairness doctrine.

Stated most simply, the fairness doctrine provides that when a broadcaster deals with a controversial issue—political or otherwise—he must present the significant contrasting points of view. Long before the FCC established it as a regulatory principle, it was the basic standard NBC employed for broadcast treatment of important public issues. We agree with the reasoning behind the fairness doctrine, because it aims at the same goal as responsible journalism: giving the public the fullest understanding of an issue. Public rights to information, not partisan opportunities or advantages, are the objective of the doctrine.

The FCC most properly leaves to the broadcaster the choice of methods of achieving fairness. In its primer on the fairness doctrine, the FCC states: " * * * the licensee, in applying the fairness doctrine is called upon to make reasonable judgments * * * as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoint, and the other facets of such programing."

The question now raised is whether this principle should prevail, or be abandoned. If it prevails, broadcast news organizations will continue to determine how best to cover controversial political issues under the fairness standard.

If it is abandoned, rules will be set that would require broadcast treatment of controversy to include direct presentation of political organizations or partisans, under formulas set by the Federal Government.

We believe that the goal of public understanding is best met by letting broadcasters, rather than legislators or regulators, judge what kind and combination of programs will most fairly and fully cover a particular issue. Broadcast organizations have no political aims. Their newsmen—by training, background and approach—are concerned with reporting events and examining issues as professional journalists, not with winning votes or elections. This is in keeping with a very basic principle of our system: that the public gets its information from a free press and free broadcasting, not from Government authority or under the dictate of any branch of government.

A series of petitions and cross-petitions before the FCC seek to establish new rights of particular spokesmen to appear on broadcast facilities. These proposals have been prompted, directly or indirectly, by Presidential messages carried on the networks. None of the proponents argues against the network broadcast of a message the President believes is important to the Nation. They recognize, as we do, that the President has the duty to explain the policies of his administration to the public. They also recognize, as we do, that a message the President considers important is top news because the policies and actions of the President of the United States profoundly influence national and world events. That is why we carry these messages live and always have, regardless of the political affiliation of the President in office.

It is also true that the President goes on thee air not only as Chief Executive but as an advocate. He seeks to persuade the public that his policies are sound and beneficial.

Our system demands that his explanations and positions be publicly examined. One way for this kind of examination is through direct presentations from opposing political leaders—or other legitimate spokesmen—in programs of their own design. We do not agree, however, with those who contend it is the only way. Nor is it always the most effective method of engaging the audience, stimulating the interest of the public or enlarging public understanding of the issue.

Other means include various forms of broadcast journalism—news reports, analysis, panel discussions, interviews and special programs presenting a variety of viewpoints on a single issue. Programs like these tend to attract a more diversified audience than set presentations by opposition spokesmen, which may be viewed mainly by those who already agree with the particular spokesmen and their position.

Typically, news and discussion programs that deal with controversial issues center on spokesmen, because their views are important and newsworthy. If public understanding, rather than partisan advantage, is the goal, this variety of information programs will achieve it better than a formula for matching appearances.

Whatever the issue—Vietnam, racial strife, student militants, administration policy and its opposition—any detailed analysis of the network schedules will show that over a reasonable period of time the audience is exposed to the pros and cons for its own judgment.

For example, on a single weekday program—NBC's "Today"—45 proadministration Federal officials and 35 opposition spokesmen appeared between January, 1970, and mid-June. A similar balance is found if you select a specific issue and trace its presentation in the network schedule.

Senator GRIFFIN. Mr. Goodman, if I may interrupt for a second, will you provide the committee with a list of those pro-administration Federal officials and the 35 opposition spokesmen [1] who appeared on the "Today" show during that period?

Mr. GOODMAN. Yes, sir, we will be glad to do that.

It is sometimes argued that these appearances in news or discussion programs cannot match the impact of a Presidential message, delivered with the weight of his office, in his own terms and at a time of his choosing. This assumes that the President overwhelms the public and the opposition when he appears on the air and that fairness demands a similar presentation of opposition views. But when a President deals with controversial matters on which public opinion is sharply divided—as is true of most basic issues today—he takes the risk, in each appearance, that he will generate as much resistance as support and will lose credibility rather than gain it. And the goal of fairness is not impact, but public information and understanding.

Each President has used a different style and method in his approach to television and each has varied in the frequency and manner of his appearances, and Senator Griffin, I did not know of your study, but this means to coincide with it.

During his first 18 months in office, for example, President Nixon has appeared on television 28 times. In a comparable period, President

[1] See p. 77 for the list requested.

Johnson appeared 40 times; President Kennedy 47 times; and President Eisenhower 15 times.

Fifteen of Mr. Nixon's appearances have been in the evening (between 6 and 11 p.m., in the eastern time zone), compared with 11 such appearances by President Johnson, seven by President Kennedy and seven by President Eisenhower.

President Nixon has held 10 televised news conferences; President Johnson held 12; President Kennedy, 34; and President Eisenhower, one.

I have attached a detailed breakdown of these appearances to the copies of my statement submitted to the committee.

Senator PASTORE. We will accept them for the record.

Mr. GOODMAN. When the particular circumstances warrant a special presentation by the opposition, broadcasters have made time available for that purpose. This was the basis for the "Loyal Opposition" programs NBC initiated in 1961, so that the views of the party out of power could be put before the public.

It was also the basis a few weeks ago for NBC's offer of free time, before it was requested for a congressional response to President Nixon's June 17 speech on the economy. It was clear that a congressional spokesman was proper in this case because the President had particularly criticized the Congress' failure to act on a number of administration proposals. Senator Mansfield accepted our offer and responded to the President's criticism in a 25-minute presentation over NBC network facilities.

Mr. Chairman, if I may interrupt here, I am sorry, but I want to emphasize at this point that there was no criticism, as far as I am aware, in the Congress or the Senate of the time that was allowed for Senator Mansfield to make that presentation. His presentation was on a level comparable, I would say, with the presentation made by the President in his discussion of the Vietnam issue, it was not particularly partisan, Senator Mansfield's response, and I just wanted to make it clear that I personally have no particular criticism of the fact that time was made available to Senator Mansfield or of what Senator Mansfield said, even though I do not agree with what he said.

We believe that no fixed formula or rule can properly determine the varying techniques and methods for achieving fairness or for illuminating political issues. These issues, the circumstances, the positions and oppositions change with new developments. Public understanding of these developments is best fostered by flexibility and initiative in journalistic presentations.

A somewhat different approach has been taken by Senator Fulbright in Senate Joint Resolution 209. That measure is, as has been outlined here many times before, based on institutional considerations rather than on controversial issues. Its preamble notes that the public, which elects the Congress has a right to know of its positions on national issues, through the primary information medium of broadcasting.

We agree completely with this premise, and it is reflected in our practice on a regular daily basis. We disagree with the procedure outlined in the resolution which would require broadcasters to make time available at least four times a year to authorized representatives of the Senate and the House to present the views of those bodies on issues of

public importance. We think this is an unnecessary requirement, and would be less effective than the present variety of news approaches, in acquainting the public with congressional activities.

As a news organization we approach the operations of the Government in terms of their news interest. Congress makes news by its actions as the legislative body, and by the positions and proposals its individual members express. Our news programs cover congressional action on almost a daily basis. Since no one Senator or Representative speaks for all the Congress, the positions of its members are separately covered when they are newsworthy.

In terms of news reporting and broadcast appearances, Congress is in fact more extensively covered than any other branch of the Federal Government. For example, from January to mid-July there were 177 appearances by Members of the Congress on the NBC network in "Meet the Press," "The Huntley-Brinkley Report," "Today" and special programs. The subjects covered included such critical issues as the Cambodia action, the Cooper-Church amendment, the President's welfare and education bill, the ABM, economic inflation, anti-war demonstrations and school integration.

These appearances, coupled with other ideas that may develop in the future as a result of our experiences and needs, are, to my mind, more useful to the public than the legislative requisitioning of television time for congressional representation which we might be required to schedule without regard for the issues, without regard for the contents of the presentation or its news value.

The latter approach would reflect the contemporay situation, with a Democratic majority in Congress and a Republican administration; and presumably it seeks to establish an institutional offset to Presidential appearances on the air. But this kind of legislative formula would have a different effect if the congressional majority and the administration were of the same political party. Nor does it tell us how the appearances would be balanced between the majority and minority representation of the Congress; or between the Senate and House; or how an "authorized representative" of each body would be chosen.

These deficiencies are serious, but they could be solved, of course, and they do not represent our basic problem with the resolution. We place great weight on the importance of informing the public of the role of Congress, but we are convinced that a better way to that end is by journalistic means that have served the public so effectively.

In our view it is inadvisable and undemocratic to establish legislative or regulatory formulas that tell a news medium how it must operate in reporting and analyzing political issues. If broadcasting is to serve public information interests, rather than partisan aims, it must have flexibility—and independent news judgment—to deal with political events as they occur.

Up to now, NBC has been able to apply news judgment in using combinations of approaches to meet new situations and new problems. We have been applying the general principle of fairness without the need for new plans or policies. We hope to be able, with the same flexibility, initiative and judgment to continue to adapt to changing circumstances as they arise.

(The attachment follows:)

TABULATION OF NUMBER OF PRESIDENTIAL APPEARANCES ON NBC TELEVISION NETWORK DURING 1ST 18 MONTHS IN OFFICE[1]

	Total	6 to 11 p.m.		Other time		Total broadcast time	
		News conference	Other	News conference	Other	Hours	Minutes
Eisenhower (2d term), Jan. 21, 1957 to July 20, 1958	15	0	7	1	7	7	30
Kennedy, Jan. 20, 1961 to July 19, 1962	47	3	4	31	9	27	12
Johnson, Nov. 22, 1963 to May 21, 1965	40	0	11	12	17	17	29
Nixon, Jan. 20, 1969 to July 19, 1970	28	5	10	5	8	16	17

[1] Excluding regularly scheduled news programs, paid political broadcasts, nominating conventions, and ceremonial occasions.

Senator PASTORE. Thank you very much, Mr. Goodman.

You said that "it is our view that it is inadvisable and undemocratic to establish legislative or regulatory formulas." Forgetting that for a moment, and considering the suggestions I made to Dr. Stanton, I realize how much time is devoted by the networks to news coverage. All you have to do is turn on your television set to understand that.

The question is raised here that of course the President does it on his own initiative and Congress is an entity, a co-equal body, and is not allowed to do the same thing. I realize the fact that your argument is that if we legislate with reference to one and not the other, we get into discriminatory legislation.

But forgetting all that for a moment, what problems would you see arise in the event that, let's say, NGC said to Congress, OK, you think you can do this, you think you can adopt a formula, just as the President adopts his own formula, we will grant you a certain amount of time, on your own initiative, to have your own format, what would be the problems that would result from that?

Mr. GOODMAN. Well, we always have an open mind, Senator, about new ideas and we are always discussing them with Members of Congress and others. And it is conceivable that we will have new ideas in the future that may hopefully come somewhere near meeting the objective we all have.

Senator PASTORE. Would you think about this seriously and possibly you could talk to the committee at some other time on the question. I realize all of the complexities that are involved here. This is not an easy problem. I have said that time and again. I have said it before the policies committee as well. But we have to admit, gentlemen, that one of the most dynamic forces today of course is the television set. It reaches so many people, it impresses many, many people, sometimes not in the same way that the speaker would like to have them impressed.

There is such a thing as overexposure as well. Just as you say, once you go on television, you are taking the chance as well. You may stimulate a lot more opposition than you thought existed.

But in order to cover this very strong feeling in the Congress—and it is a strong feeling, I want to say that very frankly, so much so that I find myself in a rather difficult position sometimes to make them understand the intricacies of the laws involved, how they operate,

and what the repercussions might be. But there is a general feeling that somehow, because the President is allowed on his own initiative to address the American public—and he should, no one questions that, no one finds any fault with that—by the same token the Congress ought to be given the same courtesy.

How you work it out is another problem. I was wondering if you could not work that out the same way you worked out the Presidency. I do not think the Congress ought to be allowed the time to slam-bang the President of the United States or start an argument with anyone. But if it felt the American people ought to be apprised of what is going on in the Congress, what the difficulties might be on certain legislation, and why it feels the way it does, why it delays, I think in the long run the American people would be in a better position or more knowledgeable position to understand the problems that do confront the Congress.

I would want to see this done on a very high level. I do not think we ought to do anything here that would create the impression that there is hostility between one end of Pennsylvania Avenue and the other end. There could be disagreement, but I would not look forward to a quarrel.

I would hope NBC would study this problem and see if they cannot come up with some suggestions. Whether or not we can, I do not know. What will happen before this subcommittee I do not know. But this is a very complex, complicated problem that will require the best brains.

Of course everyone that comes before this committee says this is a wonderful idea, but how you implement it and I do not get too much help there, really I do not get too much help.

Mr. GOODMAN. I recognize the existence of the feeling that you described, Senator. But I think there is a tendency to overlook some of the things that have been done in this respect, such as special programs that we have had on this year in prime time, 7:30 at night, with such people as Senator Dominick, Senator Hughes, Senator Goodell, General Taylor, General Wheeler and others discussing these issues in just the type of way that Senator Fulbright was suggesting yesterday.

It is true that they were done by NBC News; NBC News did issue the invitations. But these invitations are a matter of negotiation. We always try to get the best spokesman.

Senator PASTORE. That is right. There is nothing wrong with that. I am not finding any fault with that. But there is a feeling that somehow on their own initiative they ought to address the American public on their own choosing as the President does. Whether or not that can be worked out, I do not know. But I would hope you would think about it and that is about it.

Any questions, Senator Griffin?

Senator GRIFFIN. Mr. Goodman, although I do not happen to agree that the Fulbright resolution would be good legislation, I want to make it clear for the record that I think it and these hearings serve a serious purpose, requiring those of us in Congress to examine this very difficult, complex issue as well as you in the broadcasting industry to continue to examine it.

You have made the point, which I think is very interesting, that as an institution the Congress now receives more television coverage

than the executive branch. Is that what I understand your testimony to be?

Mr. GOODMAN. At least through our records of appearances on NBC.

Senator GRIFFIN. Is there any law that requires you to cover an address or press conference by the President of the United States?

Mr. GOODMAN. None at all. We cover it as a matter of our news judgment, and we would not be exercising our proper news judgment if we did not cover that.

Senator GRIFFIN. By the same token, if the Congress or Senate were to pass a resolution saying that we believe that a debate we are going to have on the ABM next week is very important, and we will make our hours available so you can televise it and we hope you will, would you give that very serious consideration?

Mr. GOODMAN. Well, I do not think news judgment should be exercised through congressional resolutions.

Senator GRIFFIN. No, what I am trying to do is point out that there is no law that requires you to cover the President, but you do.

Mr. GOODMAN. That is right.

Senator GRIFFIN. If the Congress made the facilities available, and we are willing to allow an important debate to be televised, and request that you cover it, you would at least consider it, wouldn't you?

Mr. GOODMAN. Yes, sir; but we would prefer that be done informally, rather than through a resolution.

Senator GRIFFIN. I am not suggesting that we should, but we do not do that; we have not done that. You have not turned down any requests from Congress as an institution, to my knowledge, to cover anything.

Mr. GOODMAN. That is right. Once Congress as an entity produces a news event that is worthy of national coverage, the news, the networks and news departments of those networks, would just not be doing their job if they did not give serious consideration to covering it.

Senator GRIFFIN. The real question is whether we should pass a law to make you do it.

Mr. GOODMAN. I think you should not, obviously.

Senator GRIFFIN. As I indicated yesterday, I think a logical, simple alternative to this would be for the Senate to make its sessions subject to broadcast coverage and see if the networks and the news didn't provide appropriate coverage of the important debates in the Senate. I think that we would probably find that there would be appropriate coverage.

Mr. GOODMAN. I have always advocated such right for broadcasters and journalists to be permitted to cover the debates on the floor.

Senator GRIFFIN. Then we would not be leaving it to network judgment as to who should and should not go on television. It would be a matter of who had the floor in the Senate.

Mr. GOODMAN. That is correct. I think we should not be required to cover certain debates, but I think you would find that as the news events themselves unfolded, that the major events would be covered thoroughly.

It occurred to me, Senator, if you will forgive me, yesterday while Senator Fulbright was testifying to the fact that there might have to be a vote in the Senate to choose who would go on the programs that his legislation would require us to carry, that we would not be

able to cover the vote on who should go on the program. There seemed to me to be something ironically undemocratic about that.

Senator PASTORE. If that came to a vote you would get the biggest filibuster you ever heard. Thank you.

Mr. Goldenson, I understand you would prefer to go on now?

Mr. GOLDENSON. Whatever your preference is, Mr. Chairman.

Senator PASTORE. How long do you think it would take you? I do not want to rush you. After all, we have a coequal network system here and in that spirit, why don't we recess until 2 o'clock. I do not want to feel that I am cutting anyone short.

(The list referred to on p. 71 follows:)

TODAY—JAN. 1–JUNE 15, 1970

PRO-ADMINISTRATION

Date	By—	Subject
Jan. 22, 1970	U.S. Senator Barry Goldwater (Republican, Arizona)	Supporting Vietnam policy.
Jan. 23, 1970	U.S. Senator Robert P. Griffin (Republican, Michigan)	Do.
Jan. 27, 1970	U.S. Representative John B. Anderson (Republican, Illinois), U.S. Senator William B. Saxbe (Republican, Ohio).	Supporting President's veto of HEW bill.
Feb. 4, 1970	Maurice H. Stans, Secretary of Commerce	Administration's view on black capitalism.
Feb. 5, 1970	Bryce N. Harlow, Counselor to the President	Supporting the President's programs against inflation and pollution.
Feb. 6, 1970	Will R. Wilson, Assistant Attorney General	Administration's fight against organized crime, and for civil liberties.
Feb. 12, 1970	U.S. Senator John Stennis (Democrat, Mississippi)	Uniform policy with respect to desegregation.
Mar. 2, 1970	Gov. Claude Kirk (Republican, Florida)	Florida's compliance with civil rights laws.
Mar. 16, 1970	Vice President Spiro T. Agnew	V etnam policy.
Mar. 17, 1970	William P. Rogers, Secretary of State	Vietnam policy; Laos.
Mar. 18, 1970	George Romney, Secretary of Housing and Urban Development.	Administration is working for better housing.
Mar. 19, 1970	Gov. Raymond P. Shafer (Republican, Pennsylvania), Gov. Linwood Holton (Republican, Virginia.)	Republican Party's appeal to all segments of American population.
Mar. 20, 1970	U.S Representative Rogers C. B. Morton (Republican, Maryland), U.S. Senator Hugh Scott (Republican, Pennsylvania).	Praising GOP leadership and appeal of the party.
Mar. 24, 1970	George Shultz, Secretary of Labor	Administration's actions in postal strike.
Mar. 25, 1970	U.S. Senator Edward Brooke (Republican, Massachusetts).	Proadministration foreign policy.
Mar. 26, 1970	Herbert G. Klein, Director of Communications	Administration's view of postal strike.
Mar. 30, 1970	John A. Volpe, Secretary of Transportation	Administration's view on air controllers slowdown.
Apr. 6, 1970	U.S. Senator Robert P. Griffin (Republican, Michigan)	Pro-Carswell.
Apr. 8, 1970	U.S. Representative Ancher Nelsen (Republican, Minnesota).	Supporting anticrime bill.
Apr. 10, 1970	U.S. Senator Howard H. Baker, Jr. (Republican, Tennessee).	Pro-Carswell.
Apr. 15, 1970	U.S. Senator Carl T. Curtis (Republican, Nebraska)	Favoring administration's space policy.
Apr. 16, 1970	U.S. Representative Gerald R. Ford (Republican, Michigan).	Dignity of the Supreme Court; anti-Douglas.
Apr. 17, 1970	U.S. Senator Barry Goldwater (Republican, Arizona), U.S. Senator William B. Saxbe (Republican, Ohio).	Supporting administration's space program.
Apr. 22, 1970	U.S. Representative Paul N. McCloskey, Jr. (Republican, California).	Administration's antipollution measures.
Apr. 23, 1970	Thomas F. Williams, Director of Public Affairs, Consumer Protection and Environmental Health Services, HEW; Walter Hickel, Secretary of Interior; Dr. Russell E. Train, Under Secretary of Interior.	Administration's work in area of ecology.
Apr. 24, 1970	Charles C. Johnson, Administrator, Consumer Protection and Environmental Health Service, HEW.	Administration's work in area of ecology.
Apr. 30, 1970	U.S. Senator Robert J. Dole, Republican, Kansas	Optimistic on steps President will take in Far East.
May 1, 1970	U.S. Senator John G. Tower, Republican, Texas	Cambodia.
May 5, 1970	Gov. James A. Rhodes, Republican, Ohio; U.S. Representatives Robert Taft, Jr., Republican, Ohio.	Ohio primary; various pro-Administration remarks.
	U.S. Senator Mark Hatfield, Republican, Oregon	Cambodia.
May 6, 1970	U.S. Senator Robert P. Griffin, Republican, Michigan	Do.
May 12, 1970	Joseph E. Blatchford, Director Peace Corps	Students' occupying Peace Corps offices.
May 19, 1970	U.S. Senator John L. McClellan, Democat, Arkansas	Cambodia.
May 22, 1970	Melvin R. Laird, Secretary of Defense	Do.
May 28, 1970	Charles E. Walker, Under Secretary of the Treasury	Economy is improving.
June 1, 1970	U.S. Senator Margaret Chase Smith, Republican, Maine	Against emotionalism in Government.
June 3, 1970	Clark Mollenhoff, Special Assistant to the President	Discussing his role as investigator for the President, alerting him on possible troubles or scandals.
June 11, 1970	Herbert C. Klein, Director of Communications	Cambodia.

OPPOSITION

Date	By—	Subject
Jan. 6, 1970	U.S. Senator Mike Mansfield (Democrat, Montana)	Vietnam.
Jan. 16, 1970	U.S. Senator Frank Moss (Democrat, Utah)	Air pollution; cigarette advertising.
Jan. 23, 1970	U.S. Senator Edmund G. Muskie (Democrat, Maine)	Vietnam.
Jan. 27, 1970	U.S. Representative Carl Albert (Democrat, Oklahoma), U.S. Senator Alan Cranston (Democrat, California).	Opposing President's veto of HEW bill.
Jan. 28, 1970	Hubert H. Humphrey, former Vice President; Mayor Peter Flaherty (Democrat, Pittsburgh, Pa.).	Opposing veto of HEW bill.
Feb. 18, 1970	U.S. Senator Abraham A. Ribicoff (Democrat, Connecticut).	School busing; integration.
Feb. 23, 1970	U.S. Senator Daniel K. Inouye (Democrat, Hawaii), Hubert H. Humphrey.	Against ABM and inflation measures.
Feb. 24, 1970	U.S. Senator Eugene J. McCarthy (Democrat, Minnesota).	Indochina war.
Feb. 25, 1970	U.S. Senator Edmund S. Muskie (Democrat, Maine)	Vietnam.
Feb. 26, 1970	U.S. Senator George McGovern (Democrat, South Dakota).	Vietnam, Laos, anti-Carswell.
Feb. 27, 1970	U.S. Representative James G. O'Hara (Democrat, Michigan), U.S. Representative Louis Stokes (Democrat, Ohio), U.S. Representative Carl Albert (Democrat, Oklahoma).	Against Vice President and the Southern Strategy.
Mar. 11, 1970	U.S. Representative Ken Hechler (Democrat, West Virginia).	Government's policies regarding coal mining.
Mar. 16, 1970	Mayor John V. Lindsay (Republican, New York City)	Federal Government not doing enough to cure urban problems.
Mar. 24, 1970	U.S. Representative Thaddeus J. Dulski (Democrat, New York).	Administration ineffective in postal strike.
Mar. 31, 1970	Mayor Charles Evers (Democrat, Fayette, Miss.)	Administration not doing enough for civil rights.
Apr. 3, 1970	Gov. John J. McKeithen (Democrat, Louisiana)	Opposing desegregation measures of administration.
Apr. 8, 1970	U.S. Representative Brock Adams (Democrat, Washington).	Opposing anticrime measure.
Apr. 10, 1970	U.S. Senator William B. Spong (Democrat, Virginia)	Anti-Carswell.
Apr. 15, 1970	U.S. Senator Howard W. Cannon (Democrat, Nevada)	Opposing administration's space programs.
Apr. 23, 1970	U.S. Representative Morris K. Udall (Democrat, Arizona), U.S. Senator Edmund S. Muskie (Democrat, Maine).	Opposing ecology measures of administration.
Apr. 24, 1970	U.S. Senator Gaylord Nelson (Democrat, Wisconsin)	Opposing administration on ecology.
Apr. 28, 1970	U.S. Senator George McGovern (Democrat, South Dakota).	Cambodia.
May 1, 1970	U.S. Senator Frank Church (Democrat, Idaho)	Do.
May 5, 1970	Gov. Albert P. Brewer (Democrat, Alabama), George Wallace (Democrat).	Alabama primary; race issue.
May 18, 1970	Clark Clifford, former Secretary of Defense	Vietnam; Cambodia.
May 19, 1970	U.S. Senator John Sherman Cooper (Republican, Kentucky).	Cambodia.
May 27, 1970	U.S. Senator J. W. Fulbright (Democrat, Arkansas)	Vietnam; Cambodia.
May 29, 1970	U.S. Senator Edward M. Kennedy (Democrat, Massachusetts.)	United States cannot police the world.

(Whereupon, at 12:25 p.m., the hearing was recessed, to reconvene at 2 p.m., this same day.)

AFTERNOON SESSION

Senator PASTORE. Our next witness is Mr. Leonard Goldenson, president of the American Broadcasting Co. We are very happy and pleased and honored to have you here, Mr. Goldenson.

We appreciate very much whatever you can do to enlighten us on this very, very complex and serious problem.

You may proceed.

STATEMENT OF LEONARD GOLDENSON, PRESIDENT, AMERICAN BROADCASTING CO.

Mr. GOLDENSON. Mr. Chairman, in view of the fact that the other two networks appeared this morning, I would like to submit my whole statement and I will point out where I am speaking from.

Senator PASTORE. Fine. Without objection, it is so ordered.

Mr. GOLDENSON. Mr. Chairman, I thank you for your invitation to testify on the use of broadcasting facilities for discussion of major public issues and on the Senate Joint Resolution 209, which would require broadcasters to provide time to authorized spokesmen of the Senate and House of Representatives to present the views of their respective bodies on issues of public importance.

At the outset, I should like to review briefly the backdrop to these hearings—at least as I see it.

Within a relatively short period of time, a number of complex and difficult questions have been raised concerning the accessibility of the broadcast media to candidates for political office, to elected members of the legislative branch of the Federal Government and to other responsible spokesmen desiring to inform the public as to their viewpoints or actions on the major domestic and foreign issues of our times.

In a way, this development was inevitable—both from the standpoint of the scientific evolution of mass electronic communications and from the increasing political awareness of the effectiveness of radio and television in reaching the people of the Nation directly and personally.

Here in Washington, I would suspect that it has been accelerated and brought into sharper focus by the fact that since the 1968 presidential elections, the executive and legislative branches are now controlled by different major political parties who, quite understandably, have conflicting points of view on many issues. It is only natural, therefore, that there will be clashes. And, it is quite apparent that responsible spokesmen from each branch will desire to utilize our media to convey their philosophies and to explain their policies and programs to the people of our Nation.

We in broadcasting—and specifically my associates at ABC—are vitally aware of this. We have had continuing discussions within our company as to how, as responsible broadcasters, we can meet these challenges. Our discussions have been matched, I am sure, by the members of the subcommittee and by many of your congressional colleagues. The members of the Federal Communications Commission have also been considering this problem. And, frankly, gentlemen, I believe all of our discussions—all of our concerns—are a good thing. I am convinced that as we all continue our consideration of the various facets of this problem, individually and in hearings such as this, we will arrive at reasonable solutions which will serve the public interest.

Before I address myself to the main subject you are considering in this hearing, let me report on what my company has done in related areas.

We recognize that mounting costs in congressional and other elections are serious problems for which reasonable solutions must be found. To ease the problem of rising campaign costs, ABC's 19 owned television and radio stations have been granting candidates discounts of 33⅓ percent from applicable rates for spot announcements and will continue this practice in future elections. Additionally, during campaigns, ABC's owned television and radio stations will allocate in

advance a number of time periods which will be available at comparable discounts.

For the 1972 presidential campaigns, the ABC Television and Radio Networks will also establish reductions of 33⅓ percent from the then prevailing rates applicable to both announcements and selected time periods.

Both the Senate and the House are in the process of completing legislation which would eliminate the "equal opportunities" requirements of section 315 for the office of President and Vice President. ABC for the past 10 years has consistently endorsed legislation of this type. Given the freedom to cover the major candidates without "equal time" for the candidates of the fringe parties, ABC will make its full national facilities available without charge, and in substantial amounts, for debates and for other forms of journalistic coverage presently precluded, as a practical matter, by section 315.

We also agree in principle with the legislative proposals that would impose ceilings on the amounts candidates may spend on their campaigns. We believe these limitations should extend to campaign expenditures of every type and in all media, with provision for effective enforcement.

On another but related front, ABC recently advised the Federal Communications Commission that, consistent with our other obligations, we will accept orders for purchases of time from major political parties for the solicitation of funds and for comment on public issues. We created these exceptions to our general policy which ordinarily prohibits such sales, because we believe that the continued strength and viability of the major political parties are vitally important to the Nation.

In addition to expanding use of broadcast facilities in the interest of a better informed public, this new policy should also help bring about a wider basis for political contributions—small sums from millions of Americans rather than large contributions from a few.

This in turn should help insure that an individual's integrity, ability, and dedication to public service, not his private fortune or his ability to attract selected financial backing for his campaign, will be the controlling qualifications for political office.

I realize that these developments, though significant to the ultimate objective of a better informed public, are not directly the subject of your hearings this week.

During the last few months the principle debate over access to the media has shifted from rising campaign costs to the question of who shall have access to the broadcast media to comment on the major controversial issues of our times and who shall determine the form and forum in which these contrasting views are expressed.

The intensity of feeling generated by issues related to the war in Indochina, to the Nation's economy, and to the social and environmental problems of our society have been the major stimuli to the continuing debate over the proper role of the broadcast media, particularly television, in the dissemination of information concerning these issues.

In this connection, we believe the President of the United States—now, in the past and in the future—occupies a unique position in our form of government.

As we have consistently done in the past, ABC will continue to broadcast Presidential press conferences whenever possible and will continue to give the President time on our network to report to the people of the Nation on the complicated and awesome decisions of his office.

The President has both a right and a responsibility to communicate with the public and we as broadcasters have a concomitant responsibility to facilitate direction communications. In these difficult and issue-oriented times, we recognize that each televised Presidential appearance, relating as it must to the major issues of the day, inevitably results in requests for time to respond—for an opportunity to persuade the public of the correctness of a different approach to these critical and preoccupying problems.

And each time we televise the views of opponents of administration policies in order to achieve balance, inevitably we receive counter-requests for time or complaints accusing us of partisanship and of fomenting distrust and division in the country.

Accordingly, our News Department has been charged with the responsibility of maintaining a fair balance of contrasting viewpoints on important public issues. It has the task of deciding whether a request for time is newsworthy and whether the presentation of a particular viewpoint is needed to achieve balance in respect to ABC's overall coverage of that issue. I can assure the members of the subcommittee that each decision is made on its own merits. While there will always be some who will disagree with whatever decision is ultimately reached, each determination is made impartially by professional news executives who are not partisan and who have a basic and deep-seated respect for the Office of the President and for the Congress of the United States.

Efforts of those seeking television exposure for the viewpoints they espouse have intensified of late. In mid-May, the Democratic National Committee sought a declaratory ruling from the FCC to the effect that responsible entities, such as the Democratic National Committee, could not, as a general policy, be precluded from purchasing time on broadcast stations for comment on public issues and solicitation of funds.

The Democratic National Committee also utilized a currently pending rulemaking proceeding to advance a proposal under which the networks would automatically have to afford "equal time" to responsible persons or entities with significant contrasting viewpoints whenever they present a Presidential address or press conference.

A bipartisan group of Senators has also filed a complaint with the FCC after they were unable to obtain network television prime time to respond to the President on on the war in Indochina.

Following an appearance of Lawrence F. O'Brien, chairman of the Democratic National Committee, on the CBS Television Network, the Republican National Committee petitioned the FCC requesting time for reply to the earlier broadcast which it felt focused on the issue of which political party is better equipped to govern the Nation.

On July 16, Senator Dole and 10 other Republican Senators filed a complaint with the Commission requesting a ruling that NBC was obligated to afford comparable time without cost to present opposing views to a program sponsored by the "End the War Committee," carried by that network in May.

These unrelenting and conflicting demands for time are, in my opinion, indicative of the growing recognition of the persuasive character of the national electronic media. Many responsible individuals and entities deeply committed to a viewpoint on important issues seek to be heard and vie for an opportunity to persuade the public.

Despite the pressures for new approaches and solutions, I am convinced that the FCC's "fairness doctrine," adopted by that agency after protracted hearings in 1949 and refined by scores of subsequent rulings, remains the most effective means of insuring a balanced presentation of representative but contrasting viewpoints by some 7,000 broadcast licensees. None of the legislative and other proposals I have heard advanced promises a better solution to the extremely complex problem of achieving fairness and balance with respect to controversial matters. Different issues necessarily require different approaches and different techniques of presentation.

So long as it is agreed that it is the public's right to be informed which is paramount rather than the right of a particular Senator, Representative, political party, or group to broadcast its views on a given subject, the freedom and flexibility afforded the broadcaster under the "fairness doctrine" to select in good faith the spokesmen for the representative viewpoints to be presented seems to us to be the best means yet devised for insuring that the public is exposed to all significant points of view on important public issues.

The FCC recognizes that, from time to time, a broadcaster may commit errors in judgment in applying the "fairness doctrine" to specific factual situations. However, so long as broadcasters act in good faith, opposing viewpoints on significant issues will be available for acceptance or rejection by the public.

I also think it highly important and worthy of emphasis, that the broadcaster is not free to reach his decisions in a vacuum, immune from review. The FCC has the requisite authority to review each licensee's application of the "fairness doctrine" and can impose sanctions for intentional or repeated violations of this very basic communications policy. Broadcasters are not free, as critics of the industry claim, to act arbitrarily and to present distorted coverage on important public issues. The FCC's decisions, in turn, are reviewable by the courts.

However, apart from our belief in the fairness of our coverage of important public issues, the search for the best method for achieving a balanced expression of representative views, is the context in which Senate Joint Resolution 209 is pending before you for consideration.

I can assure the members of the subcommittee of my unqualified acceptance of the stated objective of Senate Joint Resolution 209—an informed public. I must, however, reject the proposition that this proposed legislation is the best means, or even a desirable means, of achieving that commendable objective.

In the first place, the resolution requires broadcasters to furnish time for the presentation of the views of the Senate and House of Representatives. Experience indicates that the greater the controversy surrounding an issue, the more fragmented and divergent are the views of those who comprise the Senate and House. I find it difficult to even imagine a point of view on a controversial public issue which could aptly be characterized as the House or the Senate view.

Moreover, if the viewpoint of a majority of the Members of the Senate or House is to be considered the view of that legislative body, it is possible to conceive a situation where the executive branch and both Houses of Congress would each express a similar viewpoint and where the views of congressional minorities would receive no exposure. Under these circumstances, the public might well be insulated from significant minority views and the resolution's desired objective would be frustrated rather than advanced.

Furthermore, the Senate resolution does not address itself to several points of substantial importance.

Who will select the spokesmen for the Senate and the House? Does the resolution envision a single spokesman for each conflicting viewpoint within each of these legislative majorities, but not the minority party, in each branch, or perhaps even spokesmen of each conflicting viewpoint within each of these legislative bodies?

Can we be certain that congressional requests for time pursuant to the resolution will not open the floodgates for other requests for time from responsible entities espousing contrasting points of view?

In short, while we concur in the objective of Senate Joint Resolution 209, we do not believe this measure could consistently achieve its intended result. Instead of placing the networks and some 7,000 broadcast stations in a straitjacket by legislation which seeks to achieve balanced presentation according to a rigid formula, we urge the subcommittee to reaffirm, as it did in 1959, the FCC's "fairness doctrine."

Thank you for the opportunity to be present today to express my views.

Senator PASTORE. Mr. Goldenson, I can't disagree with one word that you have said. I agree with everything you have said. I think the news media does a very very excellent job in bringing to the attention of the public in the way they deem necessary or proper, according to their own style, and within the limitations of the time they can allot, many of the problems that confront us in our society today.

I don't think that anyone is intimating we should abandon that. I don't think anyone, myself or anyone thinks we should abandon programs like "Face the Nation, "Meet the Press" or "Today" or any one of those.

The question that has arisen here is the Senate and the House are here, the Capitol of the United States is here and when people come to Washington I think the first place they come to is the Capitol, and that is a prestigious place too, you will admit that. And the President of the Untied States holds office only because Congress furnishes the money and enacts the laws.

What I am saying is as a body, the legislative branch is just as important as the executive branch. But there is no one Senator or one Congressman that holds the prestige of the President of the United States as an individual or has the same responsibility that the President has under the Constitution. He is the Commander in Chief and he is the supreme executive officer of the country. We all honor his office and we respect his office. The question that has been raised here, and I think we are beginning to miss the point, it isn't that we want to reshape the whole broadcasting industry, the question here is how can the Congress of the United States, or should the Congress of the United States, like the President of the United States, on its own initiative, present to the people of this country what it deems to be the important issues of the day. What the hangups might be in the legislative system, what the delays might be, and what the importance of the decision or the value of ceratin legislation with reference to the welfare and security and future of our American citizens.

I realize that that sounds very noble. When we get around to saying how you do this, then we have some problems. I know that the networks and the broadcasting industry are not amenable at all to being told how to run their show. And whether I agree with that or not, the fact still remains there is justice in that position. It is your business, you have a responsibility, you should run it your way. And I think you have professional journalists, as you have said, who have the competence to do this.

But there is a limitation. I mean after all, when one of your newsmen questions me on a subject, there is a limit to the time he can give me on a national broadcast and it makes a lot of difference whom you choose to ask. I may be a Member of the Senate and I may have a very sagacious idea, but because I am not mentioned for the presidency of the United States, I may be overlooked in preference to someone whose ideas may be less sagacious, but who has been mentioned.

Possibly that is the news, maybe that is the glamorous side of the news that attracts the public, I don't know. But it isn't the real news, because the real news is in the idea, not in the personality who utters it, it is in the idea. But just because so and so has become alined with a certain crusade, or in opposition to a certain thing, and it becomes more or less an oddity, for some reason that becomes the news.

I have heard that said time and time again, if you do your job the way you should, you are only doing what you are supposed to do, that is not news. You begin to do something in a peculiar way, or begin to do something peculiar, and that becomes news. All you have to do sometimes unfortunately in the political life of this country is to become a maverick and you then become a standout.

In order to overcome that glamorous side of the news and in order to make the Congress of the United States concomitant with the presidency of the United States, with equal integrity and equal force, is a very complicated problem. I don't have the answer to it and nobody has the answer to it now. I have probed and probed

the witnesses to tell me how we should implement this, and they all end up by saying, "Well, there must be an answer to it." But that puts the cat right back on my back. The minute they say that, I am the fellow who is supposed to find the answer. You know that as well as I do as you sit there.

What is wrong with the industry giving this serious thought, as against being compelled to do this, and in some voluntary way making it possible, not in substitution or as an alternative to the things you have brought out, but only as a supplement to it, say to the Congress, "All right, we don't think this will work, but we will give you a try at it, we will give you so many minutes in prime time, so many times a year, and let's see what you can do with it."

Maybe they can't do it and that would be the answer to the whole problem. After all, it isn't a question here of one branch of the Government trying to take advantage of another branch. I am not carried off by the idea that every time the President speaks somebody has to answer him. I am not carried off by that. And this idea that if the President speaks and a commentary is made directly after the speech, that that more or less shades the speech; that doesn't affect me that much.

I think the people of this country are intelligent, they know what the President had to say and they can make up their own minds as to whether or not they agree with him. They know what the commentator had to say and they can make up their own minds as to whether or not they agree with him.

But somehow I think that because this has become a burning question, that we ought to give it a little extra consideration, we hadn't ought to be blase about it and just say "Well, this is an unusual idea, a new idea." Every day we have to think about new ideas and we have to cope with new ideas.

I would hope, Mr. Goldenson, together with Mr. Goodman and Dr. Stanton—not as a triumvirate, I don't mean it that way—but in your individual capacities you would look into this thing deeply and see if there isn't some solution to this.

I think it would be good for the country, provided it would be worked out in a sensible way. If it is going to become a verbal fracas that ends up nowhere, or a circus that educates no one, I would be the first one to say let's cut it out. But on the other hand, if on its own initiative this great body, legislative body of the United States of American, the Congress, the one that is responsible for the making of the laws, for providing the money, for the declaring of war, if this great body feels it has something to say to the country, apart from the fact that maybe the news media would ask them the questions anyway, possibly, and in all probability so, why couldn't the Congress, on its own initiative, call upon the networks and say "Now we have something to say" and have the time given to them and let them say it, if they know how to say it, or agree among themselves to say it.

I know many many times you are going to get yourselves mixed up in a whirlpool of arguments and disagreements. I realize that, because you have 535 minds in the Congress of the United States—we wouldn't want it any differently—and they are all divergent in their points of view, no matter what the proposition is.

You are absolutely right, I think the only unanimous vote I remember is when I put in the resolution on the Nonproliferation Treaty. There could have been no question about that. Who could have opposed that? I don't know as you would want to give the Congress time on that, I am not suggesting that.

But the fact still remains on this Cooper-Church amendment, on the anticrime bill—I had people come to my office and complain about that bill who didn't even know what was in it. Somehow that could have been explained. I don't think that your newsmen on these shows you conduct have the time or can give the time whereby an intelligent person can explain in depth what it is all about. I think myself that this would serve to educate the American public and that is all we are talking about here.

This idea of doing this just to answer the President every time he has a news conference, I think after a while it could become a charade. I wouldn't want to see that, unless the President of the United States deliberately made a speech that was political and had to be answered, as was brought out here by Dr. Stanton, when President Johnson did it at the AFL–CIO convention, and then they thought he had hit hard at the Republican Party and they should be given an opportunity to respond, and ABC has done the same thing.

These questions are easy for you to decide. If the President of the United States makes a political speech, we have no problem at all. But sometimes you get on the borderline, well, maybe the other side should be told in a diplomatic statesmanlike way.

I would hope you would think about this. We are not going to resolve this problem next week. You know we can't. The minute you begin to draft one concession for one individual or entity, you run up against the proposition of what we do about the others. We do have a fairness doctrine that has to be protected, a section 315 that has a meaning. How do we unravel this and do this?

Fundamentally there is a distinction between doing something you are compelled to do and doing something voluntarily. You did that for us in 1960. You gentlemen came before us and said, "You give us the authority to do it on a voluntary basis and we will do it." I don't care whether you are forced to do it by law or do it voluntarily, the fact of the matter is can we do it and will it serve a purpose? If it won't serve a purpose, we ought to forget it. If it will serve a purpose and help our people to better understand the issues of today in these troubled times, fine. I have said time and time again we have reached a point in our existence today where we can't afford to make a big mistake. This is the kind of world we live in. There was a time when if you made a mistake, a big mistake, you could atone yourself. Today it is almost impossible.

So I say an intelligent, well-informed American citizenry is what we want. You are doing a good job, I am not here to depreciate the job the news media is doing, that is not the point at all, but merely because this resolution did come before us and maybe because I understand because of my association with this committee and this responsibility for so long some of the pitfalls that are involved. I am pleading with the industry to come forth with some suggestions, not negative,

not just to say, "This thing is no good, it won't work," or be against the bill, but to come here and say, "Look, we don't like this bill, because this is what it is going to do, but this is what we offer to do for you."

Will you consider that?

Mr. GOLDENSON. We certainly will, Mr. Chairman.

Senator PASTORE. That is all I can ask, that is the best plea I can make today.

Thank you.

Mr. GOLDENSON. Thank you, Mr. Chairman.

Senator PASTORE. Mr. Califano.

I need not tell you, Mr. Califano, the respect this committee has for you, particularly this chairman, and the fine service you have rendered to your Government. You may proceed.

STATEMENT OF JOSEPH CALIFANO, COUNSEL, DEMOCRATIC NATIONAL COMMITTEE

Mr. CALIFANO. Thank you, Mr. Chairman. As you know, the respect is mutual.

It is a privilege for me, as general counsel to the Democratic National Committee, to be invited to testify during the course of this committee's study of the fairness doctrine and the problem of securing access to the broadcast media for the expression of differing points of view on controversial issues of public importance.

This Nation must face up to the dominant political fact of our generation: The name of the deadly serious game of national and statewide politics in the 1970's is television. If anyone doubts that axiom, he had better recognize the implications of a few recent events:

> With one 30-minute broadcast of a speech, television turned Spiro Agnew into the best known Vice President in our history.
>
> Through a television blitz, a relatively unknown businessman soundly defeated a national hero in the Democratic senatorial primary in Ohio.
>
> Broad-based concern about the Vietnam war is due in no small measure to the fact that it is fought in every American living room every night.
>
> Lenore Romney based her Senate primary campaign largely on a color television movie which the Wall Street Journal characterizes as "a living color snow job, a masterpiece of that rapidly developing branch of the cinema, aimed at creating desirable images for politicians." (Wall Street Journal, June 23, 1970, 16.)

So essential is television to national and statewide political campaigns that it is more important for a candidate to have a television adviser, a first-rate FCC lawyer and television monitors than to have loyal precinct captains and doorbell ringers. In my judgment, there is no more important pending hearing in the Senate; for the problem of television in politics goes to the very core of our democracy.

The problem with which this committee is concerned is as complex as any presented by the advent of electronics in our society. The Democratic National Committee's formal interest is directed at Presiden-

tial and national party politics. But our concern as citizens involves the broad social, political, legal and economic ramifications of television that profoundly affect our society today, with enormous power to alter the society of our children tomorrow. The problem is not a partisan one. Nor is it even limited to the right of the Congress, as a coequal branch of the Government, to have access to television time dominated by the President who happens to be in office.

In any examination of the fairness doctrine, the current state of television and the fragile state of our political system, we must recognize the problem of television access for a wide variety of groups and individuals, not necessarily affiliated with any party and yet representative of large segments of our population: the blacks and chicanos, the students, the peace demonstrators, the Wallaceites and the hard hats.

These significant minorities, who feel increasingly powerless in the wake of post-industrial society, have turned more and more often to the streets to demonstrate visually their support for or opposition to one policy or another, at a time when access to television is otherwise denied them, and such access is critical if they are to develop nationwide constituencies of significant political force and effect. In short, it is the problem of the communication of ideas, the exchange of viewpoints—infinitely magnified by the pervasive presence of television. The Thomas Paine of the 1970's must do this pamphleteering on television.

THE FCC PETITIONS OF THE DEMOCRATIC NATIONAL COMMITTEE

The central concern of the Democratic National Committee has been the viability of the two party system in the age of television. We believe that the survival of the two-party system depends upon access to television on some equitable basis for the party out of power. For months, the Democratic National Committee has written polite letters to the networks in an attempt to gain access to television for a presentation of the views of the Democratic Party. Sometimes the requests were made by the National Committee, sometimes by elected Members of Congress. Without exception, the requests were turned down. Accordingly, we determined that the time had come to file legal petitions before the FCC.

These petitions dealt with the right of response to Presidential statements on controversial issues of public importance and the right of the Democratic Party to purchase time:

With respect to the free time issue, we requested a ruling that when a network or licensee broadcasts a presentation by the President of the United States of a viewpoint on a controversial issue of public importance, that network or licensee has an affirmative obligation to seek out responsible persons or entities with significant contrasting viewpoints on the controversial issue and afford them equal opportunities to present their views.

In the pay time area, we requested a declaratory ruling that under the first amendment and the Communication Act, a broadcaster may

not, as a general policy, refuse to sell time to responsible entities, such as the Democratic National Committee, for the solicitation of funds and for comment on public issues.

THE FREE TIME PETITION

We recognize, of course, the unique status of the Presidential office in our system of Government. I would be the last person to advocate anything that might impair the integrity or effective leadership essential for the conduct of that office. I would oppose vigorously any measure which would restrict the President's ability to communicate with our citizens and thereby help him lead and govern the Nation.

On the other hand, we must recognize that the combination of the President of the United States—the most powerful individual in the free world—and television—undoubtedly the most effective communication medium ever devised by man—has an impact on public opinion that is difficult to exaggerate. Moreover, the most cursory analysis demonstrates that every televised Presidential address or press conference presents the President's self-interested viewpoint on controversial issues of public importance. A televised statement by the President of the United States simply by the force of the office and the impact of the medium, draws instant and massive attention, respect and belief. As one distinguished commentator has said:

> . . . Television has put the President himself in control of what image he will project to the country and enabled him to project it farther and more favorably than was ever possible before, with less competition from Capitol Hill and less interference from the press. (R. MacNeil, The People Machine: The Influence of Television on American Politics, p. 292 (1968).)

This fact, like the problem it presents for our democracy, is not partisan. It applies to Democratic and Republic Presidents alike. Each President since Harry Truman has extended and innovated in the use of television. There is every reason to believe that the imaginative use of prime time television will increase with each succeeding President. We must recognize that there will be further Presidents, shrewder and more experienced in the exploitation of television, who will use it as an increasingly effective political tool in an attempt to mold the minds of our citizens in favor of their particular policies.

What this committee or this Congress does in 1970 must be looked at not in terms of the present alone; but in terms of the importance of preserving, indeed, enhancing, the democratic nature of our society; in terms of making the electronic medium work for democracy, instead of against it; in terms of recognizing that the most powerful social and political force abroad in our land today is not the hostility and disillusionment of youth, not the raging divisiveness of race or the Vietnam War, but rather television and the unparalleled amount of power it places at the fingertips of any President who picks up the telephone and tells the three networks he wants to go on television in prime time tonight, or any other night.

In his 18 months in office, President Nixon has made 37 live nationwide television appearances, more of them—14—in prime time than in any previous 18-month period in our history. In the last 3 months alone, the President has made five prime-time televised presentations devoted primarily to justifying his controversial policies and actions in Vietnam and Cambodia.

Like his predecessors, Mr. Nixon has had, upon request, an instant, captive prime-time audience. He has complete control over the timing, format and content of his presentation. He has unlimited freedom to augment his presentation with any devices he chooses, such as maps and, most recently selected films. Above all, the President has been free to say anything he likes on any subject, secure in the knowledge that no spokesman would be afforded anything remotely approaching a comparable opportunity to correct misstatements of fact or to present a contrasting point of view.

President Nixon has made considerable use of this freedom. He has made partisan attacks on Congress, previous Democratic administrations and individuals. Yet, the networks almost invariably refuse to permit effective replies.

For example, the President requested and received prime time from the networks to explain his veto of the $20 billion appropriations bill for the Departments of Labor and Health, Education, and Welfare. Although attacked as irresponsible and inflationary, Members of Congress were not permitted air time to explain their decision to support the measure.

I might mention Mr. Albert, as you probably know, Mr. Chairman, requested that time on behalf of the democratic leadership in the House and was turned down by all three networks. Sometimes the attacks are undisguised, as where the President has said, and I am quoting from various press conferences:

> This Congress has the worst record in terms of appropriations bills of any Congress in history. (News conference December 8, 1969: Weekly compilation page 1725, column 1).
>
> The previous administration tried, through jawboning . . . to put the blame on business for price increases, the blame on labor for wage increases. It (jawboning) is hypocritical . . . dishonest (and) most important . . . ineffective. (News conference September 26, 1969, Weekly compilation page 1330, column 2).
>
> We found that in the year, the full year, in which he (Clark Clifford) was Secretary of Defense, our casualties were the highest of the whole five-year period and, as far as negotiations were concerned, all that had been accomplished, as I indicated earlier, was that we had agreed on the shape of the table . . . (News conference June 19, 1969; Weekly compilation page 879, column 2).
>
> I will follow the practice as President of the United States and as leader of the Republican Party of endorsing all Republican nominees. Therefore, I will endorse Senator Marchi and the other Republican nominees on the city ticket in New York. (News conference June 19, 1969; Weekly compilation page 879, column 1).

More often his attacks were subtle, but the meaning is clear and unmistakable to the American people. Thus, when the President blames problems such as inflation and crime on the "last five years" or "the

Federal Government in the 1960's," or "this Congress" no one can doubt his partisan meaning. For example, the president has said:

A review of the stark fiscal facts for the 1960's clearly demonstrates where the primary blame for rising prices must be placed. In the decade of the sixties the Federal Government spent $57 billion more than it took in in taxes . . . Now millions of Americans are forced to go into debt today because the Federal Government decided to go into debt yesterday. (State of the Union Message January 22, 1970; Weekly compilation, page 61).

Seventeen months ago . . . there were actually four roads open to us. One was the road of runaway inflation—to do nothing about Government spending and rising prices, to let the boom go on booming—until the bubble burst. That was the road the Nation was taken on in the sixties, and the people who suffered most along that road are the millions of Americans living on fixed incomes. (Address on Economics June 17, 1970; Weekly compilation, page 775).

"When this administration came in, all that had been decided (at the Paris Peace Talks) was the shape of the table. Now we are down to substance. (News conference June 19, 1969; Weekly compilation, page 879).

When you get to the domestic issues, the crime package . . ., the inflation package, and the tax bill and the rest . . . I am going to fight just as hard as I can here, because this Nation wants this Congress to get to work and give us the tools to deal with narcotics, and deal with crime, to deal with all of these problems. We cannot do it until we get this legislation passed. (Congressional Breakfast November 5, 1969; Weekly compilation, page 1560).

Obviously, there are other significantly contrasting viewpoints on these matters—and these I might say are only a few selected examples. Yet they are never permitted to be aired in a comparable forum. Some take the position that balanced coverage is provided by affording an opposing Senator or Congressman one or two sentences on the next day's new program—where the President's words are repeated—or providing a panel program with both advocates and opponents of the President's views. As we stated in our brief to the FCC:

To equate a President's unfettered presentation during prime time to a brief off-the-cuff reply carried during a newscast or a tightly controlled debate is likely equating Neil Armstrong's first moon step from the Apollo XI spaceship to a Shirley Temple two-step on the Good Ship Lollipop.

Some argue that news commentators can satisfy the fairness doctrine by presenting contrasting points of view within their own news summaries. But, as the Supreme Court recently observed, quoting John Stuart Mill:

"[It is not] enough that [one] should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest, and do their very utmost for them."[1]

The rule which the DNC has proposed to the FCC would establish procedures which would tend to assure that the American electorate receives not only the President's views on controversial issues of public importance, but also the significant contrasting views of appropriate, responsible spokesmen.

We believe that the rule we have proposed will help balance the one-sided view of the policies of the administration in power that we

[1] *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 392, n. 18 (1969), quoting J. S. Mill, On Liberty 32 R. McCallum ed. 1947.

have seen for the past 18 months. Under our proposal, the respondent would have the same freedom of format as the President. Thus, where the President requests and is granted time by the networks to do whatever he wishes, the same courtesy would be accorded the respondents. Where a Presidential news conference is televised, the same format would be available to the respondents. The respondent would have the same time period and the same type of time—for example, prime time where the President uses prime time.

Two difficulties are raised by opponents of this proposal: One relates to the designation of the appropriate spokesman for response; the other hypothesizes an endless chain of responses to responses.

Senator PASTORE. What if the President of the United States took time on television and explained his policies with reference to the Middle East? Do you think that others who disagree with that policy have a right to be heard? If he enunciates the policy?

Mr. CALIFANO. Where we are talking about significant differences of opinion, Mr. Chairman, yes. In the Nixon administration, as you know better than I, there was great concern among many Senators and Congressmen on both sides of the aisle about whether or not the Nixon administration was going to support peace and the Israeli Government in the way they thought appropriate. And I would think that if the announced policy for example were we were going to abandon Israel or something else, the people who felt the opposite way should have an opportunity to express their views. It is the idea, as you indicated, it is the controversial issues which should be fully aired.

Senator PASTORE. Let's go back to October 1962, the Cuban crisis, when President Kennedy went on television and explained the policy of the country with reference to Cuba. Do you think that the people who disagreed with him should have been given equal time?

Mr. CALIFANO. There are obvious——

Senator PASTORE. I am making a distinction there between a political barrage and one that is within the confines of the Presidency of the United States. I hope we don't go so far here as to create a sort of a scramble that would actually defeat the public purpose rather than assist it. I mean we have got to bring this thing within certain guidelines to have it make sense. For instance, if, as you pointed out here, and I go along with you, if the President of the United States says something derogatory about the Congress, where the implication is clear that this was a rebuke of the fact that it was a Democratically controlled Congress, you might have a point. You might have a point. As a matter of fact, it would suffice to say you do have a point. But you have got to make a distinction between what the President of the United States may say without challenge as the President of the United States, merely because he is reporting to the people. I mean he is not looking for a debate. He is giving a report to the people. I think we have to make a distinction here, otherwise this will confuse; don't you think?

Mr. CALIFANO. Yes; Mr. Chairman, I agree.

Senator PASTORE. The mere fact the President appears and has exposure, I hope we don't get into the Lar Daley case where the mayor of the city went out to meet a dignitary and because he got that expo-

sure, his opponents felt he should be given the same amount of equal time. To me that was a little silly. You will agree with that; won't you?

Mr. CALIFANO. Absolutely.

Senator PASTORE. It is what is said and how it is said that might raise a controversial subject whereby someone who disagrees with him thinks that he in fairness to the public and for the illumination of the public should be given a chance to state a contrary view. We are agreed on that; aren't we?

Mr. CALIFANO. Yes; we are, Mr. Chairman. There are obviously national crises and a rule of reason.

Senator PASTORE. Yes; I wouldn't want to get into anything that would deter the President of the United States from reporting to the American people, no matter whether he is a Republican or Democrat. I mean we don't want to get into that.

Mr. CALIFANO. I agree with that, sir.

Senator PASTORE. I hope that day never comes. I think the President of the United States as you say has a responsibility to report. And we have a responsibility to criticize him if we disagree with him. The big question is who is the individual who does this. Are you going to touch on that?

Mr. CALIFANO. Yes, sir.

Senator PASTORE. All right.

Mr. CALIFANO. I believe the designation of the appropriate spokesmen should be left in the first instance to the networks and licensees, under a rule of reason. Should an aggrieved party believe that he has wrongly been denied access, he would have the right, as now, to appeal to the FCC. In most cases the appropriate spokesmen will be obvious: the leadership in the Congress, the concerned committee chairman, the opposing party chairman. By ad hoc determinations, the FCC and the courts are eminently qualified to evolve a sound doctrine in this area.

The second purported difficulty—the infinite chain of response hypothesis—is specious. In the evolution of the fairness doctrine over the past several years, the FCC and the broadcasters have been able to meet and resolve this problem. As is the case throughout the common law, rules of reason must guide commissions and the courts. So far as I can tell, the basic sources for this imaginary horror are the networks and licensees, who are unwilling to give up any more revenues than the minimum required for political debate. They have raised problems of this kind at every step in the development of the fairness doctrine. Yet, over the years, applying a rule of reason, the FCC and the courts have evolved a fairness doctrine under which networks and licensees have been able to discharge their obligations as trustees for the public without any undue burden.

As for the petition of the Republican National Committee chairman to respond to Chairman O'Brien's July 7 response to President Nixon, I think it is wholly without merit. By White House reckoning, figures announced by Mr. Ziegler as his figures last Sunday—since he took office, the President has appeared in prime time, simultaneously on all three networks, 14 times for a total of 7 hours, 3 min-

utes and 18 seconds. In response, the Democratic National Committee has been granted 25 minutes by one network—CBS—on one occasion to date.[1] To grant any additional time to the Republican Party would only aggravate the grave imbalance which already exists.

THE PAY TIME PETITION

During the past year, the DNC began to develop an extensive television and radio campaign to inform the electorate and to promote wider citizen participation in political affairs. By reaching large numbers of persons, the party believed it could encourage small contributions and stem the unhealthy trend of dependence of candidates and political parties upon large contributors. To make such a campaign effective, it was essential to use the broadcast media to reach large numbers of citizens. We had planned to broadcast issue-oriented programs and spot announcements of varying duration, some designed in part to solicit funds.

Through a variety of conflicting policies and practices, the networks and local stations denied the DNC access to the public's airwaves and frustrated our projected media campaign. Since there are over 7,000 individual radio and television stations in the Nation, with a wide variety of policies and practices, it was apparent that our national media campaign was doomed to failure unless we were assured of access on a broadly based scale.

We conducted a thorough analysis of the pertinent law, including, in particular, the Supreme Court's recent landmark decision in the Red Lion Broadcasting case.[2] On the basis of that analysis, we concluded that the Constitution and the Communications Act prohibited the broadcasters from erecting arbitrary barriers which denied responsible entities, such as the DNC, the right to purchase time to discuss public issues and to solicit funds. Accordingly, last May we filed, with the Federal Communications Commission, a request for a declaratory ruling that would guarantee us access for our television campaign.

As we noted in that petition, "There is a critical question of public policy as well as constitutional law, involved here: Are the public airwaves—the most powerful communications media in our democracy—to be used to solicit funds for soap, brassieres, deodorants, and mouthwashes and not to solicit funds to enhance the exchange of ideas?" [3]

CONCLUSION

Television is the most profound influence on our political system today. It can and should be a central tool in the communication of ideas and to inform the electorate. The whole concept of our democracy is based on the inherent good sense of the majority of our people to make sound judgments, if only they are informed. The political

[1] The ABC network, on May 9, covered a speech by Chairman O'Brien in Milwaukee as a news event, with only 45 of its 160 affiliates carrying it, along with its five owned and operated stations.

[2] *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 1969.

[3] This petition, as well as our petition in the free time case, is attached to this statement for inclusion in the record.

judgments of a population will never be better than the information on which they are based. And part of that information is the wide exposure of political ideas and personalities to the scrutiny of the American people.

The essence of our democracy is the vigorous debate of political issues, not the lopsided presentation of a single point of view to the American people. It is no accident that television is the critical tool of Government in George Orwell's frightening classic, 1984. Two-way television was the essential force needed by Big Brother to run Orwell's utterly dehumanizing totalitarian state. One-way television may not be as effective for the operation of a dictatorship; but, improperly used, it is certainly sufficient to plant the seeds of totalitarianism in our society.

Senator PASTORE. Thank you very much, Mr. Califano. I understand you have an exchange of letters here that you would like to have inserted in the record?

Mr. CALIFANO. Yes, Mr. Chairman; the comments that were made earlier about having Mr. O'Brien use the first 25-minute portion of the Loyal Opposition show, I think it is important to clear the record that we talked to the CBS people about placing congressional Members on that television show and the bureau chief of CBS in Washington informed us that no Members of Congress who were candidates for office could appear on the Loyal Opposition show, which effectively eliminated the House of Representatives and Senators Mansfield and Kennedy, our two top leaders in the Senate.

As a result—we had 10 days in which to put that show together—as a result, on June 29, I wrote to the bureau chief in Washington and protested that decision, said he wanted to make it clear we found that intolerable, we thought that Congressmen and Senators should be on the Loyal Opposition shows and, finally, on July 16 of this year, I received a letter from the attorney at CBS in New York indicating that CBS had changed its policy and would permit us to put Congressmen and Senators, even though they were candidates, on the show.

I would like to place those letters in the record.

Senator PASTORE. Thank you very much.

(The documents follow:)

ARNOLD & PORTER,
Washington, D.C., June 29, 1970.

Mr. WILLIAM J. SMALL,
News Director and Bureau Chief, CBS, Washington, D.C.

DEAR BILL: As I understand it, last Wednesday, June 24, you called John Stewart, Director of Communications of the Democratic National Committee, and informed him that the Democratic Party could not have on its July 7 free time broadcast, or in any such subsequent broadcast, any person who is a candidate for public office.

As I indicated to Don Richardson in your absence, we believe that this is inconsistent with the network's obligations under the Communications Act and with our right of access to the broadcast media under the fairness doctrine and under the First Amendment to the Constitution of the United States. The effect of your rule would be to eliminate from any such broadcast all the members of the House of Representatives and a large number of Senate Democratic leaders during whatever period they are considered to be candidates.

At this time, it is not clear whether this CBS policy will become an issue in connection with the July 7 broadcast. However, we would like to make it absolutely clear that as far as we are concerned, we do not consider the arbitrary and unjustifiable exclusion by CBS of all Democratic members of the House of Representatives and a large number of Democratic Senators to be consistent with the Constitution of the United States and the Communications Act. Indeed, it is quite inconsistent with the spirit of the public announcements and background statements that CBS, through its president and other spokesmen, has given to the American press and the American public in the past few days. We believe such a policy is patently unfair and inconsistent with our legal rights and your legal responsibilities.

Sincerely,

JOSEPH A. CALIFANO, Jr.,
General Counsel for the Democratic National Committee.

COLUMBIA BROADCASTING SYSTEM, INC.,
New York, N.Y., July 16, 1970.

JOSEPH A. CALIFANO, Jr., Esq.,
General Counsel for the Democratic National Committee,
Washington, D.C.

DEAR MR. CALIFANO: This is in reply to your June 29, 1970 letter to William J. Small concerning the appearance of candidates for public office on the "Loyal Opposition" broadcasts to be prepared by the Democratic National Committee.

As you may know, the appearance of legally qualified candidates for public office on these broadcasts would appear to require under existing FCC interpretations of Section 315 of the Communications Act that stations broadcasting these programs afford "equal time" to all legally qualified opponents (including minor party opponents) of such candidates in their broadcast area. Thus, for example, if a Democratic Senator who was a candidate for re-election appeared on a "Loyal Opposition" broadcast, affiliates serving his state would have "equal time" obligations to all of his legally qualified opponents. Candidates taking advantage of this "equal time" right would, of course, be free to discuss any issue whether of local or national concern and whether or not such issue was related in any way to the subject discussed on the "Loyal Opposition" broadcasts.

CBS will not object to the conclusion of Senators or Representatives as spokesmen for the Democratic National Committee on these "Loyal Opposition" broadcasts provided that the Democratic National Committee informs CBS of such an appearance sufficiently in advance of the scheduled broadcast to enable those of our affiliates who might be affected by such an appearance to exercise their options. Those options would include not carrying the broadcast or offering "equal time" to the Senator's or Representative's opponents or securing waivers from such opponents.

Sincerely,

RALPH E. GOLDBERG, *General Attorney.*

Senator PASTORE. Of course, you differ somewhat with Mr. Fulbright's argument. He thought that the Congress, on its own, should make its own selection as to who should answer in the case of controversy. You take the position that should be left up to the broadcasting industry?

Mr. CALIFANO. Mr. Chairman, I say that, in a general way, I fully agree that Congress, as a coequal branch, independent of any right to respond under the fairness doctrine, just as a coequal branch of the Government, must have access to television in a format that the Congress determines.

Senator PASTORE. But yours is apart from this, you are getting into the controversial aspects of it.

Mr. CALIFANO. That is correct, Mr. Chairman. And I thought your suggestions today were excellent. Why not try it, let the Congress give the time to the Congress and let the Congress use the time and see what happens.

Senator PASTORE. On a voluntary basis you mean?

Mr. CALIFANO. Yes, sir; immediately.

Senator PASTORE. Do you have any questions?

Senator SCOTT. Mr. Califano, have you commented on Dr. Stanton's testimony to the effect that your proposal would require that whenever the President delivers a state of the Union address, equal time to respond would have to be given to other groups with respect to each of the many issues upon which he touched, and that that grant would not suffice to satisfy the proposed rule, that equal time would also have to be given to other significant contrasting views, whether from the principal opposition party, the President's own party, or other segments of the general population, just as long as they were responsible, but it is not stated to whom or for what and there would be no end of responsible persons or entities asking for equal broadcast time.

Mr. CALIFANO. Senator, we indicate in our brief, which we would like to insert in the record, that there is a rule of reason. With respect to the state of the Union, every state of the Union that President Johnson gave, I can remember going back to the White House and watching the Republican leadership in Congress for the half hour or hour immediately following the state of the Union address answering it.

We certainly thought that was sufficient. I would think the kind of time which was given to the Democratic leadership this year, after President Nixon's state of the Union, was the appropriate way to handle the state of the Union address. As you know better than I, FCC and its courts have been dealing with this problem for years and they have managed, through results of reason, to deal with this in a reasonable manner.

Senator SCOTT. Do you happen to have the dates when the Republican Party responded to the State of the Union address?

Mr. CALIFANO. I don't have the dates; I can supply them for the record. In some cases it was the very night of the broadcast, in some cases about a week or 2 later. I will be happly to supply them for the record.

Senator PASTORE. You mean Mr. Ford and Mr. Dirksen?

Mr. CALIFANO. That is correct, Mr. Chairman.

Senator SCOTT. Were they in every instance given equal free time? Do you recall?

Mr. CALIFANO. I don't remember, you know——

Senator SCOTT. It is my impression the last time there was equal free time it was in 1963, 7 years ago, but I am not sure. How do you deal with the problem of the minorities? They would like to be heard perhaps to respond. You have mentioned that they turn to the streets to demonstrate their opposition. Are you sure that either political party could speak for the various significant minorities?

Mr. CALIFANO. Not always, Senator. I think this is an enormously difficult problem. But I would much rather see the television stations, the networks, both the local community programing and nationally, provide time for some intelligent discussion by the president of the National Students Association, for example, or some black leaders, rather than have my children and your children and lots of Americans subjected to what is essentially aboriginal activity. The shooting at Kent State, the riots in some of our cities are not the kind of reasoned discussion and people that see that every night on television obviously get a jaundiced point of view of these situations.

Now, I am not saying that every time the President criticizes the college students, or some other group that they immediately have a right to talk on television and speak for an hour. But I think the combined impact of saying some college students are bums, and looking on television and seeing college students in what really is a very small part of their activity when they are in a demonstration or riot on campus, is very bad for this country.

I would much rather see a half hour a month of discussion by college students campus presidents or some television show than that kind of activity.

Senator SCOTT. You would prefer the approach that you mentioned then to the demonstrations that we had in Chicago in the summer of 1968 also; would you not?

Mr. CALIFANO. I certainly would, Senator.

Senator SCOTT. Yes; I would think you would. Dr. Stanton says this enactment would for the first time in American history provide that incumbent members of the Federal legislature have the privileged status over all other American citizens in or out of office in utilizing organs of information which he believes would be highly repugnant to the American people.

What do you think of that?

Mr. CALIFANO. Is that a comment on our petition or the Fulbright resolution?

Senator SCOTT. I am quoting what Dr. Stanton said, that this proposed legislation would give incumbents a privileged status over all other American citizens.

Mr. CALIFANO. I would assume, Senator, that if that incumbent was a candidate for office, and he appeared on one of the congressional television shows, and that appeared in his State, that his opponent in that State would have a chance to respond. For example, when Senator Mansfield appeared in response to the President on the economic message, his opponent in Montana had a chance to respond.

Senator SCOTT. I was going a little ahead of that. The criticism is that this bill would give a privileged status to incumbent members of the Federal legislature over all other American citizens. Actually it is discriminatory perhaps in another way, 35 Senators who are candidates for reelection, so if you choose from the Senate and don't choose one of the 65, you open yourself up to equal time as to the other 35, is that right?

Senator PASTORE. So there is discrimination there. But how do you decide whether you respond by a member of the legislature or by the chairman of the National Committee?

Mr. CALIFANO. Well, Senator, I think the legislature, the Congress, as a coequal branch, has a right of access to television independent of response. I don't think it makes any difference in a Democratic controlled Congress whether the President is a Democrat or a Republican. The point is the Congress should have some opportunity to present their views in a format that they consider the most favorable.

I think the issue of the rights, so to speak, of the Democratic or the Republican party to respond to the statements of the President in power is an issue to be handled under the fairness doctrine in discussing and responding to statements on controversial issues of public policies.

Senator SCOTT. But one of the responses came from a Senator, another came from the chairman of the Democratic National Committee. My question was how do you decide who is to respond?

Mr. CALIFANO. In terms of the Democrats deciding how its Democrats respond, I really don't think we have a serious problem. We have worked closely with Senator Muskie, who is chairing a television committee for the Democratic Policies Committee, Senator Mansfield responded, as I understand it, because there were so many statements in the economic message of the President dealing with the actions either not taken by the Congress that the President thought the Congress should take, or being taken by the Congress that the President thought the Congress should not take. When we put Mr. O'Brien on as I indicated we had hoped in that broadcast to put Senators and Congressmen on, but CBS would not let us place anyone who was a candidate for office on the program at that time. And, Senator, just before you came in I put letters in the record in which we protested that and CBS has changed its policy.

Senator SCOTT. I believe I recall that the Republican National Committee asked for equal time which would be national. On my behalf, I thought Mr. O'Brien said any political party which was responsible for the perpetuation of our involvement in Vietnam was not fit to govern, or words to that effect, and I thought he had probably eliminated the need for the Republican National Committee to reply.

But that is a matter of opinion. What about the proposal of the Senators sponsoring an amendment to end the war to supply time to any substantial group of Senators opposing the President's views? Do you think that that should be granted?

Mr. CALIFANO. I would, I haven't really looked in detail at their brief. We limited the legal discussions in our briefs to the problems of the two major political parties. I think that that kind of problem is the kind of problem that the people have talked about all day today here of who speaks for the Congress and how does the Congress determine it.

I think that is something for the Congress to determine.

Senator SCOTT. Well, I would solicit your attention to a bill I introduced today which would provide a requirement for not less than four televised sessions of each House of Congress during certain time

periods. Perhaps there the opposition could be well heard. I would like you to give some deliberation to that. I have proposed that and it seems to me it might be a viable alternative——

Senator PASTORE. You mean coming into the Chamber?

Senator SCOTT. Yes; coming into the Chamber and a requirement of not less than four times a year.

Senator PASTORE. On important issues?

Senator SCOTT. On important issues, things of that kind. But I really wonder how any Senator can be designated as fully representing the views of his party. I think that is part of the difficulty. With regard to another comment you made, regardless of who is President, or which party controls the Congress, have you ever in your life heard of a Republican Congressman demanding equal time for a Republican President or a Democratic Congressman demanding equal time in reply to a Democratic President?

Mr. CALIFANO. No, Senator, but the point was not necessarily in response. I can certainly see that even in 1968, in terms of the Senate's, the majority of the Senate's apparent view of the Vietnam war, that there were arguments that the Senate should have some opportunity to express its views of that conflict when President Johnson was expressing his view of that conflict on television.

Senator SCOTT. You are not arguing that the Democratic National Committee should have equal time to answer an address by the President in addition to the time provided to the Senate and House under S.J. Res. 209, are you? Not in addition?

Mr. CALIFANO. I think they are two different questions, Senator. I think that if you take the Congress and assume the President—one of the quotas in my statement was that President Nixon said last year "This Congress has the worst record on appropriations of any Congress in the history of the Union." Well, I think that aside from the Democratic National Committee or anybody else, the Congress would have the right to point out that the appropriations bills came up later than they ever did before, that——

Senator SCOTT. And in a Democratic Congress. That is just bad housekeeping.

Mr. CALIFANO. Whatever it is, it is not that simple a case. As Senator Muskie pointed out this morning, with respect to the tax legislation, the President can rail against the delay in passing the tax surcharge, the Congress obviously made a judgment, both sides of the aisle in that area, both Chairman Mills and Mr. Burns and in the Senate that a tax reform bill should be a part of that package and there was an extended debate on that. I would much rather have an appropriation bill delayed, for example, and have a thorough ABM debate than have an appropriations bill come through on time. I think those are problems of the Congress of how you run the Congress as the leader for the Republicans and Senator Mansfield for the Democrats. I think Senator Fulbright's resolution would not in any way affect, in my judgment at least, and in line with the briefs we filed with FCC, our rights to time as we see it, to respond to the President's comments on controversial issues of public importance.

Senator SCOTT. As far as a caucus of the two parties in the Senate, I am keeping it just to one house to simplify it—it was decided that the reply by a responsible authority to the state of the Union address of the President should be made by a Republican Senator. Would that lead you on behalf of the Democratic committee to feel you had been ruled out under this law, if it became a law?

Mr. CALIFANO. I think it would depend on what was said in the state of the Union addresses. In virtually all of President Johnson's and the one of President Nixon, it seems to me that Congress would be the appropriate entity to respond.

Now there are two levels of disagreement here. I mean if the President attacks Clark Clifford because he was Secretary of Defense when casualties were highest during the Vietnam war, Clark Clifford has a right to respond, independent of the Congress, Democratic National Committee or anybody else. To use a very simple case, the Congress may also want to comment on that. President Johnson may want to comment on that. The Democratic National Committee may want to comment on what the policies are. There has to be some rule of reason.

Senator SCOTT. I think that is all, Mr. Chairman.

Senator PASTORE. Thank you very much.

STATEMENT OF W. THEODORE PIERSON, COUNSEL, REPUBLICAN NATIONAL COMMITTEE

Mr. MORTON. I am Rogers Morton, a Member of the House of Representatives and chairman of the Republican National Committee. We appreciate this opportunity to testify before your subcommittee, Mr. Chairman, and I am here by way of introducing Mr. Theodore Pierson, counsel for the Republican National Committee.

Mr. Pierson is a senior partner in the firm of Pierson, Ball & Dowd. He is a member of the American Bar Association, the Bar Association of the District of Columbia, and the Federal Communications Bar Association.

Senator PASTORE. And well known and respected by this committee.

Mr. MORTON. And, of course, he is a man who is well known in the whole field of communications and I feel the committee would derive great benefit from his testimony and with that, Mr. Chairman, because of legislation on the floor of the House, I would like to excuse myself and leave you with Mr. Pierson.

Senator PASTORE. Thank you very much.

Mr. Pierson.

Mr. PIERSON. Mr. Chairman, Senator Scott, it is a pleasure as always to appear here. The position of the Republican National Committee can be summarized briefly as follows: It endorses the concept underlying the Fulbright resolution that the public should have full and continuing access to the views of Members of Congress on the controversial issues of the day.

But we find it difficult to understand how the proposal of Senator Fulbright could be worked out as a practical matter, which has been exemplified many times in the course of the hearing, and how his

right of access principle can be limited to the legislative branch of the Federal Government, if adopted as a principle.

These hearings undoubtedly will continue to improve our understanding, but I must confess that up to this point we have the same difficulty in trying to comprehend how the matter would work.

As an alternative to the Fulbright resolution, we suggest that it is within the competence of each House of Congress, without legislation, to gain access to the public via television in a manner that would achieve the objectives of the Fulbright resolution.

Before describing that alternative, I would like to recite the premises that underly our beliefs. We join Senator Fulbright in the view that it is vital to our democratic institutions that the electorate be as fully informed as possible on the crucial issues facing the nation.

Only in this manner can the electorate intelligently exercise its sovereignty. The broadcast media now make extensive efforts to accomplish this through news and interview programs, through panel discussions, through appearance of policymakers in various formats, and through the broadcast of Senate Committee hearings. Except for occasional lapses, we believe that the performance of the broadcast industry in this area has been outstanding.

It seems to be the complaint of Senator Fulbright that such programs by their very format fail to give a Member of the Senate or the House a full opportunity to carefully, thoughtfully, and thoroughly state his position without interruption—an opportunity which the President has when he addresses the Nation. We believe that the Senate and the House without legislation can take internal action which will almost automatically afford the public better access to congressional views via television.

The alternative that we will suggest removes the difficulties that we have in understanding how the rights granted by Senate Joint Resolution 209 could be worked out in actual practice and how the rights established by the amendment could be limited to the two Houses of Congress.

Senator Fulbright in his published statements on the matter has recognized the complexities and difficulties of how to allocate time between the Houses, among its Members, between the parties, among the divisions within each party, and among the controversial issues which are presented to the Nation.

In addition, we do not understand how, conceptually, if a right-of-access to television is established by law for the benefit of the legislative branch of the Federal Government, it could be denied to the executive and judicial branches of the Federal Government or to the legislative, executive, and judicial branches of States and municipalities.

We do not believe that anyone would suggest that the electorate has a vital interest in learning of the views of the Congress on national issues, but no interest in the views of their local and State officials on local and State issues.

If the new and radical doctrine of right-of-access were extended to include the governmental branches of State and local governments, it is not difficult to contemplate that virtually all of the prime time

and much of the other time of television stations would be preempted on many broadcast days. In our view this could cannibalize the medium through its failure to serve the other interests and desires of the viewing audience.

We have characterized governmental right-of-access as a new and radical concept—properly, we believe. One of the unique characteristics of our system of broadcast regulation is that the Government except under its war powers, has no right to command licensees to carry Government programs. This uniqueness flows from our singular concepts of press liberty. Certainly, one cannot treat lightly deviations from our basic philosophies of government.

It is because of these misgivings and concerns that we suggest an alternative which we believe will accomplish the goals we have eagerly endorsed.

If the Senate or the House will adapt itself to optimum use of the television media as it has in relation to the printed press and as our last four Chief Executives have done with television, networks, and stations undoubtedly would respond just as enthusiastically with the offer of television time for full illumination of important issues as they have responded to presidential addresses and discussions.

Admittedly, this requires quite a radical adaptation on the part of both Houses because, by and large, the Houses of Congress in the past have seemed utterly devoted to excluding television from the coverage of their public debates and discussions. Committee hearings are an exception, but as Senator Fulbright pointed out, they do not permit the complete and thorough exposition of the issues.

It is our view that, if either House would schedule debates in its chambers during prime time on the urgent issues of the day and invited television coverage, such coverage would be forthcoming.

For example, it is inconceivable to us that, if the Senate had called a 2- or 3-hour session in prime time to debate the Cambodian action, the networks could have been kept away—except by barring the doors as you now do.

It is even more unbelievable that any Senator, who could possibly make it, would be absent from the floor. With the powers and skills of both Houses in ordering debates so that all sides are heard, any exhibitionist tendencies to "mug the camera" could be restrained.

In sum, we suggest that each House of Congress without legislation has within its own competence the capacity to obtain access to the public via television. As a bona fide news event, it should be exempt from the equal time provisions of section 315. And as a bona fide news event, it will receive television coverage, the Senate willing.

Our alternative to Senate Joint Resolution 209 we believe offers several advantages over the right-of-access principle the resolution adopts for the Congress, or would adopt for the Congress.

First, it avoids most of the complexities and difficulties presented by Senator Fulbright's means to achieve the goal we all share.

Second, it avoids the necessity of having to embrace new concepts in our constitutional and communications law.

Third, it preserves traditional concepts of journalistic freedom.

Fourth, and I think this is most important, it insures that the television medium will not be used in a manner that goes beyond the tolerance of viewers and thus it will preserve television as a mass medium.

Fifth, it will add to television dramatic new public affairs programs which will enhance its value as an instrument of democracy.

That ends my remarks on Senate Joint Resolution 209.

I am uncertain about the relevance of certain matters pending before the Commission to this hearing. We filed a complaint against CBS that had its beginning in the O'Brien broadcast. We have filed pleadings with the Commission. I am not sure it is germane here. I do have copies of that petition and our reply, the pleadings, available and if the Chair will instruct me on the germane points, I will be glad to offer them for the record.

Senator PASTORE. We will incorporate them by reference [1] and if Mr. Califano had any briefs he wanted to submit, we will incorporate those by reference as well.[2] But I think we are talking about two different things.

Mr. CALIFANO. Thank you, sir. I rather suspect that.

Senator PASTORE. I don't have any comments to make except your suggestion appeals to me. Of course I can see the complications there as well, unless you get yourself into a limit on time by unanimous-consent agreement, and you have it within reasonable limits, I don't think you can hold an audience for long.

How you are going to do this on prime time is another question unless it is a rebroadcast, unless of course they hold the debate late at night and that happens, too, I suppose. But I think you are coming closer to what Mr. Fulbright has suggested, the fact that the Congress itself should determine and understand what format this would happen. That is the point he was making.

As I understood Mr. Fulbright—of course there is a limitation here, even if you think it is a brilliant idea, there is a question of how you make it work.

As Mr. Scott pointed out, who is to say who the individual will be, whether or not this individual exposes himself to his opponents who will have equal time in his own State and how this will expose him to equal time being asked for by other groups who might be offended. Where it all stops, no one knows.

Now the thing that has been of concern to me, and you are a lawyer, very competent, in this field, and I didn't ask Mr. Califano this, but he is in the room and I wish you fine lawyers would enlighten this committee on this: Do you feel that if we passed a resolution spelling out the entity of Congress as an entity created by the Constitution, that that in itself would free the participants or the Congress itself from the effects of the fairness doctrine? Or section 315? The existing law.

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[1] *Petition of the Republican National Committee for Relief Against CBS, July 13, 1970; Reply of the Republican National Committee to CBS Response, July 30, 1970.*

[2] Comments by the Democratic National Committee, *In the Matter of Obligations of Broadcast Licenses Under the Fairness Doctrine,* Docket No. 18859, June 22, 1970; *In re Democratic National Committee, Request for Declaratory Ruling Concerning Access to Time on Broadcasting Stations,* May 19, 1970.

Mr. PIERSON. I am not certain. It would depend very much on the manner in which the legislation was adopted. But it would seem to me if that was the interest of the Congress, to have such appearances an exception, that 315 is a creation of Congress, and it can amend it and so provide.

I do believe that what we have suggested that if, for example, on the Cambodian action, the Senate would have scheduled a debate on that matter starting at 8 o'clock on some evening and this debate, let's assume, would extend from 2 to 3 hours, and it was an actual working session of the Senate, that this is a bona fide news event, and it would not require equal time from other candidates, under the current statute.

Senator PASTORE. You mean they would have to show the whole thing, or would it be up to them to editorialize and cut it in any way that met the convenience of their broadcasting facilities?

Mr. PIERSON. I think what I really had in mind when I said that Congress would adapt itself to the use of the media, that this session would be held especially and primarily for airing the views of the different Members of the Senate on this issue. I don't like to use the word "staged"; I will use the word "produced."

If you want to get the interest of the viewers, and if you had that in mind when you adopted your rules for these kinds of sessions, I don't think there is any question but what the television audience would view it, and I don't think there is any question but what television stations, if not all, some, would carry it. And it seems to me that the trust of Senator Fulbright's proposal does not seem to me at all to be a fairness doctrine problem. He wasn't merely talking about responding to the President. To use much less eloquent and poetic words than he used, I think he was saying the Congress ought to find some way to get a handle on television viewers, somewhat similar to that that the President has.

Senator PASTORE. That is right.

Mr. PIERSON. I don't think I can expect to do it unless you do what the President has done, the current President and all three before him, to decide what you have to do in terms of performance to attract this media and to use it. It is pretty obvious to me if you schedule a night time session or a 3-hour filibuster, no one would be looking at television.

Senator PASTORE. But what would be wrong, Mr. Pierson, if the networks were willing to give this time Mr. Fulbright speaks about on a voluntary basis, but not mandatorily, and allow certain people designated by the Congress to speak, if it could be done. I know that is where the dilemma lies. But if it could be possible, what would be the difference? They would get there and they could explain it in a half hour and that would be it. Maybe it wouldn't be as dramatic as a debate. But the fact still remains that that is all he is asking for.

What he wants is the privilege of the Congress speaking out to the people of the United States as the President does, at its own initiative, according to its own format, you see, not with any sensee of quarrel, but merely with a sense of exposure so the people will better understand what the problems are in the Congress on a particular piece of legislation.

Now I quite agree with all of those who have said, "How are you going to work this out?" But assuming it could be worked out, assuming that that could be done, do you see any harm in the networks or broadcasters voluntarily giving a half hour of prime time, say, four times a year, so that Congress can say what it has on its mind with reference, let's say, to a delay of appropriation bills and why, let's say, on the delay of the military procurement bill and why, what the Congress has to say about the ABM pro and con, you see, so that the public would better know how the Congress feels about these things?

Maybe this is important, and maybe it is not important. I think it is. But how you can do it of course is the problem.

Mr. PIERSON. I think I would pose two objections to Senator Fulbright's resolution.

Taking them in reverse order, we think a right of access principle is very, very dangerous as a matter of principle. The voluntariness that you suggest removes that objection. Our other objection is that we wouldn't—it wasn't really an objection; we said we couldn't understand how Congress could efficiently use a half four four times a year.

If you can solve these problems, I see nothing wrong with it. But what seems to me would be much better for the public is to get a composite of senatorial views on matters, which the Senate has over its lifetime developed a means of doing.

I think it would be much better if the public could have a 2-hour prime time program four times a year that would consist of orderly and serious Senate debate on issues. I am not suggesting they are not always orderly. I saw your smile——

Senator PASTORE. You don't know the Senate. When you begin to decide who is going to talk and for how long.

Mr. PIERSON. No. I would think that Senator Fulbright could get his uninterrupted chance on two conditions; first, his colleagues would agree he should have it, and second, he would refuse to yield. Now, if his colleagues——

Senator PASTORE. Then you do know the Senate.

Mr. PIERSON. If his colleagues would not give him the time, I don't think he could blame the President or television, I think he must blame his colleagues.

Senator PASTORE. Well, I think you have made a good presentation, Mr. Pierson. I think it points up again how difficult this problem is.

Senator Scott?

Senator SCOTT. Mr. Pierson, I have mentioned the introduction today of a bill which would require not less than four times a year the broadcasting of sessions of the Congress for a 2-hour period, but not be limited to that necessarily.

It seems to me that if that were to become law, the rules of the Senate could be modified accordingly to provide certain protection for different points of view, for example, one thought that occurs to me would be a limitation of 5 minutes to each Senator as long as some other Senator wishes to be heard, which would give ample opportunity.

There are dangers in it, I know everyone would appear that time with a blue shirt and would be in fine posture for that 2-hour period.

But I do believe the Senate would be aware of the element of responsibility and would feel a necessity to be germane to concentrate on the issue if only for the great value the exposure gives to the opinions pertaining to the subject in controversy. While you have said a voluntary decision by Congress to permit broadcasting would do the job, would you see any objection to providing that it could be done in this way by statute, bearing in mind Senator Pastore's comment that in order to do it voluntarily you might have the difficulty of securing unanimous consent?

Mr. PIERSON. Senator Scott, in light of Justice White's opinion in the *Red Lion* case, I think it has already been declared constitutional that the Commission and therefore its creator, the Congress, could require stations to allocate certain amounts of time to public affairs programs.

So I think that case answered your question. There is a distinction, however, where I hope still remaining after Justice White's decision that it is one thing for the Government to say you must devote a certain amount of time to a given type of program sort of as rent for your use of this facility, and quite another thing for them to say now you must put Senator Mansfield on the air tonight at 9 to discuss a given issue.

I think that is the distinction between my objection to Senator Fulbright's resolution and your proposal that you have just outlined.

Senator SCOTT. I don't think I have anything else.

Senator PASTORE. Thank you very much, sir. I want to thank all of the witnesses for coming here.

Is there anyone else in the room who wants to testify for or against this resolution? We have a list of five witnesses tomorrow, Senator Dole, Mr. McGannon, Mr. Wasilewski, Mr. Macy, and Dean Burch and that will conclude the hearings tomorrow.

Senator SCOTT. If no one wants to say anything, Senator, and if the television cameras would remain on, I would be glad to speak indenitely on the beauties and glories of Pennsylvania and the joy of representing and continuing to represent the Commonwealth.

Senator PASTORE. Alone, your beaming countenance on that screen, I think would enlighten much of the world.

(Whereupon, at 3:35 p.m., the hearing was adjourned.)

PUBLIC SERVICE TIME FOR THE LEGISLATIVE BRANCH

THURSDAY, AUGUST 6, 1970

U.S. SENATE,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMUNICATIONS,
Washington, D.C.

The subcommittee met, pursuant to adjournment, at 10 a.m., in room 5110, New Senate Office Building, Hon. John O. Pastore, chairman of the subcommittee, presiding.

Present: Senators Pastore, and Scott.

Senator PASTORE. The hour of 10 o'clock having been reached, I think we are ready to proceed.

Our first witness today is a very distinguished gentleman in the broadcasting industry and a personal friend, Don McGannon, president of the Westinghouse Broadcasting Co., accompanied by Joseph Baudino, vice president, and John D. Lane, counsel.

STATEMENT OF DONALD H. McGANNON, PRESIDENT, WESTINGHOUSE BROADCASTING CO.; ACCOMPANIED BY JOSEPH BAUDINO, VICE PRESIDENT; AND JOHN D. LANE, COUNSEL

Mr. MCGANNON. Thank you, Mr. Chairman. I am pleased to appear before the subcommittee on behalf of Westinghouse Broadcasting Co. and the group W stations.

There are few issues which loom more importantly to our lives in the 1970's than mass communication. I think it is evident that if solutions are to be found to our many domestic and foreign problems the mass media will have a vital part in bringing about the solutions.

Today, I would like to share with you my views on the role of mass communication in the processes and functioning of the Federal Government. I think this issue is at the heart of the concern presently manifested in S.J. Res. 209 and these hearings.

I purposely label this the process of government and thus have deliberately avoided the individual political activities and motives of candidates or governmental officials. I understand that there is an unavoidable intermingling of the two but I believe that in our considerations today, concerning the utilization of the mass media, it is of the utmost importance that we deal primarily in terms of substantive governmental processes and not partisan political purposes.

49-650—70——8

A similar distinction was made recently by Herbert E. Alexander in his treatise called "Communication and Politics: The Media and the Message," written for the Duke Law Journal:

> Effective communication is important in two respects to those who would wield political power: It is effective communication which elects men to the Nation's offices, and it is effective communication which enable men to exercise control over the direction and activity of the Government and to incorporate certain opinions and preferences in the policies and laws of the land.

Two significant legislative and administrative policies now regulate the utilization of the public media: (1) Section 315 of the Communications Act of 1934 which carries over the equal time provisions of the Radio Act of 1927 requiring equal time in the use of the public media by candidates for political office; (2) the fairness doctrine, first clearly enunciated by the Federal Communications Commission in its 1949 editorializing report, which requires balanced coverage on issues of public importance to the community.

While the latter tends to be the most commanding in our current consideration, let me discuss both in order to be comprehensive in my approach.

When the original legislation on communications was enacted in the late 1920's and early 1930's the basic problem confronting the Congress was that of technical interference and congestion among competing users of the available frequencies. Obviously there had been little, if any, use made of electronic media in the political or governmental process.

Wisely, however, Congress included the provision requiring equal opportunity to be afforded to political candidates for public office. The possibility of a public disservice by those who controlled the media by favoring one political candidate or party, as opposed to another, was thereby avoided. This made a great deal of sense at that time but, in my opinion, as time passed, the equal time requirement has resulted in a limited objective and vitiated a more abundant opportunity. While it is not totally pertinent at this moment, I wish to express my opinion that section 315 has outlived its purpose and should be repealed.

In its place, the broadcast licensee should be charged with the basic fairness doctrine obligation of balanced coverage in the presentation of political candidates as well as political issues.

It must be remembered electronic media have been used for many years.

I am sure most people in this room recall one of the monumental uses of radio in government. On March 4, 1933, at a time when our Nation was desperately close to internal disintegration, we heard the extraordinary voice of a newly inaugurated President say: "All we have to fear is fear itself."

It is possible that, without radio, those same words would have failed to have their galvanizing effect upon the total body politic. Thereafter, Franklin D. Roosevelt frequently used the fireside chat in an effort to calm troubled spirits and forge a national will. His expressions of leadership and hope did much to accomplish socioeconomic and sociopolitical objectives that he and his legislation sought.

Most of the people in this room recall the 1941 attack on Pearl Harbor and listening to the President's dramatic statement that December 7 would be recorded in history as a day of infamy.

During the ensuing mortal struggle we continued to hear radio—then the only electronic media—used again and again by Roosevelt and Churchill to rally the forces of the free world.

Following the conflict, our technology added sight, movement, and demonstration to the phenomenon of sound. This development is of critical importance because the media, at this point, assumed a much greater importance. I am reminded of the appearances of candidates Eisenhower and Stevenson in 1952 and 1956, of the primaries in 1960, and of the presentation of John Kennedy to the ministerial convention in Houston in that same year.

We all recall the Kennedy-Nixon television debates, the inaugural address of January 20, 1961, and the first regularly scheduled Presidential TV news conference held subsequent to the inauguration. Remember how vivid television made the tense days of the Cuban missile crisis?

Similar was the impact of the tragedy of November 22, 1963, and the events that followed.

During President Johnson's 5-year administration, television and radio became an even more integral part of the governmental process and our national communications system.

I have imposed upon you an elaboration of these past events in an attempt to emphasize the fact that today we are dealing with a public media in a degree and to an extent that no prior generation could have predicted or foreseen. Our country's telecommunication system is the most extensive and pervasive of any in the world and the knowledge and sophistication of the audience is, by far, the most extensive enjoyed by any body politic.

It is important that in considering this resolution and, more importantly, in considering the most effective accomplishment of public goals and objectives that we appreciate the fact that we are dealing with new values and new issues and with old laws and old regulations which had their genesis in another era and with another medium. These new issues are complex and the ramifications are profound and extensive.

Recently CBS, no doubt with a publicly motivated purpose, attempted to establish a new dimension of the television medium with respect to the governmental process by making available for one-half hours of network time to the loyal opposition. When I heard the CBS announcement, I was concerned but, nevertheless, hoped for the best.

As it turned out, I think it was an industry failure as indicated by the pyramiding of requests for equal time or comparable exposure and the need for these hearings. Two factors, in my opinion, led to this state of affairs:

(1) The loyal opposition was construed to be only the opposing political party structure. When one considers the spectrum of differing points of view within the Republican and Democratic parties on the crucial national issues, we must quickly conclude that there can be no effective coalescing of viewpoints if political party structure is to be the sole criteria.

(2) The CBS decision to make network time available to the loyal opposition was made by CBS unilaterally rather than being considered by a broader base of our industry. CBS's unilateral action effectively committed individual stations to a principle or philosophy with which their management had no real involvement. In reality, while CBS only offered time on its own five owned and operated stations and its leased A.T. & T. network facilities, it effectively contributed 4½ hours on behalf of 190 affiliated stations who had no part in the decision.

It is the consequence of these facts which brings us here today at a time when many diverse elements are claiming a lack of fairness in the availability of public media to express individual views on peace, race relations, the economy, youth, dissent, and so forth. The intensity of the situation has been heightened by several of those petitioners being candidates next November in an off year election that has assumed importance beyond the normal.

Before proceeding further, let me comment upon the fairness doctrine since this relates importantly to our consideration here today. Westinghouse Broadcasting Corp. has continually supported the validity of this concept since we believe that it is the only practical method by which the balancing of attitudes and views on controversial subjects can be brought to the public.

The focal point of this responsibility, we believe, must be the individual licensee under the sharp and diligent eye of the FCC and its staff. Just as we are experiencing today, there is wide variation of attitudes concerning what is fair in a given situation. The advocates and antagonists of a certain issue seldom view the use of the media objectively. More frequently, they militate for the equivalency of an equal time provision and tend to discount the overall balance achieved through all formats and methods of broadcast presentation which the fairness doctrine allows.

I would hope that, out of these hearings and the complaints pending before the FCC on this subject, there would flow a strong affirmation and support of the usefulness of a vigorous fairness doctrine.

Despite the importance of the fairness doctrine and the benefits which can be derived from its vigorous implementation, I believe the time has come for the industry, with the help, advice, and assistance from other responsible sources, to undertake a total reassessment of the problem of communicating to the public as part of the process of Government. To this end, this committee could cooperate with and encourage the FCC to create a forum where suggestions and ideas can be discussed and weighed with a view toward working out an agreed solution to the problems we now face.

This is only one, in my opinion, of several serious challenges and problems that face our telecommunication system in the seventies. On March 13 of this year, I had the privilege of appearing before the Federal Communications Commission and at that time raised 10 areas for concern, one of which dealt with today's subject. At that time, I asked the Commission to act as a catalytic agent—and only that—to call together representatives of the industry, education, the community and such other expertise as is needed to fashion an overall na-

tional policy in telecommunications and to set goals and objectives for the next decade. The subject matter of today's hearing was an element of that presentation and could be a first order of business for such a group.

As I talk with you today I do not have any pat solutions for this problem and, thus far, I have heard none that satisfies me, in my opinion, nor the long-term public interest. My associates and I have attitudes on particular subjects which I am sure, when tested and discussed in a dialog with others who are similarly involved, could emerge as a workable policy, developed by the industry and others, which would be truly responsive to the needs of the seventies. This would spare the Government the difficult, if not impossible, task of attempting to legislate in an area that does not readily lend itself to effective legislation.

To be specific, the following represents some basic principles which I believe should be considered in the formulation of new policies:

(1) It is my opinion the President of the United States, irrespective of party, is the leader of all the people of our country. His effectiveness in many cases will depend on the effectiveness of his communication with the people. Therefore, I believe that he should have ready and complete access to all electronic media to effectuate this communication.

(2) As a counterpart of that, it is of great importance, however, that the President use the media with great care, sensitivity, and capability. Overuse, overexposure of less than high professional presentation will abort this communication process and alienate the public rather than attract them.

(3) When the President speaks on a controversial subject, which is very often the case, the news media in my opinion has the responsibility and obligation to effectively and respectively comment upon his views and express such other views as are contained within the full spectrum of thought on that subject.

Senator PASTORE. May I interrupt you at that point?

Why would you give a greater privilege to the news commentator than you do to the Congress of the United States? Why doesn't the Congress have the same privilege?

Mr. MCGANNON. I, only this far, have made that mistake. In about one or two more items you will see I correct it.

Senator PASTORE. All right, fine.

Mr. MCGANNON. (4) Similarly, when the President speaks on controversial subjects, a prominent, identifiable, and responsible spokesman for the opposing points of view should be afforded reasonable opportunity to voice these views as determined by the broadcaster's judgment in implementing the fairness doctrine generously and positively.

(5) The times, the issues, and the circumstances should determine the frequency and length of Presidential exposure as well as commentary by the media and response by others advocating different views.

(6) Congress also has a role in this communications process. While in principle the amount of time to be made available should be flexible, a structure and a base amount of time for the opposition should be

advanced at this time. I suggest that twice during each year an opportunity, of 30 prime time minutes each, be afforded to a Representative designated by the opposition party in the Senate and separately an equal amount in the House.

Senator PASTORE. You would do this on a voluntary basis?

Mr. MCGANNON. Yes, sir. This would represent a base of 4 half-hours in each year.

(7) Only individuals who have a direct public responsibility in the governmental process would be designated to comment upon Presidential assertions—not individuals whose activities are limited to the political party organizations.

(8) Both Presidential statements and those by the congressional designees would be carried on the major television and radio networks and such other facilities as individual licensees may determine.

(9) In order to preserve true freedom of broadcast editorial effort, the final judgment shall be that of the individual licensee involved in a given situation.

(10) The balanced presentation of all sides of controversial issues should be the public service responsibility of each licensee. As a consequence, the licensee shall be free to determine his policy on the sale of time for the presentation of such controversial issues. It is our policy and will continue to be our policy—excepting the sale of time to political candidates and for ballot issues—not to sell such time and thereby prevent well-funded organizations and individuals from all walks of life dominating the electronic media and controlling public thought by sheer dint of its or his own wealth, in the area of controversial issues of course.

I do not feel that any of these principles or other proposals should be adopted without the test of critical dialog by representative elements of this industry and our society.

As I said earlier, this is a very complex issue and vitally important to the free flow of information in a free society. The current policies and legislation are many years old. Our society has become infinitely more complex as are also our problems. Our technologies and our capabilities have greater potential. If the best minds available are put to the task of the kind of study I have suggested, we should be able to achieve a workable solution.

For your information and for the record, I offer a copy of my statement to the Commission in March and I would now be pleased to answer questions you may have concerning my comments today.

Thank you.

Senator PASTORE. They will be incorporated by reference.*

Senator PASTORE. Are you through, Mr. McGannon?

Mr. MCGANNON. I am, sir. Thank you.

Senator PASTORE. I want to compliment you for your statement and for your provocative thinking on this very, very complex subject.

As I understand your position, even in the answer to the President or irrespective of the answer to the President, your suggestion is that

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*Statement of Donald H. McGannon, president of Westinghouse Broadcasting Co., before the Federal Communications Commission, March 13, 1970.

you would voluntarily grant 4 one-half hours each year, 2 to the Senate and 2 to the House, to be used at the discretion of either branch, each branch designating the individual that would speak for that branch, or the group of individuals that would speak for that branch, on any controversial subject?

Mr. McGovern. Mr. Chairman, my original comments, since this matter was born of response to Presidential statements, my written or prepared statement was intended to be a response to those.

However, I don't see any reason within that same quantitative context, that that time should not be made available.

Secondly, I am indicating, though, it should be made available to the party, the opposition party from the Presidential party in power. And that in caucus, that party would designate a representative to represent them in the 2 half-hours in the Senate and 2 half-hours in the House.

Senator Pastore. Of course as these hearings have developed, the intent has become a little broader than the concept that this was to be a refutation of anything the Congress might think was offensive to it in a Presidential news conference. It has gone a step further. They go so far as to say—and I want your comments on this—that the Presidency of the United States is a constitutional office, he is a very prestigious individual. I quite agree with you that the President of the United States should not be shackled in any way in communicating with the people on important issues. God forbid the day that that would happen.

The question arises that even a President is a human being and from time to time in the spirit and in the excitement of controversial issues he might take a positive position which either offends the opposite party, or offends someone in his own party who has taken a contrary position, and feels offended, that possibly his side of the story is not being fully told.

And there is an argument for that. But what has been talked about here as well is the idea that while the Presidency is a constitutional office, so is the Congress of the United States a constitutional body that is elected by the people and makes the laws and has the same prestige as a body as the Presidency of the United States.

The President of the United States determines on his own when he will go before the American people and no one should ask that to be changed. The President decides himself what he shall talk about and no one should dare ask any change there.

Now the Congress and those who have been talking here before this committee, the witnesses, have taken the position that this same courtesy should be rendered to the Congress of the United States; and they have introduced this joint resolution which is mandatory that the broadcasting industry grant a certain amount of time to the Congress of the United States to carry out this idea. The minute that suggestion is made, of course the question arises that this may be discriminatory, because there is nothing in the law that compels the broadcaster to even give the time to the President of the United States, it is done on a voluntary basis.

The point I am raising is this: What do you see wrong in the broadcasting industry allotting this time that you suggested at the convenience of the Congress of the United States to be used by the Congress of the United States at its discretion, at its own choosing, and to discuss the problems and issues that they consider to be of importance to the people of the United States of America, irrespective of whether or not this has anything to do with an utterance from the President or a news conference by the President?

Inasmuch as it is a coequal body and this, of course, includes the judiciary as well, why shouldn't it have the same courtesy extended to it?

Now I know that that opens up many complex problems. How do you go about doing this? I will tell you very frankly, I have probed and probed and probed here and no one as yet has come up with the answer. They say, well, the Congress is capable of doing it. You know the recommendation will have to come from this committee. In that regard, I will have the primary responsibility. But coming back to the fundamental question that I put before you, do you see a distinction in granting to the Congress of the United States, which is a coequal branch and has the same responsibility to the people of this country—and sometimes even more intimately, because the House is elected and reelected fully every 2 years—don't they have the same rights and privileges as the Presidency has in discussing the issues, not in a sense of quarrel, but merely in a spirit of exposure?

What is your answer to that question?

Mr. McGannon. First, Mr. Chairman, I agree, which is an obvious fact, with the coequal position of the Congress with the executive branch and the judicial branch of the Government.

I have a very liberal point of view about the opportunity of exposure of any national issues and, therefore, I don't philosophically oppose your thought. I think, however, there are very practical differences between the unified state of the executive branch epitomized by the President and the rather nonhomogeneous diffuse composition of almost 535 Members, I guess—in the House and Senate; and compounding that is the rather wide differences in attitudes on sociopolitical subjects within the same party structure within the House and Senate. And while they are elected by the people too, they tend to be elected by a considerably smaller constituency than the Presidency.

I would worry about that suggestion without some refinements in a year in which the Congress was controlled by the same party that was in the White House, because at that point in time conceivably one would be reenforcing the other and really shutting off the dialogue that perhaps should be or could be discussed.

I don't view the process of being one of retort and rebuke by Congress to the President. I look upon it as a dialog. I look upon it as a communication process. In order to bring a better level of public information on important public subjects I wish it would lose the intensity of rebuke and answer and retort and talk issues and talk fundamental public good in that process.

I think in the course of the recent experience that is one of the unfortunate elements of that that came out. I would hope it would be one

that would deal with substantial and deal with issues and deal with the desire to create a better public awareness and informal level than just a tit for tat situation between the Presidency and the Congress.

So I can't disagree in philosophy with you. In order to answer it more specifically, I would have to know more specifics about how it would work. But I can agree with your philosophy in the matter and support you in that regard.

Senator PASTORE. Do you feel it is hard to remove the practical aspect of the problem from the principle that is involved?

Mr. MCGANNON. Yes, very much so. Very much so.

Senator PASTORE. I would hope, Mr. McGannon, I have respectfully suggested to the other presidents of the networks that they would give some thought to this suggestion of voluntary participation with certain modifications, limitations, anything they might want to suggest.

Wha the end result of these hearings will be, of course, I am in no position to say now. I have been connected with this responsibility for a long, long time, since 1952 I think, and we are dealing with a very complex problem.

We do have section 315, the guaranty of equal time to various candidates, so the political structure of the Nation would not fall into the control of a selected few. We do have the fairness doctrine that has been upheld by the Supreme Court, and that is a very effective instrument. And how much of this, of course, will fall right into the area of the fairness doctrine, where it might agitate and stimulate many other problems as well, I don't know. All of that, of course, will have to be considered by this committee.

It is not an easy solution.

Mr. MCGANNON. It is a very difficult one, sir.

Senator PASTORE. The idea sounds very, very good, it is a very noble idea, but I think the Congress of the United States ought to explain to the people of the country exactly what is going on, what their hang-ups are sometimes, what the frustrations are. I think the people of the country are entitled to know that.

And I think they ought to hear it from the Congress as well as they ought to hear it from the President.

Now, how you do this, of course, is another question. I want to thank you for coming here this morning——

Mr. MCGANNON. May I make a further observation and one request of the committee?

Senator PASTORE. Yes.

Mr. MCGANNON. The observation I want to make is I think we should not in the course of these discussions overlook the fact that probably the coverage of the activities of the Federal Government and particularly the Congress are probably the most extensive that exist anywhere in this country of any place perhaps in the world. I think that is an important basis upon which we should consider this current area of the time availability to the Congress for the presentation of views on controversial issues. The broadcast media and all media have done a very extensive, a very aggressive and fine journalistic job.

Senator PASTORE. But you have to admit it is a very glamorous area, too. You have to admit it is not the most articulate Member of Con-

gress that is called upon to discuss an issue. It usually is a fellow who is maybe running for the presidency or mentioned for the presidency or for some reason he has set himself up in some unique position. The question here is that sometimes those who have something to say, who have the ideas, but possibly don't have the same charisma as others, if I may borrow a word, somehow that is a responsibility of the industry. I have seen that happen time and time again.

And you have seen it happen.

Mr. McGANNON. Oh, yes. I don't represent——

Senator PASTORE. This idea that you have got to stand on your head in order to get television attention, and if you do your job and you do it well, that is not enough. Somehow we have got to do something to disabuse that idea if we are going to serve American intelligence. That is the point I make. That has happened time and time again. That is happening to the screen as well.

Mr. McGANNON. My request, Mr. Chairman, is that in the process of the subcommittee deliberating this very difficult issue that it give serious thought and consideration to the possibility that the crucible on which something will be developed here in my opinion is not and cannot be effectively done by the Congress itself or by this committee. I think it has got to represent all elements of the community. I think it has to represent the industry. And I think it should be a voluntary effort and should come forth as something which, if you will, is a part or element of a national policy of telecommunications on the governmental process.

Senator PASTORE. Dean Burch is going to testify today at 2 o'clock, I am given to understand, and I hope that whoever is here as his observer will bring this to his attention and see what he has to say about it.

Thank you very, very much.

As our next witness, we have the Honorable Robert J. Dole, U.S. Senator from the State of Kansas.

We are honored to have you, Mr. Dole, and you may proceed in any way that is convenient for you.

STATEMENT OF HON. ROBERT J. DOLE, U.S. SENATOR FROM KANSAS

Senator DOLE. First let me commend the chairman. As you indicated, you have had a vast amount of experience with an area that many of us are just learning about. But while I come as a junior Member of the U.S. Senate, as a Member of the Congress for 10 years, I have been concerned about the very question that we are discussing today.

Mr. Chairman and members of the subcommittee: Over the past 10 to 15 years television has established itself as an indispensable vehicle for gaining political support and maintaining political consensus in the United States. Due to the increased importance of television broadcasting in American politics, a myriad of controversies have arisen—specifically concerning the Federal Communications

Commission fairness doctrine, as sanctioned by the Congress in 1959 in section 315(a) of the Communications Act of 1934, as amended. Subsequently, there have been suggestions for altering section 315, in order to clarify subsection (a) and to more precisely defined the extent of the doctrine's application. However, I believe that Senate Joint Resolution 209, like most of the suggested alterations which preceded it, is an unsatisfactory remedy.

CONCERN WITH FAIRNESS

To be sure, the Senator from Arkansas, the author of the resolution and a television regular, is not alone in his concern that the broadcast media—specifically the networks—present a fair, unbiased account of important public issues. I, too, am concerned that public affairs broadcasts provide the public with the full story. But I am also concerned that an equal amount of fairness be applied to regular and special news broadcasts.

Too often an obviously biased point of view is presented under the guise of hard news reporting. In recent months, network news departments have crossed the line between commentary and straight news. In at least one instance, a network aired a report of a correspondent in Southeast Asia which played on the emotions of American troops just before they entered battle. The same network broadcast a report in which the Nixon administration was said to have claimed to end the hunger problem in America "within 1 month." Another network personality made a remark which some construed as a charge that Vice President Agnew was indirectly responsible for the tragedy at Kent State. Such instances of slanted news reporting merit open criticism.

MAINTAINING A FREE PRESS

But it is important to recognize that the central issue in criticism of print and broadcast news reporting is not freedom of the press. The media should not raise the first amendment as a shield against legitimate criticism; nor should they feel intimidated by criticism.

However, should the Federal Government attempt to enforce a blanket rule such as that proposed by the Senator from Arkansas, I believe the media would have just cause to feel intimidation; for it is an established principle in this Nation that the only legitimate regulator of a free press must be the press itself. That is a principle that must not be compromised. Therefore, I can join the network and other broadcast executives who testified in opposition to Senate Joint Resolution 209.

OBJECTIONS TO THE RESOLUTION

My specific objection to the pending resolution is based on three points. First, I do not believe, except in the case of a national emergency, that the Federal Government should require broadcast stations to present any particular program—whether it be a soap opera or a partisan political address. Such a blanket provision would be a step toward removing the discretion and trust the American system has placed in free, commercial broadcasting. It would be similar to the

British system in which any ministry of the Government can order any program it favors to be broadcast at any time. Admittedly, Senate Joint Resolution 209 is a much narrower requirement, but the basic principle is the same.

Secondly, why should there be a requirement—and this has been touched on, of course, by other witnesses—in the Communications Act for congressional appearances on every broadcast facility in the Nation when there is no such requirement for Presidential appearances? Why does the proposed joint resolution not also require, for the sake of legal consistency, that the President be presented at least four times a year? For if such requirements were advisable, it would seem reasonable to require time for the executive branch as well and perhaps the other coequal branch of Government.

Granting for a moment its desirability, a third objection to the joint resolution is its vagueness. There is no explanation of who is an "authorized" representative of the Senate or House of Representatives. Nor does the legislation specify how much time should be made available. There is no reason to believe that any "authorized" representative could present a consensus view of such pluralistic bodies as the Senate and the House of Representatives of the United States.

I might add, Mr. Chairman, that as far as I know, time might be available now by the networks, simply by request from someone in the Congress, without any legislation being necessary.

CONGRESSIONAL ACTION

There is at least one form of action the Congress can take by itself to make certain the public is cognizant of its thinking on important issues. All congressional hearings and Senate and House sessions, other than executive sessions, could be open to television coverage. I am not certain I support the proposal introduced yesterday by Senator Scott, that we open the Senate and House Chamber four times a year for television coverage. I am afraid that someone might be trampled in the rush to get before the camera although it might improve the attendance and thus serve a useful purpose. But by encouraging the stations and networks to broadcast more of the activities of Congress, the public could become aware of the general feeling of the Members of Congress on issues of public importance.

Again I might add there are some of us with more moderate to conservative philosophies who sometimes feel, perhaps without any justification, that too often only the liberal view is presented on networks. Yes, maybe a Republican and a Democrat appear, but philosophically both are liberals. We feel from time to time that the conservative view is somehow overlooked by those who report the news. So in addition to a partisan balance, we sometimes feel that there needs to be a philosophical balance in the news.

I am not certain just how Senate Joint Resolution 209 would apply to this problem. But in any event, broadcasting more activities of the Congress would be informative and certainly more in line with the principles of the first amendment than the pending resolution.

For these reasons, I believe the Congress would be well advised to reject Senate Joint Resolution 209. I do not mean to suggest that there may not be some reasonable alternative to the confusion which occasionally exists as a result of demands and counterdemands for comparable time under the fairness doctrine. As the chairman knows, there are a number of us now who have made demands for equal time. We have filed complaints with the FCC. I am a member of one group. There are other Members of Congress in another group. Some want comparable time to answer the President, some of the rest would be satisfied to have as much time as the Senator from Arkansas. Others might be satisfied to have as much time as some of the more junior Members of the Senate, because as the chairman pointed out, there are Senators who do their work but who are not recognized by the media. Certainly, this is an area that should be given more attention.

I can appreciate this, having come from the House, where for 8 years the only time I was on television was during a campaign, when I paid for the spots. But——

Senator PASTORE. And you are good looking.

Senator DOLE. But there is a difference in the Senate. Maybe we are more accessible. But in any event there is a marked difference, perhaps because there are many presidential hopefuls in the Senate, in fact there are only two or three that probably aren't hopefuls in the Senate. But in any event, there is a real problem, and there is more attention given to the Senate than the House. Maybe it is because of numbers. It would be difficult to have 435 on each evening news program or any representative group from the 435. As a result of these problems, the Fairness doctrine is probably the only workable method of assuring that a free and complete discussion of controversial issues will be broadcast by the Nation's radio and television stations.

I need not tell the chairman about these cases. I read one last night, the Red Lion Broadcasting case, where the Supreme Court found the Fairness doctrine encompasses "A set of reasonable concise and specifically enumerated prohibitions addressed to the evils they seek to guard against."

We should recognize the difficulty of attempting to write specific guidelines for application of the Fairness doctrine. In fact, the Supreme Court found in the Red Lion case no "irrebuttable presumptions" since the subject of a complaint is provided an opportunity to comment or take action on a complaint before action by the Commission.

That is the major reason administrative bodies such as the Federal Communications Commission were created—to deal with such issues on a case-by-case basis. As Roscie Pound of the Harvard Law School remarked, "It is because rules aren't adequate to the situation that something is committed to an administrative commission." As the law now stands, we grant broad discretion to the commercial licensees in determining balance in presentation of public issues. Yet there is still recourse to the Federal Communications Commission and the courts should such action be deemed necessary.

But the current confusion regarding comparable time for discussion of the general issue of the war in Southeast Asia demonstrates that further clarification of the Fairness doctrine would be helpful. Although I cannot endorse the joint resolution now pending in the subcommittee, I do commend you, Mr. Chairman, for holding these hearings. I would further suggest that the FCC might hold hearings similar to its 1948 public hearings which led to the 1949 report on editorializing by broadcast licensees.

Mr. Chairman, that concludes my statement and my comments on what I consider to be a most important subject.

Senator PASTORE. Thank you very, very much.

Senator McGovern has submitted a statement, which we will place in the record at this point.

(The statement follows:)

STATEMENT BY HON. GEORGE MCGOVERN, U.S. SENATOR FROM SOUTH DAKOTA

I am pleased that Senator Pastore and members of the Communications Subcommittee are holding hearings on the important proposal made by Senator Fulbright in Senate Joint Resolution 209.

The present hearings are an outgrowth of the mounting concern that the great power of television is being used so heavily by the President as to upset the constitutional balance of powers between the Presidency and the Congress.

Like many others, I believe the President should have access to television and radio whenever he deems it necessary to speak directly to the American people. But I also believe that the record of the last 18 months shows that this privilege if used excessively without comparable consideration for the Congress can produce a distorted view of vital public issues.

The precedent set by Mr. Nixon is almost certain to be followed by succeeding Presidents, either Democratic or Republican. As a result, it becomes increasingly necessary to ensure that the use of the airwaves in the national political process is fair and that it promotes a balanced treatment of the issues.

The Constitution, both directly and indirectly, provides that, in the field of national policy-making, the President and the Congress shall share governmental powers. This represents, of course, the checks and balances which ensure that no one man as President and no Congress can govern the United States independently of the other. We are all familiar with historical underpinnings of this constitutional framework.

The interplay between these two branches of government, each representing the people, but selected differently to ensure a full representation of all views, is the essence of our governmental system.

Both institutions should be given access to the airwaves. There are virtually no problems in connection with according this access to the President, who as an individual, merely requests the time and is granted it. The problem of defining who should speak for Congress may well be the reason why there has been no serious effort to accord the Congress the same kind of access.

The networks might argue that Congress is, in fact, given its chance through the regular newscast and through the several interview programs on which Members of Congress often appear. But I submit that such television coverage does not in any way match qualitatively the broadcast time made available to the President.

The President is free to organize the television time at his disposal as he sees fit. He is under none of the contraints associated with a television interview program and is not subject to the editing characteristic of news programs. He can choose the time he would like to appear on screens. And, perhaps most importantly, he appears simultaneously on all three television networks, which means that in many areas his appearance preempts all other television programming.

In simple terms, I believe that Congress as a coequal branch of the federal government should be accorded exactly the same kind of access. For this reason, I fully support Senate Joint Resolution 209.

There appear to be two kinds of arguments in opposition to this kind of television access for the President and the Congress. First, the networks may complain that too large a portion of commercial programming is displaced and that, in addition to the loss of revenues, they stand to lose viewer interest. In short, viewers will soon tire of seeing their elected leaders and prefer situation comedies and the like. Second, the problem is raised of determining who speaks for Congress.

I think we can dispose of the first problem easily. There is probably a natural limit to the use that either the President or the Congress will make of television. They will almost certainly not want to appear as frequently as "Laugh In" or Ed Sullivan. But whatever the frequency of their appearances, we should always keep in mind that television is intended to be used in the public interest and to serve an educational purpose. There is much room for improvement on both these scores. Rational debate about the complex issues confronting the Nation might help to upgrade both television fare and political understanding and participation.

It is obvious that Congress does not speak with a single voice on most issues of great national importance. Therefore, Congress could not be expected to select a single spokesman to appear on television to express its point of view. Instead, procedures would have to be developed to provide that representatives of major currents of opinion in both Houses could appear on the telecast provided to the Congress either at its own spontaneous request or following a statement by the President. It has been suggested that a bipartisan committee could regulate the matter. It might be appropriate for the majority and minority leadership in both Houses to handle the selection of spokesmen, based on sponsorship of legislation or committee assignment or similar criteria.

The net result of the selection procedure would be to allow the viewer to experience the give-and-take of the legislative process. Direct broadcasts of House and Senate proceedings would not allow for a compact and manageable television broadcast. Nor could the networks be left with the responsibility of editing filmed proceedings of the Congress in order to arrive at a program of acceptable length. But recent experience on network programs designed to present the diversity of opinion in the Senate on the Cooper-Church amendment and the amendment sponsored by Senator Hatfield and myself and many other Senators shows that it may be possible to televise what amounts to a summary version of our debates.

Whatever the ultimate procedure, I do not believe it beyond the realm of human ingenuity to devise a satisfactory method of selecting those who would appear on the Congressional telecasts and the format for such programs.

I have set forth here the reasons for my support of the pending resolution. May I stress that while my recent experience in connection with telecasts about the so-called Amendment to End the War has been helpful in my consideration of the matter, my support of Senator Fulbright's proposal is not based solely on that experience. Rather the larger constitutional questions that I have mentioned are of basic importance.

But I might observe that if this proposal were adopted it might represent a solution of the present dilemma arising from a plethora of requests for television time. I believe that a single, clear rule like the one proposed would be a great help to the networks and stations which are faced with difficult decisions in the face of a mounting number of requests for time.

The proposal would lessen the need for a partisan response to the President, because on most issues the dividing lines are not simply Party lines. Instead viewers and listeners would be able to gain an accurate understanding of who were the proponents and opponents of Presidential proposals. The Congressional programs would be oriented to the discussion of specific issues, not Party platforms.

In addition, a regular grant of time to Congress, including time for opponents of Presidential policy would remove the need for those who want to broadcast opposing viewpoints to raise considerable sums of money to purchase time. It would be dangerous if the presentation of a variety of views depended on the financial resources of the proponents of some of those views.

The free time granted by the networks to the President and Congress might cause a loss of revenues to the broadcasters. I do not expect that the loss would be great and it would represent the sacrifice necessary to fulfill the stations'

public service responsibilities. If such losses were burdensome, perhaps a federal subsidy could be considered.

I recognize that the pending resolution will not be a panacea. But it does represent a constructive step toward bringing our political reality and the special advantages of television broadcasting into closer harmony. Enactment of the resolution would open the way for consideration of new procedures for the use of television, but we should not shy away from this challenge. Above all, we should not regard this as a partisan issue. If our citizens are denied a full opportunity to take part in the political process as it involves both the Presidency and the Congress, all Americans will lose. Today one Party may have an advantge; tomorrow nother may benefit. In the long run, all citizens and the Nation will gain an advntage, will enjoy the benefit.

Senator PASTORE. Our next witness is Mr. Vincent Wasilewski, representing the National Association of Broadcasters.

It is a pleasure to have you here, Mr. Wasilewski. You may proceed in any way that would be convenient to you.

STATEMENT OF VINCENT T. WASILEWSKI, PRESIDENT, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. WASILEWSKI. Thank you, sir.

Mr. Chairman, my name is Vincent Wasilewski. I am president of the National Association of Broadcasters which has as members 555 television stations, 2,158 AM radio station, 1,212 FM radio stations, and all of the national radio and television networks.

I welcome this opportunity to express the views of the NAB with respect to Senate Joint Resolution 209, because it would affect every radio and television station in the United States.

The resolution would amend section 315 of the Communications Act to require that licensees shall provide a reasonable amount of public service time to authorized representatives of the Senate and House of Representatives. It would be a specific statutory amendment and, if enacted, would for the first time in history require that the Nation's principal journalistic media carry a particular program or a specific spokesman.

Even section 315(a) does not become operable until the licensee first allows a legally qualified candidate to appear on the station's facilities. Senate Joint Resolution 209, however, would require a station to present a particular spokesman unrelated to any election or specific issue. It would be a statutory allocation of time to a branch of the Federal Government.

While the resolution is not addressed to controversial issues nor to the fairness doctrine, it would inevitably bring that doctrine into play. Under the resolution, one or more points of view would be broadcast and, undoubtedly, demands would be made to present still other points of view both from within and outside the Congress.

Senator PASTORE. In other words, would you say, Mr. Wasilewski, that it is your opinion, even though the Congress of the United States is a constitutional entity under the law, that the mere fact the Congress designated someone to speak in its behalf, to express the voice of the Congress, that this would bring the fairness doctrine into play and would also bring section 315 into play?

Mr. WASILEWKI. Absent any other exclusionary legislation adopted by the Congress to the contrary, yes, sir.

Senator PASTORE. In other words, the Congress could dictate that, you think.

Mr. WASILEWSKI. I think the Congress could exempt such appearances from the fairness doctrine and also from section 315.

Senator PASTORE. I see. I thought that should be clear in the record.

Mr. WASILEWSKI. Yes, sir. The chairman of the subcommittee stated on the floor of the Senate, when he announced these hearings, that in his view the application of the fairness doctrine is in a state of confusion at this time.

I certainly concur with that succinct characterization of the entire situation. When it was first enunciated some 20 years ago, though couched in many words with almost as many opinions as there were members of the Commission, the fairness doctrine stood for a fairly simple principle. All understood it to mean that when a broadcast licensee permitted the use of his facility for expression of one side of a controversial issue of public importance he must afford reasonable opportunity for expression of contrasting points of view on the same facility. Matters of timing, method of presentation, and selection of spokesmen were left to the individual licensee.

The doctrine operated as a general guideline and reminder to licensees of their obligation under the public interest clause of the Communications Act. During the early years after its adoption, there were few complaints under the fairness doctrine.

In recent years, however, our institutions have been repeatedly challenged in an atmosphere of crisis. The resulting spirit of foment and revolution has been felt most keenly by the media. Not only our two great major political parties and significant minor parties, but almost every radical group—wherever it may fall in the political spectrum—seeks to present its views on radio and television.

As a result, the Federal Communications Commission is under continuing pressure to hammer out precise decisions in today's unstable atmosphere under a general doctrine which does not lend itself to regulatory precision.

While the fairness doctrine, on its face, appears to be one under which reasonable men could live in harmony, its effect, I fear, is to restrict rather than encourage freedom of expression. If broadcast licensees are required to provide time to major political parties as a matter of law, then it would seem that they could be further required under the fairness doctrine to provide time to the minor parties, to dissenters within the major and minor parties, to all other organized political groups, and to zealots of all kinds. In this age of controversy, every program—indeed, every commercial—could become a controversial issue.

Turning to the specific legislation proposed in Senate Joint Resolution 209, time would be provided on the broadcast media for Congress as an institution of Government. Its objective is to provide to the Congress, as a branch of our Federal Government, the same access to the broadcast media that the President, by tradition, has been able to obtain.

Here it is well to note that the President has no right to command his appearance on radio and television, but stations have broadcast Presidential appearances as a public service.

Although the resolution is nonpartisan, it is impossible to consider it except in the light of certain partisan facts of life. For example, if time were so provided, who would speak for each house? One might answer that it would be simple enough for the majority to decide, or for the majority and minority leadership of each house to divide the time.

But could we, or should we, then ignore significant dissenters? And what about the political orientation of the President and of the Congress? I believe that more often than not the Congress is controlled by the same party as the White House.

Thus, if time is provided to the President and to the dominant majority of the Congress, it would seem that a lopsided situation could develop vis-a-vis the conflict between the two major parties.

Much is being said these days regarding the role of the President as the Chief Executive, Commander in Chief and spokesmen for the Nation. There can be no doubt that the President fulfills these roles when he addresses the American people. At the same time, however, we cannot escape from the fact that the President is the leader of his political party. He occupies a dual role. He is not only President of the entire country; he is a partisan leader of the party that won the most recent presidential election.

We all know that the opposition party has complained since the days of Franklin D. Roosevelt and the fireside chats that the incumbent President, as leader of his party, has an advantage over the opposing political party. The basic question that then arises for the broadcasters, and for this subcommittee, is how do we provide sufficient access to the media for the President and Members of Congress and, at the same time, avoid giving an overwhelming advantage to one political party or to the dominant element within any political party as against significant numbers of dissenters?

One member of this subcommittee has made the very sound observation that a large part of the objective of the resolution under consideration might be achieved by opening the debates of the Senate and House to broadcast coverage. Others have made similar suggestions. With that I heartily concur.

But the issue before us is whether or not legislation should be enacted with respect to access to the media. With the exception of the equal opportunity provision in section 315 of the Communications Act, as it applies to specific use of broadcast facilities by candidates themselves, there is no statutory control of political use of the broadcast media.

Traditionally in this country, the Government has not controlled political colloquy. In various forms, every significant point of view is aired. Broadcasters have honored this tradition in recognition of the right of the public to be informed.

Broadcasting's record in making time available to the leaders of both parties, to individual Confressmen, and to Congressmen representing minority viewpoints, has been good. Every week, Members of Congress present varying viewpoints on many issues in news, interviews, documentaries, and other types of programing.

Broadcasters are aware of the necessity in this country for the presentation of the views of this Congress to the American people. To achieve a balance between the individual viewpoint of the Presidency and the highly fractionalized viewpoint of the Congress, admittedly, presents a most difficult problem for the news media.

Senate Joint Resolution 209 would transfer the initial decision in this news function to other than news professionals, but it certainly would not provide a solution to the basic problem.

The proposed legislation would, in our judgment, not achieve its objective. It contains the possibility of undermining present methods, and inhibiting the development of new methods, of presenting the spectrum of opinion—displacing a working system with a straitjacket of additional statutes and administrative rules. We believe there will be many unforeseen problems in its administration, and that it is likely to have capricious results not intended by its sponsors.

I am confident that broadcasters will fulfill their journalistic responsibility to achieve a reasonable balance without legislative fiat.

Senator PASTORE. Thank you very much, Mr. Wasilewski. I am not going to ask you any questions, not because your statement is not provocative, it is indeed a good statement, but it is very much in line with the representatives of the network and asking you questions now would be covering the same ground, so I hope you understand that.

Mr. WASILEWSKI. I do, sir. I had one thought along the line of questions that have been propounded relative to the spokesmen from the Congress. It has occurred to me that in certain respects this is really not the problem of the media as much as it has been of the Congress, because had there been a spokesman of the Congress, so to speak, over the course of the past few years, I am confident that he would have preferred coverage, not comparable per se, but reasonably fair coverage as has the President of the United States.

Senator PASTORE. Of course, you run up against the proposition, you see, that when you speak on the national level, in refutation to anything that has been said, with reference to any issue, it may not have the same impact in your own bailiwick as it might have on the national level.

Now, I give you the example of Mr. Mansfield. Mr. Mansfield, of course, was designated by the policies committee to speak. And I think he delivered a very impartial, very nonpartisan, very statesmanlike presentation. But it did subject him to equal time on the part of his opponent back home.

And you do have that problem. Therefore, unless somehow you make an exclusion in the law with reference to the Congress, insofar as it pertains to section 315, and the fairness doctrine, you run that risk each time.

Then, on the other hand, do we really want to do anything about 315 and the fairness doctrine? Because that would lead to many other problems as well. All of this has to be considered by this committee in its full context.

And it is not easy. I would not at this time—I have been one of those who has said that I thought the industry had reached a point of maturity, that possibly they could be left on their own. That is the

reason why we exempted the presidential and vice-presidential campaigns in 1960 and they did a fine job.

I am hopeful that this bill that was passed by the Senate, that is now before the House, will pass as well, exempting broadcasters from the effects of 315, insofar as the presidential and vice-presidential campaigns are concerned.

But, on the other hand, I would not do anything to disturb the fairness doctrine. You were a little critical of the fairness doctrine. I realize that sometimes it is hard to interpret it with precision because what is fair to one man is not fair to another man. Especially in the heat of a campaign, there is no one more sensitive than an individual running for public office, you know that.

So you run up against these very serious problems and how you are going to solve them, of course, is a large question. Then if you do exempt the Congress from the effects of the fairness doctrine, wouldn't that be discriminatory? Is that equal protection of the law?

Mr. WASILEWSKI. Or would it be in the public interest?

Senator PASTORE. There you are. These are very serious questions. I have been here for 3 days and everybody has given me a lot of ideas, but nobody has given me any answers so far.

I hope we will get some answers.

Thank you very much.

Mr. WASILEWSKI. Thank you.

Senator PASTORE. Mr. John Macy.

STATEMENT OF JOHN W. MACY, JR., PRESIDENT, CORPORATION FOR PUBLIC BROADCASTING

Mr. MACY. Thank you, Mr. Chairman.

Senator PASTORE. You may proceed, Mr. Macy. It is a pleasure to have you here. I will go a step further than that, it is an honor to have you here.

Mr. MACY. Thank you. You are very gracious, Mr. Chairman.

Mr. Chairman, I appreciate the opportunity to join with the other witnesses in testifying before this subcommittee on the public service potential of radio and television. I know you are aware that this testimony is particularly challenging to me because the central issue involved is one that public broadcasters—and the members of this subcommittee—have been trying to develop and explain to the public for many years. We have sought to demonstrate the fact that radio and television are really more than media for entertainment; they are even more than common carriers of news; they are national and local resources of great potential for communicating knowledge of importance; they can—and must—educate and enlighten as they entertain.

In this, we can all agree, and can all join in endorsing Senator Fulbright's statement that "Radio and television are the primary sources of information for the electorate."

The national dialog that has recently begun concerning the impact of television on modern American life is, in my judgment, Mr. Chairman, a healthy sign. The major political parties, leaders in both Houses of Congress and in the administration have come to realize that most

of our citizens receive most of their information from television and radio. This realization should be the first step in forging a national commitment to aid in assuring the most efficacious possible use of the media. Public broadcasters have been urging just this, encouraged by this subcommittee and by your colleagues in the House, but without full understanding of this potential by most other segments of our national leadership.

Mr. Chairman, you have provided here the forum for a full discussion of this opportunity to inform the electorate on vital issues and you are to be commended.

Let me say right now that the Corporation for Public Broadcasting is vitally interested in finding methods to provide the most effective use of noncommercial radio and television for all kinds of public service.

I would like to discuss with you today some of those methods which may relate to the purpose of this hearing. Since that purpose is to review and assess the equality of access of the Congress and the Presidency to the media, I believe that two general comments should be made at the outset regarding the fairness doctrine and how it relates to the extension of public debate and discussion of national issues.

First, the aim of any action we may take must be the enlightenment—in the most entertaining way possible—of the public, our audiences. We must always keep in mind the fact that broadcasting, in general—and public broadcasting, in particular—is licensed to serve the public, not the aims of any political party or any administration, or any loyal opposition, or any group espousing any particular view on an issue. If a specific program proposal does not meet the criterion of genuinely informing the public on matters of concern to their welfare, it must be abandoned.

Second, the broadcaster—whether commercial or public—must retain the right and the responsibility to exercise his own best judgment as to the selection of issues and the format of programs broadcast. This judgment, of course, must be made within the requirements of law and the fairness doctrine, but the decision, the ultimate decision, must rest with the licensee.

In testimony before this committee on past occasions, representatives of the public broadcasting community have outlined the increasing activity among the 198 public television and more than 450 public radio stations in providing thousands of hours of public service in local communities. Each month, new reports come into our headquarters of additional stations providing full, live coverage of controversial city, county, and school board meetings as a service to interested citizens who cannot attend in person. A prime example of this local initiative was evident recently here in Washington as WETA–TV and FM provided citizens with full coverage of city council hearings concerning revision of drug laws, and freeway development.

I mention this here, Mr. Chairman, because I believe that the citizen can most effectively learn about congressional attitudes on critical issues through television and radio coverage of floor debates in both Houses. By becoming a witness to congressional hearings and listen-

ing to legislators in action, he can become aware of the diverse and complex views which contribute to national policy formulation. I am fully aware of the many arguments pro and con on this suggestion, but I am confident that with modern technical developments suitable arrangements can be made with appropriate committees to allow such coverage without disrupting the decorum or the work of the Congress.

Senator PASTORE. Where would you put them, in a glass cage as they do at the U.N.? Don't you think it would be quite distracting, unless you invented some kind of system which would lend itself to orderly procedure in the Senate or in the House? If you just flash down those lights every time they thought someone was saying something, it could be disconcerting and many times it could develop into a spectacle.

There must be way to do it, I suppose, but this has to be thought of very seriously.

Mr. MACY. Mr. Chairman, that is why I mentioned technical developments.

Senator PASTORE. The House did reject it recently?

Mr. MACY. Yes, they did. They took one step, they opened up committee hearings to television.

Senator PASTORE. We have been doing that for a long time.

Mr. MACY. Yes; you have been doing that in the Senate for a long time. Certainly that is an important public service. But my conviction is if, under properly controlled conditions, it were possible for the electronic media, as the print media, to be present for the debates in the arenas of legislation, the public would receive firsthand or on tape a picture or the words of the actual presentation of views by those that are in contest in those arenas.

Senator PASTORE. Of course, the argument is made that even though the President of the United States is left to his own choosing as to the issue, as to the time, and as to the format, discretion of what should be told to the public remains with the journalist.

You think that is the answer. The point has been made here that the Congress might feel it too wants to decide from time to time what it considers to be important and it ought to be allowed to say, not as a matter of news, but as a matter of conveying knowledgeable information on issues to the public. I don't think there is any attempt here or any intent, say on the part of a man like Mr. Fulbright, to usurp the journalistic activities of this country nor of the press. His argument is, inasmuch as the President of the United States has the initiative, he, alone, has that initiative, and that he can ask for the time any time he wants, when he thinks it is necessary for the people—no one is quarreling with that, I wouldn't want to change that for a moment—but somehow, because we are a branch of Government established under the Constitution with a tremendous responsibility to the people of the country, that the same courtesy ought to be exended to us.

I realize that that opens up the door to many problems. We don't have to belabor that situation.

Mr. MACY. I think I have, later in my statement, a suggestion which might be an approach to that.

Senator PASTORE. On this question I raised?

Mr. MACY. Yes; on this question. I am not saying that the editorial judgment of camera or microphone in the House deliberations or Senate deliberations in and of themselves is the final answer. But I would hope it would be possible to work out access of that kind. Because I believe that that constitutes a very important service to the public, a means of educating the public with respect to the legislative process and the very diverse and complex views that go into the ultimate formulation——

Senator PASTORE. I would not deny to the press or electronic media the right to editorialize on anything that was said. It is their fundamental right, it is their right of free speech under the first amendment, and no one intends to impinge upon that. We are not talking about the elements of editorializing. We are talking about the initiative.

You see, the President of the United States is allowed to do this because of his office, and rightfully so. Nobody is disputing that. No one wants to do anything to change that. On the other hand, the contention is being made before this committee—what the end result is going to be I don't know, I repeat again—but the presentation has been made here that the same privilege ought to be given to the Congress of the United States. And that is the question.

Mr. MACY. I think the difficulty with that is that, admitting very readily that these are coequal constitutional bodies, the composition of the Congress is so different, as Mr. McGannon indicated, that we have very difficult problems in executing equivalent conditions.

Senator PASTORE. In other words, what you are actually saying is that the practical aspects of it somehow becomes involved in the principle.

Mr. MACY. That is right. I think, therefore, you cannot have exactly equal conditions created. What I would hope we could do would be to find ways in which the activities of the Congress, the views of the leaders and Members of the Congress, can be conveyed electronically to the American people in greater depth and in a greater variety of situations.

Senator PASTORE. Their argument is if you can do it in a hearing room, why can't you do it on the floor of the Senate.

Mr. MACY. That is right. I feel it is on the floor of the Senate that great debates on the issues of our time are held. And these are not debates that are between Republicans and Democrats, or between liberals and conservatives, these are the views of individual Members as they have formulated them out of their own experience, out of their own convictions, out of the beliefs of their constituencies.

Senator PASTORE. You don't have the same limitation in a debate—I will tell you very frankly some of the debates I have heard lately really lead nowhere. I say something for a few minutes, your opponent says something for a few minutes, you say something else for a few minutes, and the moderator says all right, do you want to ask one another a question, and by the time you get around to a sensible question it is all over. Your argument is if you adopted the style of debate on the floor of the Senate it would be more illuminating.

Mr. MACY. That is right. Why simulate if you can have the real thing? It seems to me, although there are problems of certain individuals perhaps wishing to have more time on the cameras than off, my view would be that the body would establish customs and practices which would help to control that through their own action.

Senator PASTORE. Well, the chairman of this subcommittee would be the last one to resent that.

Mr. MACY. Mr. Chairman, public broadcasters in many areas of the country know from experience that initial hesitation in allowing live coverage of State legislatures has been dispelled by a heightened awareness on the part of the citizen of the difficult and demanding problems faced by their elected representatives. In my view, there is no better way to communicate the nature of these problems and the arguments on their many sides than through coverage of live debate on the major issues.

Public broadcasting stations and State networks—notably those in Nebraska and Connecticut—have been providing this kind of service to their viewers. I am sure that if Congress would allow the broadcast of the key debates, broadcasters would be able to find a way to make them available to the public in the most effective manner.

I feel this is one aspect of communication of public issues that should be considered thoroughly by all Members of Congress. If broadcasters are able to capture arguments from many viewpoints as they occur in actual debate, there will be little difficulty in giving the public a feeling for the arguments, not only of the loyal opposition, but of those in favor of a particular legislative issue as well.

While we are on the subject of live coverage, Mr. Chairman, I must explain another key series of proposals now being discussed within the corporation concerning public radio. It is our view that many of the key public issue debates and events that are presently open to the broadcast media can be covered and communicated more efficiently and more economically by radio. The corporation, as part of a series of recent grants, for example, provided WETA–FM, Washington some $25,000 to provide coverage for all public stations of important congressional hearings, Government meetings and press conferences, et cetera. I understand the station is utilizing some of those funds to cover these hearings and will make them available to public radio stations.

The newly organized National Public Radio (NPR), supported by the corporation and designed to be the principal national production center for public radio, will be headquartered in Washington. There is much discussion at this point of providing NPR with funding to allow it to put on the network, in-depth reports and live as well as taped coverage of many more national events. Public radio, which has greater freedom in the use of its air time than its commercial colleagues, or any type of television, can deliver to citizens in all parts of the country information about the activities of Congress and the executive branch—information that is not now regularly available from any other source.

Concerning the use of television to provide the country with many sides of major national issues, public broadcasting has some reason to be proud. Despite limited financial resources, public stations in this country have provided their viewers in recent years with the most ex-

tensive and considered analyses of major government pronouncements available anywhere. The Washington Bureau of National Educational Television (NET) has produced programs of in-depth discussion of Presidential state of the Union addresses and most of the President's principal television speeches on foreign policy and the economy.

NET originated the now-common practice of analyzing the President's speeches following the 1967 state of the Union address. That program included such distinguished and diversified participants as Arthur Schlesinger, Clinton Rossiter, George Kennan, George Ball, Daniel P. Moynihan, Kenneth B. Clark, James J. Kilpatrick, Walter Heller, and Milton Friedman. Participants were selected not only for their spheres of interest, but also to provide varying regional viewpoints—the program originated from New York, Boston, Washington, Minneapolis and Los Angeles and lasted for nearly an hour and a half. This idea of using regional correspondents and experts has been followed since as NET has provided considered reaction to Presidential statements, from diverse sources including Members of Congress who oppose as well as those who favor administration policy.

It is interesting to note that in granting funds to NET, the Corporation specifies that certain sums are to be set aside for special public affairs projects such as those mentioned. In addition, public broadcasting schedules last year included an hour-long, live public affairs program designed to air vital issues in such a way that both pro and con arguments are adequately presented.

"The Advocates," which will appear in a new time slot next season, uses the debate format and encourages viewers to be more than passive observers, to become participants and cast a vote on the issue under discussion.

Many Members of both House of Congress and representing a wide spectrum of opinion have appeared on the program as witnesses and decisionmakers.

I feel that to provide the citizen with a genuine understanding of the currents of opinion on any given vital issue, it is essential to approach the problem from the viewpoint of political labels. On what issue of vital importance do all members of the same party agree? The same can be said of those labeled doves or hawks, liberals or conservatives.

It is also deceptive to approach the problem from a belief that issues always break down into administration and congressional stances. Did all Members of the Senate vote against the administration on the Cooper-Church resolution?

The issue and the points of view should be the central theme, not party labels or the somewhat artificial distinction between Congress and the White House.

In order to offer a concrete, positive proposal, Mr. Chairman, let me say I feel that a great public service could be performed if the citizens of the country knew that on a given night the major issue in current controversy would be explored on radio and television. If on this given night, they would have the opportunity of hearing several sides of the question presented by the men and women most closely identified with the issue they would plan to tune in.

This would mean, in most cases, that Members of Congress from both Houses would be found on both sides of the issue. Sometimes this

would mean that spokesmen for the administration would be involved, but not necessarily. In my experience there have been many heated controversies over vital issue where the principal antagonists were all in Congress, while the administration tried, most often vainly, to remain neutral.

Specifically, we would consider, if the appropriate funding were available, providing an hour each month to a major national issue, and allowing a half hour each to representative spokesmen of two differing viewpoints.

The issue could be selected by one of the major, reputable nonpartisan research organizations operating in Washington, such as the Congressional Quarterly or the National Journal, for example, or by a bipartisan committee selected for the purpose. The researchers could also provide the producers with the names of key legislators or national figures who have been vitally concerned with the issue, and can represent differing viewpoints.

The producers would then work with both sides, assisting them in putting together their half-hour presentations in the most effective possible way in broadcasting terms.

Senator PASTORE. Now, if you can trust the Congress to designate the people who should participate, why can't you trust the Congress to decide on the issue?

Mr. MACY. I think they would have a great deal of difficulty in deciding the issues.

Senator PASTORE. No more than who should talk on it.

Mr. MACY. It would be helpful to them to have an outside group that would make that determination.

Senator PASTORE. Do you think an outside group ought to tell the Congress what the issues are? We are elected to determine that. I mean after all, we can only govern those who send us here to govern.

Mr. MACY. I wouldn't insist that that be the way, obviously. I suggest the option of a bipartisan committee that might do this. I think the important thing is that there be an assurance that the selection of the issue and the selection of the individuals to discuss it does not become a reflection of——

Senator PASTORE. But Mr. Macy, that is only a deviation from what already exists. I think the news media these days is competent to know the issues and many, many times I think they select them—after all they have to appeal to the public, and they have to put on programs that appeal to the public, otherwise they can't get the advertising subscriptions that they would get.

But the argument has been made here that as the President selects his time and his issue, why shouldn't the Congress be given the same opportunity and the same courtesy, if it can be done.

Now we can go off on 20 different tangents and bring in new ideas. But the idea is very simple, the only problem that we have here is how much does the practicality of the situation confuse the principle that is involved. I think the principle is the same.

If somehow you could devise a system whereby the Congress of the United States could explain to the American people at its own choosing, the same way the President does, I think you would have an answer to the problem. Of course, it becomes a little difficult when it gets down to the implementation, as far as the Congress is concerned, be-

cause it involves 535 different people. That is the only argument that can really be made, in my humble opinion.

But no one can say the presidency is more important than the Congress of the United States, any more than anybody can say the Congress is more important than the presidency.

One cannot exist without the other. I mean it is a partnership, created under the Constitution. The President can't declare war, but the Congress can. The President can't appropriate money, but the Congress can. And there you are.

We have a very important function. We are an entity. The only trouble is that you are living in a time where views are so divergent that sometimes it is hard to get unanimity. And that is the problem.

But this idea that an outside group will decide what the Congress is going to talk about on Tuesday night, I am afraid I would be violating my oath of office. I am being sent down here to discuss the issues that I feel should be discussed for the benefit of this country and my State.

And I am the one who has that responsibility. The minute I don't carry out that responsibility, my people won't send me back. I can't rely on someone else to tell me what an issue should and shouldn't be.

That is what I am sent here for.

Mr. MACY. This wouldn't supersede that. This would be an extension that would provide an opportunity for the presentation of congressional views on a regular basis in a way that hopefully would attract audiences.

Senator PASTORE. I would prefer, if you are going to do it at all—I don't like the idea that four times a year or sometime on Friday evening, or let's get on prime time, let's hold a special session at 8 o'clock at night. I am afraid that that is regimentation. That is regimentation. I don't subscribe to that at all.

I will subscribe, if it can be done technically, without disturbing the orderly function of the Congress, that the electronic media be brought into the Senate, just as the newspapermen, when that bell rings and the prayer is given, the press is there in the gallery.

And the electronic media should be in that gallery, and they should stay there until we adjourn or recess. And let them choose what should go on and then if they don't live up to their responsibility, then the people would react toward them.

Now if you are going to do it at all, you have to treat the electronic media the same way you do the press. And the press is up there every day.

Now the trouble in the past has been that they think this would be disruptive. I think it can be done in such a way that maybe it wouldn't be.

Mr. MACY. So do I.

Senator PASTORE. Maybe this is the way it ought to be done for the people of the country so they would know what is going on, you see.

Maybe they can better understand their candidates throughout their entire tenure better than they can just during the campaigns.

Mr. MACY. That is right; they see them under actual working conditions. Mr. Chairman, one final point.

None of those proposals mentioned here would replace or alter any of the regular news analysis, documentary, or other public affairs pro-

grams on public broadcasting. These programs, produced by professionals in the industry, would continue to carry the burden of providing audiences with the information and discussion and journalistic appraisal of the issues of the day.

Mr. Chairman, I believe that the regular broadcast of a diversity of views on national issues is a major mandate of public broadcasting. Even without further legislation, I can assure you that this objective will be pursued in depth and with balance to the extent of our available resources.

I may add in offering this statement I have associated with me the National Association of Educational Broadcasters, representing the stations and the professionals in this field.

Senator PASTORE. And you have made a fine contribution, Mr. Macy, and I want to thank you very, very much.

I repeat again what I said to the previous witness, it would only be repetitive for me to ask questions at this time on your statement. But that doesn't take away from the provocative nature of your statement.

I compliment you for it.

Mr. MACY. Thank you very much.

Seator PASTORE. Thank you very much.

Now I would like to call on Mr. Jordan.

STATEMENT OF ABSALOM JORDAN, ON BEHALF OF BLACK EFFORTS FOR SOUL IN TELEVISION, WASHINGTON, D.C.

Senator PASTORE. We are pleased to have you here, Mr. Jordan.

Mr. JORDAN. I am happy to be here, Senator Pastore.

First, I would like to say our statement is short today because most of the viewpoints concerning this bill have been articulated by the broadcasters and the distinguished Senators.

Black Efforts for Soul in Television is aware that other witnesses appearing before this committee have compared their own lack of equal time with exclusion of the black community from the media. However, we wish to disassociate ourselves from that comparison. The black position is unique. Our intention in testifying today is to bring to this committee the perspective of blacks. Our statements are concerned with black interests from the black point of view and not with black interests as they may be asserted by whites.

On several occasions over a period of 2 years, BEST has addressed itself to this committee, each time to discuss this problem of lack of diversity, or fairness, on the public airwaves. Each time you listened attentively. Yet in our case, no Senator has submitted bills to expand access to the airwaves for minority groups nor has this subcommittee held hearings on the exclusion of black people from broadcasting.

Senator PASTORE. I think I ought to tell you on this point that when it came to my attention, and I was interrogated by the press as to the two nominees to be selected for the Federal Communications Commission, I strongly suggested that the President should seek out a black man for that position.

Mr. JORDAN. I am happy to hear that.

Senator PASTORE. I want you to know that. But the prerogative of appointments is not mine, it is the President's. I think myself had that

been done, it might have quieted much of the dissatisfaction and unsettlement that exists today.

I don't mean by that that we have to have a black man on that Commission in order to do fairness and justice, because I think that should be inherent in the body of every individual if he is a human creature.

Mr. JORDAN. Senator Pastore, I am very glad you have made your viewpoints known publicly.

As you know, last year when we appeared before your committee to testify on the FCC appointments, we did at that time bring up the issue of a black appointee to the Federal Communications Commission. As you also know we have been engaged in an intensive campaign to have a black representative appointed to the Commission.

Senator PASTORE. I would hope within due time the President of the United States, no matter who he is, will take this under serious consideration.

Mr. JORDAN. Senator Pastore, we hope the next Commissioner will be a black man.

Senator PASTORE. I repeat again, of course, I cannot put myself in a position that if a name comes up here and the person is qualified and distinguished, that I should reject him on the grounds that he is not black. I can't do that. I know you understand that I can't do that.

Mr. JORDAN. Yes.

Senator PASTORE. No more than I would reject a black man just because he is black. Because to me you are all of God's children. I have lived that kind of life and that is the life I respect.

Mr. JORDAN. Seemingly, Congress is only aware of the dangerous trend of a monopolistic television viewpoint when they themselves feel the frustrations of exclusion.

All of this seems most ironic to the black community. We too have been hearing a one-sided debate, not just on 34 occasions but for 50 golden years of broadcasting. We have heard white programs, with white actors and white values. When blacks have not been ignored by television, their way of life has been distorted.

So black people have a great deal of sympathy for the Democratic Party and antiwar Senators who are just beginning to understand what it means to be denied access to the most powerful and persuasive means of communication.

However, to them we say that we hope you do not end the battle after you obtain some free time for yourselves, but that you continue to fight so that not only 535 Senators and Congressmen can have access to the public airwaves, but also 22 million black people, and in fact, 180 million other Americans.

Though we have sympathy for the excluded Senators, we have only contempt for the hypocrisy of a political system that responds only to the grievances of the wealthy and powerful, and that ignores the needs of the people. The Democratic and Republican elite and the networks may work out a formula for dividing up a few hours of precious time for various Senators on various issues, but the root issue of public access to the airwaves and full and free debate from all perspectives on matters of public concern will remain untouched.

The public access problem requires solutions that speak to the source of the problem. The problem is a lack of realistic representation on our public airwaves. One source of the problem is the lack of diversity on

the very Commission that is charged with the responsibility of protecting those public airwaves. "Black Efforts for Soul in Television," recognizing this infection, 2 years ago suggested that to begin treatment, the concept of fairness and equality should be considered with respect to the position of Commissioner.

But, Mr. Nixon is aware that the tube can be his exclusive instrument of political and moral indoctrination. He is using it to indict murder defendants as well as cajole support for his war policies. He is shrewdly remaining silent about his maneuvers to take solid control of the media. His latest appointment to the FCC should stimulate debate in regard to fairness and equal representation. However, we can predict the actions of most Senators.

All of these facts should make us cognizant of the intentions of this administration regarding communications control.

BEST is deeply concerned about the future. We are certain about the determination and depth of commitment of the black community. We are certain about the commitment of a white community whose rhetoric is sypathetic to the needs of the minorities, but whose actions allow intimidation.

If equal time continues to be your issue of the day, then use that time to discuss the core issues of this Nation. BEST would support, in fact challenges, the President or any Senator to use his prime, equal time to discuss the exclusion of minorities from the airwaves.

The debate, in order to be reasonable, should include an exploration of the numbers of minorities in policymaking positions within the Federal Communications Commission.

Mr. Stanton, Mr. Goodman and others need not be alarmed. We anticipate that our challenge will not be taken up.

In conclusion, "The nonwhites of America will struggle to have it no other way," Frederick Douglass said over 100 years ago. We can be remodified, changed, assimilated, but never extinguished. This is our country. We shall neither die out nor be driven out, but shall go with white people either as a testimony against them or as evidence in their favor throughout generations.

Gentlemen, the choice is yours.

Senator PASTORE. Thank you very much, Mr. Jordan. I have a communication here from "Fight Medical Delinquency—Write Your Congressman Now Committee" signed by Mrs. Reed. It says:

Responsive to your query today to the audience at large to those who wish to be heard with respect to the above captioned hearing to come forward, this letter is an application for my appearance before your Subcommittee.

I wish to outline briefly observations of use of public hearings I have attended and TV coverage to incumbent legislators in New York State over the past several years in my study of why the people of New York and in the United States are virtually silent to the facts of very poor and no medical care on a massive scale.

Your consideration is earnestly requested.

Respectfully submitted.

JULIE REED.

Is Julie Reed in this room? Would you come forward, please?

STATEMENT OF JULIE REED, ON BEHALF OF THE FIGHT MEDICAL DELINQUENCY—WRITE YOUR CONGRESSMEN NOW COMMITTEE, P.O. BOX 103, BRONXVILLE, N.Y.

Senator PASTORE. If I remember correctly, you did testify at a previous hearing, did you not?

Mrs. REED. Yes, I did.

Senator PASTORE. And you are going to testify on this particular matter that is before us, or is it going to be on the matter that you discussed before this committee before?

Mrs. REED. I wish to point out some of the things that happen at public hearings in New York State, and their relation to television.

Senator PASTORE. You have no written statement?

Mrs. REED. No; I haven't.

Senator PASTORE. How long will it take you, Mrs. Reed?

Mrs. REED. I think ten minutes if not less.

Senator PASTORE. All right, proceed.

Mrs. REED. Thank you. My name is Julie Reed. I am an ad hoc committee of one, as I say. There is a great deal of benefit in being a committee of one, nobody else gets hurt by your testimony. And the reason why we don't have people organized against poor medical care is that people do get hurt. And it is virtually a death threat that medical doctors deliver to us in the sense of the want of medical care. This is well documented in their medical literature.

I regret very much that this witness list states that Senate Resolution 209 would "amend the Communications Act so as to require broadcast licensees to provide public service time to authorized representatives of the U.S. Senate and House of Representatives to present the views of their respective bodies on issues of public importance." I think this is a sad day, something terrible has happened to the United States and it is about time that the airwaves that belong to all of the people go back to the people.

My opposition to you would be that commercial television be abolished in this country. We need the airwaves, they have not served us, the commercial broadcasters, well. Here the U.S. Congress is begging a mass industry for time on the public airwaves. How ridiculous can we get.

Senator PASTORE. I would hope you would generalize in your statement without being critical of individuals.

I say this politely and as courteously as I can, I would hope you would direct yourself to this bill.

Mrs. REED. Very good.

Senator PASTORE. If you at any time feel you want to submit a statement, then we will have it studied, you see. But we heard you before on some of these matters, some of them of course are new, but the point I am making is, you are an intelligent woman, you understand this, I am afraid that if we begin to mention people's names in a tone that is derogatory, without an equal opportunity being given to them, we are going to get right off the track on this resolution. I would hope you would stick to the resolution.

Mrs. REED. Perhaps that is why we haven't had sufficient discussion on this matter of a new definition of death. After all, it hasn't come on television. Why hasn't it? This has been published in the New York Times January 28, 1969, page 20.

Senator PASTORE. Why don't you discuss that without mentioning names, though. Please don't mention names. Can you do it without mentioning names?

Mrs. REED. It really is not important to me as far as names go.

Senator PASTORE. All right. Just do it without mentioning names, please. Because that puts me in a very, very awkward and embarrassing position.

Mrs. REED. This is the—these are the politics of my State, sir, and it is very serious.

Senator PASTORE. I am not concerned about the politics of your State, I am concerned about this bill that is before us now.

Mrs. REED. Well, in our State of New York, every fifth death is unnecessary, for want of medical care. And the reason for it is that we, the people, cannot communicate on this problem. I beg your pardon, sir, we have another public hearing——

Senator PASTORE. All right. You proceed. And I hope the news media here will use the proper discretion. You may proceed.

Mrs. REED. We had another public hearing at which the Radio Corporation of America appeared——

Senator PASTORE. I am telling you now the mentioning of names in any derogatory way will be deleted from the record. I must tell you that. I will hear you out completely.

Mrs. REED. I am not trying to malign anybody, Senator Pastore.

Senator PASTORE. Well, you accused someone of making a heart transplant when somebody was alive and you said isn't this murder. Whoever did that, in your estimation, would be a murderer. I mean how much can you malign somebody?

Mrs. REED. There is a great deal of disquiet in the country because of heart transplants. This is a very serious matter. And it has been quieted over the airways. We had a public hearing at which the Radio Corporation of America appeared and there were no television cameras there. Radio Corporation of America is in the health business.

Senator PASTORE. That is a justified complaint. You may proceed.

Mrs. REED. And I think the Radio Corporation of America could have had television cameras present. And they have in New York State up in Buffalo a huge trailer—this is the cover of their booklet, in which they have the insignia of the New York State Department of Health. They are having tremendous combinations and mergers in the medical and electronics field. And they are planning all sorts of new things. This is going to be the practice of medicine by a corporation and there is no change in the law, you don't have an opportunity to legislate on the matter. And part of this is because of a want of communication.

I want to say, sir, mostly, that it is quite disturbing to people for instance to hear a prominent surgeon go on the air and talk about how we should redefine death and it is a very simple matter to transplant a heart from one person to another, just solve the problem by taking a beating heart rather than waiting until the heart has stopped beating. I say to you that there is a rapid change in our society, it is

going to be more rapid everyone says, and for this reason we need the mass media, not for commercial purposes, and the commercial television is no longer serving this country, if it has served the country well, and we need, I would agree with you on this bill, we need to have the television cameras in the Senate, in the House, the people yearn to see where the action is, they want to hear and see what the Senators are doing.

Thank you.

Senator PASTORE. Well, thank you very, very much. Two o'clock this afternoon.

(Thereupon, at 11:50 a.m., the subcommittee was recessed, to reconvene at 2 p.m. this same date.)

AFTERNOON SESSION

Senator PASTORE. We will now continue with our hearings.

We are honored to have this afternoon the Chairman of the Federal Communications Commission, Dean Burch.

STATEMENT OF THE HONORABLE DEAN BURCH, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; ACCOMPANIED BY HENRY GELLER, GENERAL COUNSEL

Mr. BURCH. Thank you, Mr. Chairman. I am pleased to be here today to present the views of the Federal Communications Commission on Senate Joint Resolution 209, a joint resolution to amend section 315 of the Communications Act of 1934—47 U.S.C., section 315.

Specifically, the resolution would require broadcast licensees to provide a reasonable amount of public service time to authorized representatives of the Senate and House of Representatives of the United States to present the views of the Senate and House on issues of public importance.

In addition, the proposed amendment would require licensees to afford each such authorized representative at least four appearances per year.

While the Commission fully understands the objectives and concerns underlying this joint resolution, as they are stated in its preamble, we do not support this legislation.

I should first like to give some brief background, then discuss the basic concept of the resolution, and finally comment briefly on the resolution itself.

There are two important duties imposed upon the broadcast licensee: (1) To devote a reasonable percentage of his broadcast time to the discussion of controversial issues of public importance; and (2) to do so fairly.

This second duty is delineated in the fairness doctrine, set forth by the Commission in its 1949 report, given explicit congressional approval in the 1959 amendments to section 315(a) and upheld by the Supreme Court in the *Red Lion* case.

I will not discuss the fairness doctrine further, but rather have attached an appendix A giving background on the doctrine which may be of interest to the committee.

As I understand Senate Joint Resolution 209, it involves the question of the right of access to the broadcast media. The general policy applicable here may be briefly stated. In the 1949 report we stated:

> 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.

This same report stresses that the broadcast licensee has wide discretion in selecting the issues to be covered, the formats to be employed, the appropriate viewpoints and spokesmen for these viewpoints, and so on. As the Supreme Court stated in *Red Lion*, the broadcaster is a public trustee, a proxy "for the entire community, obligated to give suitable time and attention to matters of great public concern, to present representative community views on controversial issues."

With this as background, I turn now to the basic thrust of Senate Joint Resolution 209—the right of Congress to access to the broadcast media.

First, I point out that the question presented is not whether the broadcast media should cover the critical issues before the Congress. Of course they should, and do. Coverage of congressional matters in a variety of journalistic formats is a most important part of the broadcasters' obligation to inform the public on national issues.

The question presented is whether something more is called for over and above such coverage—specifically, whether Representatives of Congress should have a right of access to the broadcast media to presents the views of Congress to the Nation, in the manner they choose, rather than through the journalistic coverage of the broadcaster.

Such a right of access is a sharp departure from the basic scheme of broadcasting in this country. As I have said, that scheme stresses the right of the public to be informed on issues, and not the right of any governmental or private entity to access. Under the approach of Senate Joint Resolution 209, for the first time, one entity, the Congress, would be singled out and given a statutory right of access to the broadcast media.

We, at the Commission, have no basis for supporting this departure. First, we do not monitor the broadcast media's coverage of congressional issues and, thus, are in no position to state that the coverage is inadequate or ineffectual.

Senator PASTORE. Now let's backtrack, Mr. Burch. You say here in the third paragraph "Specifically whether Representatives of Congress should have a right of access to the broadcast media."

Now that is not the question. The question is should the Congress have access as an entity, as the President has access as an entity. The President is not recognized as a person, he is recognized as the President of the United States. That is the reason why he is extended this courtesy for him to, on his own initiative, to talk to the American people.

The argument that has been made here is that Congress is a constitutional entity, it is a coequal branch of the Government and it possibly should be entitled to the same privilege.

I realize that gets into many difficult practical questions. But I take it the thrust of your presentation here is that you are placing the Congress or its representatives in the same category as any other individual.

Now, if you take an individual Congressman or Senator, you are absolutely right. I don't have any better right than any John Doe, just because I happen to be a Senator. And I don't have any more privileges than anyone else, we all understand that.

But the question that has been raised here and the thing that strikes me ought to be resolved one way or the other is whether or not the Congress of the United States, as a constitutional entity, as a coequal branch of the Government, together with the judiciary and the Presidency, should have the same right and be extended the same courtesy.

I realize that, if you pass this law, a question of discrimination could arise because the President does not function under a law, he functions under a courtesy extended to him by the broadcasting industry because of the importance of his position. The minute he stops being President of the United States, even that courtesy stops. He only enjoys it because he is the President.

A question arises: Does the Congress of the United States, as a constitutional entity, have the same authority or should be given the same privilege. That is about the size and substance of it.

Now, of course, if you get down to the individual Members of Congress, the right for them, on their own, to establish their own format, all of that sort of thing, then you are absolutely right. We are no different than anybody else and the fairness doctrine does apply.

I was wondering if somehow this couldn't be explored, because I would like to know that, because the minute we are told that there is a distinction to be made, and constitutionally it can't be done, that would be the end of the question. But whether or not Congress can be recognized as an entity and be given the same courtesy that is extended to the President, that is the question here.

Now, we could agree with it or disagree with it, but that is the question.

I am not going to resolve it one way or another because I know what we are up against here, I know the whole dilemma. But I get the thrust here of what you are saying to be that the Congressmen and Senators don't warrant different privileges, and that is not the question here.

I know how impossible this may be, but let's assume the Congress, on its own, could designate one individual to explain to the American people a very important issue that the Congress is interested in, apart from whether this is a refutation of anything that the President has said. Let's forget that. I means we are not seeking a quarrel here, just exposure. Let's assume the Congress of the United States, on its own, decided tomorrow that we would like to have Mr. Hugh Scott speak for the Congress of the United States on a very important issue that we think affects the welfare of the American people.

Could the Congress of the United States, or should the Congress of the United States, call upon, on its own initiative, establish its own format, and call upon the broadcasting industry, as the President does, and what is wrong or inimical to the public interest in that? That is the question.

I am not saying that the Congress could ever agree on a Hugh Scott or a John Pastore. I know there are 535 individual and differ-

ent minds. But let's assume that is possible. Let's talk about the principle and not the practicalities. Then what would you say? Would you say that the Congress of the United States is less in prestige than the Presidency? Is it, really?

Mr. BURCH. No. Senator, first of all, our language, "Representatives of Congress," is a paraphrase from the resolution. I meant the Congress, as an entity, throughout the statement. Representatives is simply the language we used, which is the language in the resolution.

Senator PASTORE. That is why I picked it up on that one word, because I don't want a misunderstanding on that.

Mr. BURCH. But the whole point of this statement has to do with the Congress as a body, as an institution of the United States, not the individuals who make up the Congress, but the Congress.

Senator PASTORE. For instance, you can't put the Congress of the United States in the same category as you put the Federal Communications Commission. You are a creature of the Congress. The Congress is a constitutional body, created by the Constitution as the Presidency is. That is what gives it its unique position.

Mr. BURCH. Correct. The point you made, Senator, which I would echo is that part of the difficulty in this area is that there is no law which requires that the President get x amount of time on television. It is a courtesy and part of it arises out of the natural fact that the President is news, and these networks are in the news business and it is a natural thing on their part to cover the President.

I would say, in that regard, I think if the Congress as an institution did decide that Senator Scott was going to speak for the entire Congress on a subject of great magnitude, that there would be no doubt that Senator Scott, as a representative of the Congress, would be accorded a lot of coverage.

Senator PASTORE. Now we are getting into something else, because that is the suggestion I left with the broadcasters, that possibly this could be made to work on a voluntary basis. It could well be if the broadcasting industry came along and said all right, we will give you so many hours a year, maybe we could never agree on it anyway, as far as that is concerned, but that is apart from the point, that is the practical side.

We want to establish here the constitutional and legal side and principle side of the question.

I repeat again, I mean this is not an easy thing, it is a very difficult problem, we all understand that.

But go ahead and proceed.

Mr. BURCH. Second, there would be the question of extending the right of access to others. While the President is now afforded time upon request, should he by law be given an equal right of access? What of the States, which have common concerns on issues such as revenue sharing? Or, of entities within the States? Further, there is the question of whether only governmental voices are to have this right of access.

Finally, there are the difficult issues raised in implementing a right of access to state the views of the Senate or the House. I am informed that these difficulties have been pointed up by a number of witnesses, and therefore I have simply set them forth in appendix B to my statement.

For these reasons, we do not support Senate Joint Resolution 209. We would suggest that any further, in depth coverage of vital congressional matters be left to the innovative or experimental efforts of the broadcast media.

It is my understanding, Mr. Chairman, that you suggested that the networks consider what they might do voluntarily along that line. Congress could, of course, facilitate such efforts by the media through a number of innovations of its own—for example, the approach of Senator Scott to admit the television cameras to special debates on the floor.

Finally, Mr. Chairman, I would like to call the committee's attention to a number of fairness complaints or petitions now before the Commission. These pleadings are set forth in appendix C to this statement. They deal with President Nixon's addresses to the Nation via the broadcasting medium or with claims for access to the airways by political parties or other interested entities. They raise important issues well worthy of consideration by the committee.

The Commission has just acted on two of these complaints, the request of the Democratic National Committee and the complaint filed by Business Executives Move for Vietnam Peace against WTOP–AM. Our decisions, the text of which will be released tomorrow, were in line with the principles set forth in appendix A. Thus, the requests based upon a right of access to the broadcast media were denied.

I should like permission to lodge these decisions with the committee, so that they may be reviewed and studied by it.

Similarly, when the Commission very shortly takes action on the remaining matters, I would like to submit them to the committee.

You will appreciate that since the Commission has these matters under consideration at the present time, I am not now in a position to state the agency's position on the merits of any particular claim.

That concludes my prepared statement, Mr. Chairman. I should be glad to answer your questions and of course to cooperate fully with the committee in its important undertaking. We would thus be happy to assist the committee in working out the implementing details of any approach which it may adopt.

(The appendixes to the statement follow:)

Appendix A

Pertinent Fairness Doctrine Background

The essence of the fairness doctrine is that the broadcaster, in his coverage of controversial issues, must afford reasonable opportunity for the discussion of conflicting viewpoints—the essence of the fairness doctrine. First, I believe it important to point up the different manner in which the "equal opportunities" and fairness requirements of Section 315 operate. The former is applicable only to uses of station facilities by candidates for public office and calls for *equal* treatment—as to the amount of time to be afforded, the nature of the time slot, ec. It thus works with virtually mathematical precision.

The fairness doctrine works much differently. As we stated in our Fairness Primer, 29 Fed. Reg. 10416 (1964):

> The fairness doctrine deals with the broader question of affording resonable 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 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. 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.

The areas where the licensee's discretion have been curtailed, chiefly as to selection of the appropriate spokesmen, are the personal attack and political editorializing situations. The reasons are obvious and are set forth in our reports and in the *Red Lion* opinion.

The reasons are also obvious as to why the licensee is afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field, this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities on controversial issues would simply not be workable or sound. For, it is just not practicable or indeed desirable to require absolute equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. A policy of complete equality would inhibit, rather than promote, the discussion and presentation of controversial issues. Further, it would involve this Commission much too deeply in broadcast journalism. We would become virtually a part of the broadcast "fourth estate," overseeing the thousands of complaints that some issue had not been given "equal treatment." We thus do not believe that "the profound national commitment" to the "uninhibited, robust, wide-open" debate that the Courts speak of, would be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality.

On the other hand, we remain firmly convinced that the fairness doctrine *is* workable and does promote robust, wide-open debate. Again, I do not believe that I need discuss this, in light of the *Red Lion* opinion, where the Court indicated that the fairness doctrine is not only constitutional but may well be constitutionally required. I will therefore only say that we regard strict adherence to the fairness doctrine as the single most important requirement of operation in the public interest—the "sine qua non" for grant of a renewal of license.[1] For the basic allocation purpose involved here [2] would be largely undermined if the broadcaster
7829 (1970).
could discuss issues unfairly—by presenting only one side or only the viewpoints with which he agreed.

To make this fairness doctrine obligation effective, the Commission has evolved several important policies. I will touch here on only two of them. The first is that the licensee cannot sit back and wait for the proponents of opposing viewpoints to knock on his door. He must affirmatively act to encourage and implement the presentation of the contrasting viewpoints. And we now have a proceeding under way to buttress this requirement of affirmative action by the licensee in several fairness situations.[3]

Second, the Commission has evolved the Cullman doctrine [4]—that where the licensee has presented one side of an issue on a paid basis, and has not presented the other side or made plans to do so, he cannot reject programming giving the other side that is otherwise suitable to him, on the ground that he wants payment before he puts it on. For, as I have said, what is paramount here is the right of the public to be informed—not the broadcaster's right to a "buck."

In stressing that the licensee has considerable discretion in discharging his fairness obligation, I do not mean to imply that that discretion is absolute. We will intervene if the showing establishes that the licensee has acted unreasonably. Under that standard, it is not a question of whether we believe that the licensee has acted wisely or whether we would have proceeded as he did. The issue is not one of substitution of our judgment for that of the licensee on these issues of broadcast journalism, but rather whether the licensee has acted in an arbitrary fashion. Thus, it is patently unreasonable for a licensee consistently to present

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[1] *Office of Communications of the United Church of Christ* v. *F.C.C.*, 425 F. 2d 543, 548 (CADC 1969); see also *Brandywine-Mainline Radio, Inc.*, FCC 70–686, released July 7, 1970.

[2] See *Storer Broadcasting Co.*, 11 FCC 2d 678 (1968).

[3] See *Notice of Inquiry and Proposed Rule Making*, Docket No. 18859, 35 Fed. Reg.

[4] *Cullman Broadcasting Co.*, 40 FCC 516 (1963), 25 R.R. 895 (1963). This doctrine also received Supreme Court approval in *Red Lion*.

one side in prime time and to relegate the contrasting viewpoint to periods outside prime time. Similarly, there can be an imbalance from the sheer weight on one side as against the other. But there is no mathematical formula on any of these questions: What is called for is a judgment on the facts of each case, when an appropriate complaint comes before the Commission.

The foregoing principles have been long established and consistently adhered to by the Commission. But their support does not rest simply in administrative declaration. More important, the statute and its legislative history are to the same effect. Thus, Congress early considered and rejected the notion of equal opportunities for controversial issues. And as I said, in 1959 Congress codified the fairness standard by inserting the provision in Section 315(a) that broadcast licensees "must operate in the public interest and afford reasonable opportunity for the discussion of conflicting views on controversial issues of public importance." The judicial cases are to the same effect.

The fairness doctrine is thus a term of art. A layman might say that if A got 30 minutes to speak on some issue, it is only "fair" that a spokesman for the other side also get 30 minutes in the same time period. Thus, in such a lay viewpoint, "fairness" would always entail "equal opportunities." But as I have tried to make clear, that is not the thrust of the fairness doctrine as developed by the Commission and codified in the law in Section 315. The fairness doctrine does not require equality, but rather reasonable opportunity in the circumstances for the discussion of the conflicting viewpoints.

As a final background point here, I want to stress the Commission's commitment to the policy of fostering "a multitude of voices" in the discussion of public issues. Thus, it has sought to promote the growth of FM radio, Educational broadcasting and UHF television and is seeking to promote a new technology which can make a most significant contribution in this respect—cable television. Because of the potentially great number of channels, cable opens up the possibility of common carrier channels, public access channels, and so on.[5] The policy in the broadcast field is shaped by the inherent characteristics of that field—that "unlike other modes of expression, radio inherently it not available to all." (*NBC* v. *U.S.*, 319 U.S. 190, 226). As I have shown, that policy is based on the right of the electorate to be informed, and is an issue-oriented "right of public access," not the right of any individual to access.

Appendix B

Comments on the difficulties of implementing Senate Joint Resolution 209

Senate Joint Resolution 209 would amend the Communications Act by adding a new Section 315(d):

> Licensees shall provide a reasonable amount of public service time to authorized representatives of the Senate of the United States, and the House of Representatives of the United States, to present the views of the Senate and the House of Representatives on issues of public importance. The public service time required to be provided under this subsection shall be made available to each such authorized representative at least, but not limited to, four times during each calendar year.

This proposal would appear unworkable in its present form. Indeed, there is a critical need to clarify the proposal before further comment can be made.

Thus, there is no definition as to what constitutes the "views" of the Senate or of the House of Representatives. Are the "views" of the Senate only "views" after being voted so? Are the views of one or two Senators also to be considered "views" of the Senate?

As a further point here, we point out that Section 315(a) prohibits censorship by the licensee of material broadcast under provisions of Section 315. If a Congressman uses his time to discuss a matter not pending in the House of Representatives, is he representing the views of the House, and if not, what is to be done about it, in view of the no censorship provision?

There is the critical consideration how the "authorized representatives" are to be selected and how many each house of Congress may authorize. There are no guidelines as to the selection process for the authorized representatives. Would the Speaker of the House and the Vice President select them? The majority and

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[5] E.g., *Second Further Notice of Proposed Rule Making*, Docket No. 18397–A, FCC 70–676, 35 F.R. 11045 (July 9, 1970) — F.C.C. 2d — (1970).

minority leaders? Would a majority of each house elect them? Or would each party appoint its representatives?

The number of such representatives is also a most important consideration. Since there is no limit in the resolution, all 535 Senators and Members of Congress could be "authorized representatives" without presently running afoul of the proposal, although we recognize that this is clearly not intended.

Further, we raise the question whether the obligation should be restricted to the national networks and their affiliates, rather than every licensee.

It is also important to keep in mind that the number of Congressional broadcasts would not necessarily be the sum total required under the proposal. There would also be the question of responses to the Congressional broadcasts. All broadcasts by candidates for political office would be uses of broadcast facilities for the purposes of the "equal opportunities" provision of Section 315(a). Accordingly, all opponents of those candidates would be entitled to equal free time. Further, the fairness doctrine, including the *Cullman* aspect, would be applicable to any issue raised in the Congressional broadcast, as to which the licensee had not afforded, or made plans to afford, reasonable opportunity for the discussion of the contrasting viewpoint.

This brings us to a most important policy consideration. If the number of broadcasts are considerable, they have a corresponding considerable effect on the station's other programming plans, including particularly its plan in the area of controversial issue programming. We recognize that the matters pending before the Congress are of vital importance to the nation. But local issues, involving, say, the school board, a desegregation plan, a stream polluted with mercury, can also be of critical importance to the community. We have thus pointed up the need for discretion in the licensee to make judgments in the allocation of limited broadcast time. To the extent that the proposal inordinately cuts into that limited time and thus particularly adversely affects the right of the public to be informed on other important issues, we believe that it would be inconsistent with the "public interest in the larger and more effective use of radio" (Section 303(g) of the Communications Act). As stated, we cannot set forth a definitive view on this critical aspect because of the lack of standards in the proposal.

Appendix C

List of recent petitions filed with Federal Communications Commission dealing with access to the broadcast media

1. Democratic National Committee request for a declaratory ruling that a broadcaster cannot refuse to sell time to responsible entities for the solicitation of funds and for comment on public issues—filed May 19, 1970.

2. Committee for Fair Broadcasting of Controversial Issues:

Complaint, Petition for Issuance of Order To Show Cause To Cease and Desist, and Request for Expedited Disposition—filed May 25, 1970. This petition claims that CBS has not complied with the Fairness Doctrine in that the CBS network has not provided an adequate response to the President's addresses to the Nation on the Indochina War. The claim, specifically, is that CBS made no effort to exercise its discretion under the Fairness Doctrine. The Committee for the Fair Broadcasting of Controversial Issues, a New Haven, Connecticut group, would have us hold that compliance with the Fairness Doctrine on this matter on the same controversial issues which conflicted with that of the President; (b) received significant publicity; (c) was broadcast during prime time; (d) and was uninterrupted.

3. Business Executives Move for Vietnam Peace (BEM East) complaint against WTOP-AM, Washington, D.C. filed January 22, 1970, regarding the station's refusal to sell advertising time for presentation of the group's one-minute anti-Vietnam announcements.

4. Business Executive Move for Vietnam Peace, Los Angeles Chapter (BEM West) complaint against CBS, ABC, and NBC Television Networks, filed June 3, 1970 charging violation of the Fairness Doctrine by the Los Angeles outlets of all three networks. BEM West requested reasonably comparable prime time opportunity for BEM or other responsible spokesmen to express a contrasting viewpoint on the Cambodia issue in response to the June 3 broadcast by President Nixon.

5. Letter of 14 United States Senators dated July 8, 1970 seeking network television prime time to respond to the President's series of televised addresses to the Nation on the Indochina War. Specifically, the letter states that the Commis-

sion "should require networks to provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issues and the President has initiated debate via nationwide television."

6. Letter of 11 United States Senators of July 10 requesting that NBC give comparable free time to present contrasting views to the May 12 program which supported the Amendment to End the War.

7. Petition of the Republican National Committee for relief against CBS, filed July 13, 1970. This is a request for time to respond to the CBS broadcast featuring Lawrence O'Brien, Chairman of the Democratic National Committee, which in turn was a response to President Nixon's broadcasts. The Republican National Committee claimed that Mr. O'Brien had raised a new issue in his broadcast—namely, which political party should hold power.

Mr. BURCH. One personal note, Mr. Chairman. As a former chairman of the Republican National Committee and as one who has served on the 20th Century Fund, I am deeply interested in this entire subject matter. It is one that I have thought about for many years. And I must say that I regret the negative tone of this statement. I wish that I were here full of answers. But I am afraid there are no easy answers to this problem.

And I would like to say that as an individual I hope that we will pursue this entire problem further and will come up with something. Commissioner COX has submitted a separate concurring statement, and Commissioner Johnson has submitted a dissenting statement, together with some attachments.

Senator PASTORE. Well, Mr. Johnson is here, we will hear him if he wants to be heard.

Mr. JOHNSON. It is not necessary.

Senator PASTORE. Would you rather we not hear you? You said not necessarily. I mean when we are through with Mr. Burch. I have the afternoon if you want to testify; that will be fine with me. Maybe you should.

Why don't we wait until we get through with Mr. Burch and you think about it. I don't care how you do it.

Senator SCOTT. Well, Mr. Chairman, in considering fairness, does the Commission believe that presentations should be balanced politically, or do you consider it more important that differing views on matters of national interest be expressed regardless of the political affiliation of the responsible man?

Mr. BURCH. Senator, I don't know that there is an easy answer to that. Basically the fairness doctrine suggests that the public is entitled to have the divergent views. Often by definition those divergent views have political labels attached to them. But I would see nothing improper, for example, in having two members of the Republican Party, or two members of the Democratic Party on opposite sides of the same issue and that quite often happens.

Senator SCOTT. It has been suggested by at least one witness that the Commission should reexamine its fairness doctrine in a proceeding which would involve all members of the industry and the various concerned segments of our population.

Do you have a reaction to that?

Mr. BURCH. Senator, I was just made aware of that recommendation a few moments ago. I would like to say this, I don't have a very thoughtful reaction to it, but I certainly don't reject it out of hand by any means. And I believe that is Mr. McGannon's recommendation?

Senator PASTORE. That is right.

Mr. BURCH. Yes. And whether or not the Commission itself should be the catalyst that he speaks of, or whether we could simply help or whether we should do it as our own inquiry, or just what, I am not really sure. But I do think that these hearings have demonstrated that the industry is concerned about the problem, certainly the Congress is, and if we can be of assistance, I would hope that the Commission would do whatever is appropriate under the circumstances.

Just how that will work out in hardware I don't know.

Senator PASTORE. I think the worst thing the Congress could do is to place itself in the embarassing position of being favored in any sense of the word. I hope we don't meet with that misunderstanding, because certainly as a Member of the Senate, I wouldn't want that. I know Mr. Scott wouldn't want that, no one is asking for that. But let's assume you had a very serious question about a declaration of war. That falls exclusively within the jurisdiction of the Congress of the United States.

Let's assume the Congress felt that over television they should explain to the American people, as the President sometimes will explain to the American people, a very important issue. It has nothing to do with politics, it has nothing to do with what the President might have said, but it has to do with the constitutional responsibiliy of the Congress of the United States, which is the elected body of the people of the United States, an elected entity under the Constitution.

Assume the Congress could designate one man to explain to the people why the war should or should not be declared, so the American people wouldn't be confined to reading the newspaper, but would hear it from the lips of a responsible man appointed by the entire Congress. What is wrong with that?

Mr. BURCH. I don't think there is anything wrong with it, Senator.

Senator PASTORE. That is what I am talking about. Everybody here is assuming that is a fight between the Republicans and the Democrats. I don't look at it that way. I am only looking at it that the Congress of the United States on is own initiative speak to the people as a Congress.

Mr. BURCH. I don't think there is any doubt about it and I don't think there is any doubt if Congress could agree on one man to speak on a vital issue, he would have all of the coverage he needs.

Senator PASTORE. Suppose it is two men. It might be an issue that should be brought to the attention of the American people. That is a pretty far-fetched example, but sometimes to prove a point you have to put yourself on the end of a limb.

Senator SCOTT. The chairman of the subcommittee has just used the illustration of a declaration of war and it points up the desirability of either opening up Congress to televised proceedings, broadly and generally by action of Congress, perhaps, without legislation, or by the legislation I have suggested for limited periods. But certainly the most dramatic episode, aside from the attack on Pearl Harbor in 1941, was the vote by the Congress to declare war and the very dramatic decision of one member to vote against it. If there existed a prior decision by Congress to televise proceedings, this is typical of the kind of thing we ought to make available permanently for

the historical records, it seems to me, and we are missing a great chance to record a part of American history.

I can imagine the enormous impact, for instance, if we were to have a declaration of peace, and how much more importance would be attached to the filmed record if that could be included. So I think it is desirable that the Congress do something here, whether it be by statute or action of Congress. It has been suggested that the frustration of denial of access to the media in large part accounts for the militancy of certain groups which attempt by their actions to become sufficiently newsworthy, so as to obtain coverage.

I must say that I do not support this particular method of obtaining coverage. But what efforts are being made by your Commission to insure that all generally recognized minority groups are given an opportunity to express their views responsibly by virtue of public service time grants to do them for that purpose by the broadcast media. What is your general policy?

Mr. BURCH. Well, our general policy, Senator, is that we of course respond to any complaints that are filed with us. We also are aware of the surveys of community needs that are made by the stations in each of their areas as to those groups which have problems in a particular area, and how they propose to handle them. I will be very candid and state we do not have any automatic system whereby a certain group comes up every 3 months and gets some time on television. I don't know that that would even be feasible if we were able to do it, and frankly I don't know the mechanism by which you could accomplish this, set up as we are.

I think frankly if a group does feel that it is being badly used, its best resort is a complaint to the Commission. Commissioner Johnson in his dissent points up his feeling that we do not honor those complaints when we get them. And I won't belabor how we decided this one particular case. But again our basic principle is the right of the public to be informed of the issues, not the right of you or Senator Pastore or me necessarily to get on television to tell how we feel about a particular issue. Always there is a judgment called for on the part of the broadcaster as to just how you present a particular issue. That is where the hangup comes on this fairness.

Senator SCOTT. As I understand your position, the Commission serves as an arbiter of disputes arising out of a given station's application of the fairness doctrine. I agree. I would like the Commission to continue along those lines, inasmuch as it is the body best qualified, I think, to arbitrate individual disputes arising out of a multitude of different fact situations. What concerns me is that an attempt to establish a rigid set of criteria, as to what constitutes fairness, even if it were possible to do so, would tend to destroy the usefulness of the Commission in its role as arbiter. Do you agree generally with that?

Mr. BURCH. Yes, although I don't share your concern about the rigid criteria. These criteria are just as broad as they are long. The problem is applying those criteria to a given set of facts. It is somewhat like the reasonable man rule, it is easy to state but very difficult to interpret sometimes.

Senator SCOTT. That is what I said, it would be difficult to establish a rigid set of criteria.

Mr. BURCH. I don't believe you can. The fact situations are so varied—just as these five matters we have before us now are just as different as they can be in their approach, yet they will all be ruled by a one sentence rule of law which will apply to each of them.

Senator PASTORE. I want to compliment Mr. Scott for his suggestion on television in the Senate. But I would go a step farther and I discussed this in detail this morning when you weren't here, Mr. Scott. I would give the same privilege to the electronic media as you give to the newspapers. I think this of course would require certain modifications being made; I think they would have to be placed behind a screen, as they do at United Nations, so it wouldn't disrupt the orderly procedures of the Senate. But after all, television has become a vital force in the life of Americans, it is the great dynamic media of communication. I think myself that possibly we ought to begin to amend our rules in such a way that we can have our committee meetings at a certain time, after that we meet in the Senate, and the cameras are there, the newspapers are there, and consider our bills.

Senator SCOTT. I have no objection to that; I have long favored it. I have proposed a modest first step designed to stir up some consideration. As you know, if the Senate ever adjourns long enough for us to install the new sound system, which takes about 45 days, we will then have one enclosed space for general visitors, and the Congress ought to be considering whether it needs two enclosed spaces, one for television cameras and radio, in addition to this visitors' space. But when that happens, the proceedings in the Senate will become much easier to understand, both within the Chamber and for the public if they are broadcast, and I think we ought to be thinking about it before we get into a subsequent question of rewiring the whole Chamber. I have no other questions, Mr. Chairman.

Senator PASTORE. Thank you very much. I realize we didn't give you much time to review the testimony of all of the other witnesses. If any new ideas occur to you as members of the Commission, I hope you will submit them. All of us realize here that we have a two pronged issue, No. 1, can it be done constitutionally; and No. 2, just how you go about doing it? That is not going to be very easy. We would welcome any suggestions.

We are privileged to have Mr. Johnson in the room; he has a short statement here and I will accede to whatever your wishes are, Mr. Johnson, either put it in the record or read it.

STATEMENT OF HON. NICHOLAS JOHNSON, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Mr. JOHNSON. Mr. Chairman, let me come forward at least long enough to acknowledge your usual generosity with your time and courtesy toward me.

I did not come with the intention of reading this statement to you, and I don't really think that is necessary, although I would be happy to do it if you would like.

Senator PASTORE. Let's put it in the record and let's get your ideas on some of these things, it would be helpful.

Mr. JOHNSON. Yes, sir. Basically what I have brought here, and I will add material to it as it becomes available as Chairman Burch

mentioned, is the statement prepared for your committee—the dissenting opinion which I prepared in the Anti-War Spots case—the Business Executives' Move for Vietnam Peace against WTOP–AM—a public announcement on which has been released by the Commission this afternoon; a speech I delivered at Princeton entitled "Politics and Power in Radio and Television Land," which addresses some of these questions more broadly and the Armed Forces Recruiting Spots opinion of June 4 of this year which deals with a related issue.

We have also decided today the Democratic National Committee complaint and I will be submitting my separate opinion on that.

I have opened the statement with a parable, in part, because I really believe that something is necessary to focus upon the dramatic consequences of what it is we are talking about here. I think you are very much aware of it, and you made that clear in your statements. But I think many others may not be.

Television is the most powerful force going in our country today. It is the only game in town. It is the place not only where commerce does the work, but where such little politics and culture as may be permitted to the American people is also displayed. And in an age in which that little screen is the sum total of the political ball field, it does seem to me that we simply must recognize that if we are to continue to have three equal branches of government, a system which has after all worked fairly well so far, we are going to have to recognize the necessity of coming up with some rules with regard to television, or Congress is simply going to be drowned out.

I think it is a terribly significant problem. And I think that the FCC's position, while without question being well grounded in past Commission law, is wrong and I think shortsighted. And I think it leads to the kind of sense of alienation on the part of a great many American people that Senator Scott referred to.

I think it is in part responsible for the violence that we see in our society; it is a way of communicating discontent. What we are now discovering is there are many silent minorities in the United States, not just the blacks.

One of our Nation's smallest minority groups, the Members of the United States Senate, are discovering that they too are excluded from direct access to radio and television.

Now as I read the law, as I have spelled it out in this 42-page analysis in the BEM against WTOP Case, I just think it leaves no doubt whatsoever that the first amendment compels an equivalent right-of-access to the broadcast media as is accorded to advertising posters on buses and other situations in which the courts have ruled on this issue.

Senator PASTORE. When you say that, Mr. Johnson, do you have reference to cameras in the Senate?

Mr. JOHNSON. No, I am referring now, Mr. Chairman, to access by some spokesman on behalf of United States Congress to television.

Senator PASTORE. I see.

Mr. JOHNSON. It seems to me the law is very clear on this. Now my colleagues disagree with me and that has happened before and will probably happen again. But, as I read the law, and I don't believe they have really addressed the arguments that I have raised, I think we are compelled, as a branch of the Federal Government, clearly under the mandates of the first amendment, to provide the same kind

of right-of-access here, right-of-access by elected officials, as pertains in other media.

Now the Commission says there is no personal right-of-access to the mass media, only an access for ideas under the fairness doctrine. I think that is demonstrably untrue. There is a direct right of personal access to the media for a very small kind of idea and that is the idea that one ought to buy a commercial product.

If you want to advertise hair spray or deordorant, you can go directly to the media and you can present your case, in your words, in your time, in your fashion, directly to the people.

But if you, as a representative of the United States Senate, wish to go to the media and present your ideas as you believe them to be important to the American people, you don't have the same right-of-access that the feminine deodorant spray seller has. You have to hold a hearing, and the cameras may come or they may not come. If they come and take film, they may or may not use those portions which you would like to have used.

And the networks have made clear to some Senators that they are not going to sell them time. And they have made this clear to other groups of citizens. I think these are dangerous times in our country; I think what the FCC is doing, yesterday and today, in these decisions is going to be noted historically. I think it is disastrous, and I can only hope that the attention of your committee will cause us to reconsider what I believe to be a very serious error.

Senator PASTORE. You say they have decided the case, the National Democratic Committee case today but it hasn't been published yet?

Mr. JOHNSON. A public notice was issued by the Public Information Office this afternoon at 2 o'clock.

Senator PASTORE. Well, it is after 2 o'clock. What is the notice?

Mr. JOHNSON. Yes, sir. I regret to say I have not been given a copy of it. I know only that it is being released. The decision is that we are holding that the committee can purchase time for the purpose of soliciting funds, but it cannot purchase time for the discussion of ideas, which seems to me a rather anomalous conclusion, one consistent, however, with the general commercial domination of the airwaves.

Seemingly, solicitation of money, even by a political party, is sufficiently familiar to those who believe in using the airwaves for nothing but commerce, so that they find it acceptable. But the concept of discussing ideas is as much an anathema to the FCC as it is to the industry.

Senator PASTORE. Thank you very, very much, Mr. Johnson, you have been very, very helpful. I hope that somehow we can reach some kind of decision here that makes sense. I think it would be beneficial to the American people.

But I think it is not an easy problem.

Mr. JOHNSON. You have done a courageous job with it and I thank you once again for your courtesy.

(Complete statements of Nicholas Johnson and Kenneth Cox follow:)

STATEMENT OF COMMISSIONER NICHOLAS JOHNSON, FEDERAL COMMUNICATIONS COMMISSION

[An Opening Parable]

[Once upon a time there was a nation as great in ideals as industrialization. It had business everywhere—and an unsurpassed military might to protect it. And yet its greatest strength was its foundation. For this nation professed to be governed by the consent of its citizens. To insure the successful functioning of this unusual government, free education, libraries, and full information were provided in order that its 200 million governors, through wide-open debate, might govern wisely. As the years slipped by the people spent more and more time in their air conditioned homes watching television, and less and less time listening to speakers in the public parks and reading handbills on the streets. And yet the great issues, and the need for informed governors, continued. And thus it was that the great debate about the great debate began.

Everyone had his own theory how to get the democratic dialogue back to the people (who were all home, watching their television sets). Some advocated letters, petitions, press conferences, and picketing, but they didn't seem to be successful. Attention shifted to those who advocated bombing, burning, shooting and looting, because before and after the showing of such activities it was usually possible to present a short message on television (however distorted) about the merits of the issue at hand. Then a third group came along. It said, "Let us simply go to the broadcasters peacefully, and ask them for the time to present our concerns—and even pay them." They were jeered by the crowd, but not deterred. The broadcasters politely explained that there was no longer any room at their inn for the discussion of public issues—like war, and life, and politics—because the time all had to be used for programs and announcements necessary to the very difficult but essential task of manipulating consumers to buy useless and harmful products. And yet these patient and patriotic students, businessmen, and Senators still did not give up. They continued to preach the doctrine of "working within the system." "The government," they said, "will treat us fairly. There is reason and justice in our land. Surely a democratic people need not be violent to be heard." And so it was that they came to the FCC. * * *]

On February 25, 1970, a branch of the Bank of America was totally burned by demonstrators in Isla Vista, California. Even with 971 branches, this was a matter of sufficient significance not only to reach the attention of the Chairman of the Board, Louis B. Lundborg, but to start him to thinking. In a subsequent speech, he reflected:

> Today's young people are saying * * * 'Business is ruining America. Business is destroying our natural resources—polluting our air and our water—and why? To produce garbage—things we don't need—and must throw away to keep the economy going. It's a garbage economy, and we don't need it.' The people who talk that way are not all hippies and not all young. An increasing number of older people are raising questions like that; and a few of them have been doing it for a long time.

It is no accident that what he could verbalize, the demonstrators chose to communicate through action. They had "learned"—or been told, and believed to be true—that the only way they could be heard was through acts of violence. And, in this instance, their actions seem to have been an effective means of communication. They got national television coverage. And they got the attention, and understanding, of the Chairman of the Board.

The late Dr. Martin Luther King put the matter more precisely as to the issue before us today: "Lacking sufficient access to television—Negroes have had to write their most persuasive essays with the blunt pen of marching ranks." The country is now waking up to discover that blacks are not the only silent minority in this country. Even United States Senators—one of the nation's smallest minority groups—have learned that they, too, are denied access to radio and television.

Indeed, most of television's critics complain not so much of what is on television as of what is not on television. And what is not on television is America in all its beautiful, maddening, glorious diversity—the real people who make up this

country, their lives, their ideas and their ideals. As Mason Williams says, "If reality could get a break on television I know it could make it big." To borrow from Louis Lundborg's statement, the television industry, like many American corporations, is producing garbage—programming we don't need and must throw away to keep the economy going. It's garbage we use to sell the other garbage. It's one thing to poison the air and water. It's another thing to poison the nation's most precious resource: the hearts and minds of its citizens. The computer people have a saying: "Garbage in, garbage out." It means, a computer's results will be no better than the facts you give it. The same thing's true of people. "Garbage in, garbage out." We're paying a heavy price as a nation for the irresponsible, unrestrained corporate greed of Big Television in America today.

British television—commercial as well as BBC—makes an effort to reflect upon its screen the people and culture of Great Britain. Writers who write novels and poetry also write for television; actors who act in film and on the stage also appear in television; people from all walks of life are represented on the "telly." Not so in the United States. The Vice President is right (even if for the wrong reasons). Television *is* kept as the private preserve of a small group of people who, not content to dominate *most* of the programming, insist on controlling it *all*. The public's airwaves, entrusted to the broadcasters as trustees, are apparently viewed by them as too precious (or dangerous) to be shared with the owners. And the FCC stands as the classic example of Mason William's adage: "The government makes better deals with business than it does with people." The people's representative, the agency set up to serve "the public interest," continues to persist in taking a position foursquare behind the broadcasters to sing a constant chorus of "Amen" to the industry's most outrageous demands. [I have attached, as appendices to this statement, illustrative dissenting opinions of mine in just two recent cases, the Armed Forces Recruiting Spots case (FCC 70–595, June 4, 1970), and the BEM–WTOP Anti-War Spots case (decided today), along with my Princeton address on "Politics and Power in Radio and Television Land" (FCC 47276, April 2, 1970).]

Let me start with a few fundamentals. The great concept of our Constitution, embodied in the First Amendment, was that our democratic government would endure only so long as its citizens and their elected representatives had the leisure to think, the right to speak, and the freedom to criticize their government. As Supreme Court Justices Holmes and Brandeis understood, "the best test of truth is the power of the thought to get itself accepted in the competition of the market," and that in a government of free men, "the deliberative forces should prevail over the arbitrary."

The issues we must therefore grapple with here today pose an essential question. How can we create a free and open "marketplace of ideas" over the radio and television media in this country in which citizens, and their elected representatives, can discuss the great issues that weigh upon our nation?

The second fundamental is equally important. For speech to be free, there must be both a *forum* for communication—whether it be a public park, school, town hall meeting, soap box, leaflet, newspaper, magazine, or radio and television frequency—and there also must be *procedural rules* to keep order, to make it possible for all (or most) to speak in turn, and be heard, in that forum. Perhaps the greatest legal distinction to be drawn in political and free speech theory is that between restrictions on the *content* of speech (which the First Amendment flatly prohibits), and regulations for the manner of speech (which the First Amendment not only permits but requires). As this nation's concept of speech derives principally from the model of the town meeting, I would like to quote Professor Alexander Meiklejohn, one of the greatest champions of First Amendment freedoms, as he describes the town meeting:

> In the town meeting the people of a community assemble to discuss and to act upon matters of public interest—roads, schools, poor houses, health, external defense, and the like.* * * The basic principle is that the freedom of speech shall be unabridged. And yet the meeting cannot even be opened unless, by common consent, speech is abridged. A chairman or moderator is, or has been, chosen. He "calls the meeting to order." And the hush which follows that call is a clear indication that restrictions upon speech have been set up. * * * [N]o one shall speak unless "recognized by the chair." Also, debators must confine their remarks to "the question before the house." * * * The town meeting, as it seeks for freedom of public discussion, would be wholly ineffectual unless speech were thus abridged. * * *

Let me go a few steps further. Although the First Amendment would clearly ban governmental censorship of speech content, it would bar the government from adopting invalid procedural rules that control the public forums for discussion. If someone—a moderator, or radio-television licensee—applies rules that result in one speaker, or viewpoint, obtaining less time to present a position (or none at all), then a censorship exists as invidious as unconcealed thought control. There is little doubt in my mind that for any given forum of speech the First Amendment *demands* rules permitting as many to speak and be heard as possible.

The analogy to broadcasting is, I hope, clear. But we have now created a system of broadcasting in this country in which private licensees not only serve as the "moderators" of the electronic forums of communication, but all the speakers as well. As FCC Chairman Burch has said to you, our limited frequencies require someone to be "trustee." But must that person be the "trustee" 100 percent of the time? Or should he be required to turn over significant portions of that time directly to the people?

The question before us here is: are the existing procedural rules for broadcasting, whereby direct "access" to the system for expression of views is permitted for commercial but not political speech, consistent with the "marketplace of ideas" demanded by the First Amendment? I believe clearly not.

Chairman Burch has said that we must perforce have an "issue-oriented 'right of access,' not the right of any individual to access." But is that in fact true? A moment's reflection shows it is not. As the system now operates, any person wishing to sell products—toothpaste of "femine deodorant spray," say—has direct, personal and instant access to television. He can present his message, in the form he wishes, not in terms of "issues" (the general benefits of toothpaste or deodorant), but in terms of individual products. He is not forced to rely upon a "trustee" to argue the cause of his product for him under some principle of the Fairness Doctrine—an occasional mention on the evening news, or a Sunday afternoon talk show. He does it personally and directly.

No, our Rules or Order for radio and television are fantastically skewed. We have an individual right of access, all right, but only for hucksters of industrial garbage. Anyone wishing to discuss war, peace, mental health, or the suffering of the poor, must seek out a corporate "trustee," appointed by the government, to speak for him. With the help of Congress and the FCC, the broadcasting industry in this country has built perhaps the most beautiful, efficient, and effective "marketplace for ideas" ever conceived and executed through the mind of man. The industry finds it most profitable, however, to use its marketplace only for the sale of products—not the robust, wide open debate of a free society. And the FCC finds this in "the public interest"!

It is useful, I think, to see how the courts have dealt with these problems. In *Wirta* v. *Alameda-Contra Costa Transit District*, 434 P. 2d 982 (Cal. 1967), for example, a public transit company sold advertising space in its buses for commercial products, but refused to accept an advertisement by Women for Peace, which simply stated:

> " 'Mankind must put an end to war, or War will put an end to mankind.'
>
> President JOHN F. KENNEDY."

Stating that the political "advertisement" was clearly protected by the First Amendment, the court flatly ordered the company to accept the advertisements for display.

[A]dvertising is an acceptable and effective means of communication. A regulation which permits those who offer goods and services for sale * * * access to such forum, while denying it to those who desire to express other ideas and beliefs, protected by the First Amendment, cannot be upheld.

The "vice" of censorship lay in "choosing between classes of ideas," accepting commercial ones and banning all others. Every other court faced with the same issue has followed this position. See *e.g.*, *Hillside Community Church, Inc.* v *City of Tacoma*, 455 P. 2d 350 (Wash. 1969); *Zucker* v. *Panitz*, 299 F. Supp. 102 (S. D. N.Y. 1969); *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S. D. N.Y. 1967). (The application of this area of the law to broadcasting is new and as yet undeveloped and unapplied. I have attempted to spell it out fully in the appended opinion involving BEM and WTOP. I hope the Committee will find it useful.

The lesson of these cases is clear. The Government could not, for example, allow persons selling products to speak freely in public parks, but require those

opposing the war to "speak" through an interpreter or "trustee" appointed by the Government. No court in the land would tolerate such blatant discrimination. Yet this sort of discrimination occurs every day in our nation's electronic "public parks."

If broadcasters are to accept commercial advertising on a first-come, first-served basis, then the "free speech" and "equal protection" clauses demand that they accept political advertising on similar conditions.

If broadcasters are to permit a General Motors or a Ford Motors Company to purchase a full hour of "I love Lucy" as a vehicle upon which to display their commercials, then fundamental principles of fairness demand—at a minimum—that they permit the leading representatives of our legislative branch of government to purchase the equivalent hour to display their ideologies and concerns.

We have two separate problems before us: individual citizens are seeking to purchase radio and television time to speak to their government on national issues; and members of that government are seeking to purchase time to speak to their citizen constituents. At first, the broadcasters rejected both demands; now they grudgingly decide to accept paid one-minute advertisements from political parties soliciting funds—a venture sufficiently close to a commercial undertaking to be familiar to them. But the broadcasting industry, with the advise and consent of the Federal Communications Commission, continues to deny the sale of television spot time to individual citizens; and it continues to deny members of Congress the right to purchase access to their forum to discuss matters of national concern. What conceivable justifications can sustain this sort of discrimination?

I would propose the following "Roberts Rules of Order" for radio and television. First, with respect to commercial advertisements of short duration, we should (perhaps for a two-year trial period) adopt a policy requiring all broadcasters to accept *any* advertisement, whether commercial or political, for broadcast at rates determined by the licensee. In other words, I would open the broadcast spectrum to short announcements from all comers on a first-come, first-served basis. If the ghetto residents of this and other cities wish to purchase announcements decrying the rat-infested, disease-ridden slums in which they are forced to live, they must be given their say. If the Daughters of the American Revolution wish to announce their support for the Vietnam War, they must be given their say, I would be surprised, however, if more than 1 to 2% of the available commercial time were in fact devoted to political issues. There will be time later to assess and evaluate—to consider, for example, whether the views of the rich are predominating—at least, any more than they now predominate in the advertising of the mass media. I would not expect any fairness doctrine problems. Few licensees would argue that they were unwilling to accept an advertisement because it might force them to present all views on an issue of controversy and public importance. This obligation is already incumbent upon them.

Second, with respect to offers for the purchse of half-hour or full-hour time segments, I would require licensees to accept programming of a political nature, if offered, in an amount up to 5 percent of their primetime evening schedule on a first-come, first-served basis. Assuming four hours of prime time every evening (from 7:00 p.m. to 11:00 p.m.), and calculating 30 days per month, that would release 6 hours per month to "pure access" by politicians and citizens groups alike. The individual licensee would, of course, still retain the right to reject programming for inadequate technical and production quality, or violation of federal law (lotteries, obscenity, etc.). I would assume, however, that programming purchased by the national political parties would, *per se*, meet any pre-established quality standards. Of course, licensee profits would not drop one cent. And there will be time later to assess this scheme and determine the extent to which fairness doctrine obligations apply. We might suspend the fairness doctrine in this limited area, on the assumption that persons wishing to reply would be able to purchase the necessary time.

The matters before us go far beyond freedom of speech. For, in the last analysis, we are confronted with one of the most serious challenges to the system of "checks and balances," the separation of the legislative and executive powers of government, that our country has ever faced. If, for example, through some bizarre turn of events the President, but not the Congress, was granted access to the computer, the telephone, the telegraph, the typewriter, the printing press, and the Xerox machine, we would also see a constitutional quandry of the propor-

tions that face us now. The President has immediate, direct and vivid access to the minds of all the prime-time television viewers in America. Can our tri-parte scheme of government survive if the Congress receives substantially less?

Unlike the fairness doctrine, which often imposes a burden on broadcasters due to the importance of the *issue* to the public, principles of pure "access" pay their own way. The broadcasting industry is out-of-pocket nothing. The great mass of news, documentary and entertainment programming will be unaffected. And the forums of the air will be opened to the breeze of dissent, controversy, and thought.

Unlike the fairness doctrine, an "access" system is self-enforcing. No governmental agency is called upon to decide which issues are controversial and of public importance. Issues reach the public immediately, without the years of delay required to push a fairness doctrine controversy through the Commission and the courts.

And, unlike the present system, the views that reach the people will not be dominated by the consensus committees of the corporate television establishment. There are some who fear that the agenda of debate will be set by the rich. But who, after all, sets that agenda now? The great mass of television programming consists of format entertainment series, carefully designed as supportive and palatable packaging for the commercial content supplied by the merchandisers of our land. To the extent a network seeks to provide programming which is "offensive" to some corporate interest, then pressures for censorship are brought to bear—as Coca Cola is alleged to have pressured NBC over its recent documentary on migrant workers. All we can hope for is a system of access in which at least a wee small percentage of the time and views will originate directly from the people—of all views, persuasions, and walks of life. That even that modest participation is anathema to the broadcasters is testimony to their dangerous arrogance and unrestrained power.

You, as elected officials, are to be commended for having the courage to address these issues. You should not be surprised if the networks continue to press the position that they should be left free to apply their largess as they see fit—until the storm blows over. Those who have power seldom relinquish it voluntarily. But they fly their colors for all to see: they have made it abundantly clear over the years that profits take precedence over the public interest, and that they believe they know better than the people themselves (and their elected representatives) what persons and issues should be presented and in what form. With your guidance, with your insistence, the FCC may be moved to reconsider its position in its decisions and the Joint Resolution before you now.

Attachments to Statements of Commissioner Johnson

ANTI-WAR SPOTS

[In re complaint by Business Executives Move for Vietnam Peace (BEM) regarding WTOP–AM's refusal to sell airtime for presentation of anti-Vietnam War announcements.]

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON *

"The peculiar evil of silencing the expression of opinion is that it is robbing the human race; posterity as well as the existing generation; [and] those who dissent from the opinion still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth; if wrong, they lose what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error . . ."—J. S. Mill, *On Liberty*, quoted in *Buckley v. Meng*, 230 N.Y.S.2d 924, 932 (Sup. Ct. 1962).

History will record, I believe, the fundamental misstep taken today by the Commission in its slow progress toward securing truly free speech for all citizens over the broadcast media. Almost two hundred years ago, the architects of our country drafted a constitutional scheme of government based on the bedrock of one paramount principle: that a free society would endure only so long as its citizens had the freedom to think, to speak openly, and to criticize their government. This First Amendment freedom of speech and press was "preferred" above all others, see *Marsh v. Alabama*, 326 U.S. 501, 506 (1946), *Thomas v. Collins*, 323 U.S. 516, 530 (1945), for so long as speech remained free, all other

*Preliminary Opinion. Additional material, responsive to the majority, to follow.

liberties could be defended. But should speech vanish, then the informed electorate necessary to preserve all other freedoms would cease to exist.

Yet freedom of speech does not exist as an abstraction. The First Amendment protects not just the right to speak, but the right to reach an audience—the right to *communicate*. Protection of the means used to disseminate ideas, therefore, as well as the availability of forums used for discussion and debate, must receive as much attention as the more abstract right to speech itself.

> The right of free speech necessarily embodies the *means* used for its dissemination because the right is worthless in the absence of a meaningful method of its expression. To take the position that the right of free speech consists merely of the right to be free from censorship of the content rather than any protection of the means used, would, if carried to its logical conclusion, eliminate the right entirely. The right to speak freely must encompass inherently the right to communicate. The right to speak one's views aloud, restricted by the ban that prevented anyone from listening, would frame a hollow right. Rather, freedom of speech entails communication; it contemplates effective communication.

Wollam v. City of Palm Springs, 379, P.2d 481, 486 (Cal. 1963) (emphasis supplied). The Supreme Court has often recognized this principle, holding that forums for the expression of views must remain free and open, and that the preservation of these forums for the communication of views between citizens is one of our most important goals. In *Hague v. CIO*, 307 U.S. 496, (1939), Mr. Justice Roberts made the statement that *Kunz v. New York*, 340 U.S. 290, 293 (1951), later elevated to precedent:

> Wherever the title of street and parks may rest, they have immemorially been held in trust for the use of the public, and time out of mind have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.

Hague v. *CIO supra* at 515. The Supreme Court has recognized this right to access to a "public forum of communication in numerous other areas, including privately owned sidewalks, *Marsh* v. *Alabama*, 326 U.S. 501 (1946), modern shopping centers, *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968), and public schools, *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969). And the Court has also acknowledged the importance of the press, see *Associated Press* v. *United States*, 326 U.S. 1, 20 (1945); *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964), and the electronic media, see *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367 (1969), as media or *means* for the communication of thought.

The question before this Commission, therefore, is the extent to which the First Amendment *requires* the public forum of broadcasting to be equated with the "streets and parks" of *Hague* v. *CIO*, and the rights of citizen access to those forums recognized as among those basic "privileges, immunities, rights and liberties of citizens." The question before us is whether private corporate licensees of the FCC have any more right to exclude citizens from the use of their facilities than a privately owned "company town" has to exclude citizens from its streets. *Marsh* v. *Alabama*, 326 U.S. 501 (1946). The broadcast spectrum is public property belonging to the citizens of this country. It is entrusted for limited periods of time to the trusteeship of private entities, corporate broadcast licensees. I believe these corporate licensees must be treated, for purposes of speech freedoms, as privately owned "company towns."

The question, therefore, is not what policy the Commission might wish to adopt concerning the "advertisements" before us, but what the Constitution *requires* the Commission to adopt. "In seeking to provide the broadcasting media with the diversity *demanded* by the first amendment, . . . the Commission must avoid the perils of . . . abdication which would allow those possessing the most economic power to dictate what may be heard. . . ." *National Ass'n of Theatre Owners* v. *FCC*, 420 F. 2d 194, 207 (D.C. Cir. 1969) (emphasis supplied). I believe the Commission has failed in this task.

The complainant, Business Executives Move for Vietnam Peace (BEM), is a well-established national organization with more than 2, 700 members from business communities across the country. BEM has sought, unsuccessfully, for over a year, to purchase airtime on WTOP-AM in Washington, D.C., at the standard commercial rates, to present to residents of the nation's capital (including nationally elected members of the government) one-minute "spot announcements"

urging immediate withdrawal of American troops from Vietnam and otherwise opposing the current Administration's war policy. WTOP-AM has refused to grant BEM the access to its broadcast facilities—which it freely sells to purveyors of mouthwash, underarm deodorant, and hand soap—on the ground that the station has a long-established policy of refusing to sell spot announcement time to individuals or groups with "controversial" views. WTOP-AM's principal justification for this policy is the belief—apparently not shared by BEM—that "subjects of this type require a more in-depth analysis than can be provided in a 10, 20, 30, or 60 second announcement." The Commission has thrown the weight of its precedents and support behind WTOP-AM's decision to bar the views proffered by BEM. Citing Section 3(h) of the 1934 Communications Act, the Commission argues that licensees are not "common carriers" and therefore WTOP-AM is "not required to open its doors to all persons seeking to use the nation's facilities for whatever purposes." The majority delegates to "the licensee's judgment" the power to determine "the format for presentation of controversial issues "and all other facets of such programming.' " Any other result, the Commission contends, "would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt."

The Commission's decision, I believe, ignores a long line of judicial precedent which guarantees to individuals a *right of access* to forums generally open to the public for expression of views. These cases, which I will discuss in detail below, establish the proposition that a private or public corporation, which exercises control or possession over property open to the general public or the communication of particular views, cannot discriminate between the persons or views that seek access to its facility, barring some and admitting others. BEM's request, therefore, places the following four issues before the Commision: *first*, are BEM's anti-war spot advertisements constitutionally protected "speech" under thee First Amendment; *second*, is the action of WTOP-AM, a private corporation licensed and supervised by a public agency in a fiduciary or trustee capacity for public property, sufficient "state action" to bring the First Amendment's protections into operation; *third*, are BEM's proposed spot announcements an "appropriate" exercise of speech activities in the public forum of WTOP-AM's frequency, given the character, usual activity and purpose of the forum and the nature of competing uses; and *fourth*, is a limited right of "non-commercial paid access to WTOP-AM's frequency barred, in a constitutionally permissible manner, by Section 3(h) of the Communications Act of 1934, which declares that broadcast licensees shall not be deemed "common carriers." I believe the Constitution compels an affirmative answer to the first three questions, and a negative answer to the fourth.

I. ADVERTISEMENTS AS PROTECTED "SPEECH"

The Supreme Court has drawn a distinction betwen two types of speech: the first, political or social speech, is entitled to the fullest constitutional protection. Indeed, Professor Harry Kalven believes the "central meaning of the first amendment" is to preserve the citizen's right to criticize those who govern for him. Kalven, *The New York Times Case: A Note on 'The Central Meaning of the First Amendment.'* 1964 Sup. Ct. Rev. 191, 208–09; see Meiklejohn, *The First Amendment Is An Absolute*, 1961 Sup. Ct. Rev. 245, 256.

The second type of speech, "commercial" speech, however, has not been viewed as worthy of much deference. "In the quarter century since *Valentine* v. *Chrestensen* [316 U.S. 52 (1942)], the notion that commercial advertising is not protected by the first amendment has been enshrined among the commonplaces of constitutional law." Note, *Development in the Law: Deceptive Advertising*, 80 Harv. L. Rev. 1005, 1027 (1967); see, *e.g.*, *Ginzberg* v. *United States*, 383 U.S. 463, 474 n. 17 (1966); *Polak* v. *Public Util. Comm'n.*, 191 F. 2d 450, 456–57 (D.C. Cir. 1951) (dictum), *reversed on other grounds*, 343 U.S. 451 (1952); see also, Note, *Freedom of Expression in a Commercial Context*, 78 Harv. L. Rev. 1191 (1965). In *Valentine* v. *Chrestensen*, *supra*, the Court upheld a municipal ban on the distribution of commercial pamphlets on city streets. The Court simply observed that "the Constitution imposes no . . . restraint on government as respects purely commercial advertising." *Valentine* v. *Chrestensen*, 316 U.S. at 54.

Although the distinction drawn is an elusive one, it divides, perhaps, speech which seeks to influence political and social decisions in the marketplace of ideas from speech which seeks to influence private economic decisions in the marketplace of goods and services. Compare *Murdock* v. *Pennsylvania*, 319

U.S. 105 (1943) (conviction for door-to-door solicitation of contributions for religious literature reversed), with *Breard* v. *Alexandria*, 341 U.S. 622 (1951) (conviction for door-to-door solicitation of magazine subscriptions upheld) and *Jamison* v. *Texas*, 318 U.S. 413 (1943) (advertisement on back of religious handbill protected). And while this distinction has been severely criticized, see *Cammarano* v. *United States*, 358 U.S. 498, 513–15 (1959) (dictum) (Douglas, J., concurring), and I think with reason, it may indicate that the dissemination of "false" political ideas can evoke discussion or controversy which may refute or highlight the falsity of the original statement. "False" commercial assertions, by contrast, may only breed additional false claims from competitors with no corresponding improvements in the products sold. Note, 80 Harv. L. Rev. 1005, 1030 (1967). Viewed in this light, WTOP–AM and the Commission have relegated political and social speech to a peculiarly inferior role. By permitting broadcasters categorically to exclude political advertisements and accept only commercial announcements, the Commission has encouraged exclusion of highly valued political speech to the benefit of paid commercial speech.

With this in mind, it is clear that the paid anti-war advertisements proffered by BEM fall within the category of protected—indeed highly valued—political speech. The fact that BEM is willing to pay the "admission price" for access to WTOP-AM's facilities does not detract from the purpose of its message to encourage political decisons in the marketplace of ideas. The Supreme Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, (1964), conclusively laid all doubts to rest on this point:

> The publication here was not a "commercial" advertisement in the sense in which the word was used in *Chrestensen*. It communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern . . . That . . . the advertisement [was paid for] is as immaterial . . . as is the fact that newspapers and books are sold. [citations] . . . Any other conclusion would discourage newspapers from carrying "editorial advertisements" of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. [citations] . . . The effect would be to shackle the First Amendment in its attempt to secure "the widest possible dissemination of informaton from diverse and antagonistic sources." [citation] . . .
>
> . . . The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protecton.

New York Tmes Co. v. Sullivan, *supra* at 266, 271. "[W]hen an advertisement is the medium for noncommercial expression, constitutional freedoms apply in spite of its commercial nature." Note, *Resolving the Free Speech-Free Press Dichotomy: Access to the Press Through Advertising*, 22 U. Fla. L. Rev. 293, 309 (1969) (citing further authority at n. 131). *Accord*, *Banzhaf v. FCC*, 405 F. 2d 1082, 1101–02 (D.C. Cir. 1968); *Zucker v. Panitz*, 299 F. Supp. 102, 104 (S.D.N.Y. 1969); *Wirta v. Alameda-Contra Costa Transit Dist.*, 434 P. 2d 982, 984–85 (Cal. 1967).

I conclude, therefore, that BEM's anti-war advertisements are "speech" deserving of First Amendment protection.

II. "STATE ACTION"

The First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech . . ." Although the language of this amendment binds only the national government, the Supreme Court has extended its protection to actions by the states as well. *Fiske v. Kansas*, 274 U.S. 380, 387 (1927); *Gitlow v. New York*, 268 U.S. 652, 666 (1925). "Yet, while the Fourteenth Amendment affords protection from state action as well as that from the national government, it does not protect against wrongs done by private persons." *Chicago Joint Bd., Amal. Cloth. Wkrs. v. Chicago Tribune Co.*, 307 F. Supp. 422, 425 (N.D. Ill. 1969). In order, therefore, to establish a violation of the First Amendment, there must be "state action"—here by the federal government—which deprives a group or individual of the speech freedoms guaranteed by the First Amendment.

On its face, the refusal of WTOP-AM to accept BEM's advertisements is "private action" by a private corporate license, and therefore not restrained by the Constitution. Yet the "state action" requirement has been found in the actions of many non-governmental persons or corporations. In each case, the private action has been sufficiently "involved" with the state that the restraints of the Constitution have been found to apply. The question before us, therefore, is whether WTOP-AM's actions are involved with the federal government to such an extent that the Constitution sets limits to its action. To paraphrase *Farmer* v. *Moses*, 232 F. Supp. 154, 158 (S.D.N.Y. 1964) (grounds of World's Fair equivalent in status to public property), the question is whether WTOP-AM's actions "are so impregnated with and supported by state . . . action as to place them within the ambit of the [First] Amendment, . . . even though [WTOP-AM] . . . possesses certain indicia and aspects of 'private' ownership and dominion."

I believe that WTOP-AM's rejection of BEM's advertisements clearly constitute "state action" under either of two major doctrines: sufficient "involvement" with the government, and the failure ("*in*action") of the government affirmatively to enforce the First Amendment.

A. State "Involvement"

There are a number of traditional theories according to which WTOP-AM's censorship of BEM's attempted speech constitutes "state action."

1. Public Property

The broadcast frequencies are a valuable and scarce resource belonging to the public. Although broadcast licensees are given the temporary use of this public property for terminable three-year periods, ownership and ultimate control remains vested in the people of the United States. In Section 301 of the 1934 Communications Act, Congress evidenced its clear intention that the broadcast spectrum should remain "public property":

> It is the purpose of this Act . . . to maintain the control of the United States over all channels of interstate and foreign radio transmission; and to provide for the use of such channels, *but not the ownership thereof*, by persons for limited periods of time, under licenses granted by Federal authority, and no such license shall be construed to create any right, beyond the terms, conditions, and periods of the license. [Emphasis supplied.]

The mere fact that the licensee's actions are taken with respect to public property should suffice to meet the test of required "state action." See *Tucker* v. *Texas*, 326 U.S. 501 (1946) (actions by municipal officials over property of government-owned town comprised "state action").

2. Private Lessee of Public Property

It is equally clear that the requirement of "state action" cannot be evaded by the *lease* of public property, by a public entity, to a private individual. Discrimination by the private lessees with respect to public property, for the purposes of the First Amendment, has been equivocally deemed state action by the courts. E.g., *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 438 (S.D.N.Y. 1967) (city "leased" public advertising space on city buses to "private" advertising agency); *Farmer* v. *Moses*, 232 F. Supp. 154, 159 (S.D.N.Y. 1964) ("when a city or state leases public property [such that] . . . services . . . are actually performed by a 'private' lessee, the latter stands in the shoes of the government"); *Anderson* v. *Moses*, 185 F. Supp. 727, 733 (S.D.N.Y. 1960) ("private . . . concessionaire [operated] on public . . . property for the convenience and comfort of the public"); *Hillside Community Church, Inc.* v. *City of Tacoma*, 455 P.2d 350 (Wash. 1969) (action by private advertising agency, pursuant to "contract" with city, in removing advertisements from municipal buses comprised state action); *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P.2d 982 (Cal. 1967) (publicly owned advertising space on municipal buses "leased" to private advertising company). In *Marsh* v. *Alabama*, 326 U.S. 501 (1946), a privately-owned "company town" was found to serve a "public function," and that its exclusion of a person seeking to distribute religious literature comprised "action" sufficient to bind it by the requirements of the First Amendment. If under certain circumstances the private owner of private property is bound by state action, then surely the private *user* of *public* property is not less bound. See, e.g., *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128 (D. Ore. 1970) (privately owned shopping center); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 P.2d 921 (Cal. 1964) (same).

In sum, therefore, "a broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. . . ." *Office of Com-* endowed by the State with powers of functions governmental in nature, they 1966). Those First Amendment obligations are enforceable against WTOP-AM.

3. "Delegation" of State Power

When the state "delegates" its authority over public property to the use and control of a private entity, then the exercise of that use is state action for purposes of the Constitution. "[W]here a state delegates an aspect of the elective process to private groups, they become subject to the same restraints as the State. [Citation.] . . . That is to say, when private individuals or groups are endowed by the State with powers of functions governmental in nature, they become agencies or instrumentalities of the State and subject to its constitutional limitations." *Evans* v. *Newton*, 382 U.S. 296, 299 (1966) (although state "delegated" authority over public park to private trustees, discriminatory conduct of trustees comprised state action). WTOP-AM has exercised powers of control over its broadcast frequency which are governmental in nature—that is, the exclusion of persons wishing to express their views on public property. See, e.g., *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961) (discrimination by private restaurant using and occupying publicly owned land and building "dedicated to 'public uses'" was state action); *Smith* v. *Allwright*, 321 U.S. 649 (1944) ("state delegation to a party of the power to fix the qualifications of primary elections is delegation of a state function that may make the party's action the action of the state"). In other words, private actions taken by the broadcaster-licensee-trustee with respect to his trust "*res*" are imbued with the attributes of state action.

4. Involvement of Regulatory Agency

In *Public Utilities Comm'n.* v. *Pollak*, 343 U.S. 451 (1952), the Court addressed the question whether action by a privately owned public bus company, regulated by the Public Utilities Commission, was to be treated for purposes of the Constitution as action by a governmental entity. In finding sufficient state action, the Court specifically relied upon the fact that the bus company "operate[d] its service under the regulatory supervision of the Public Utilities Commission of the District of Columbia which is an agency authorized by Congress." *Id.* at 462. The Court cited as authority the following proposition from *American Communications Assn.* v. *Douds*, 339 U.S. 382, 401 (1950): "[W]hen authority derives in part from Government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by Government itself." There is little doubt that both the Congress and this Commission are substantially involved in the operations of broadcast licensees. Again, this involvement should provide the requisite state action.

5. State Encouragement or Lack of Neutrality

In *Evans* v. *Newton*, 382 U.S. 296 (1966), a state court accepted the transfer of control over a public park from public to private trustees. In a concurring opinion, Justice White pointed out that a provision of state law permitted private trust settlors to dedicate their property to the public for use as a park and limit the use of that park "to the white race only." Although this statute did not *compel* a settlor to discriminate, it certainly indicated that such an action would be *valid*. According to Justice White, this statute "depart[ed] from a policy of strict neutrality in matters of private discrimination by enlisting the State's assistance only in aid of racial discrimination and . . . involve[d] the State in the private choice. . . ." *Id.* at 306. By encouraging discrimination, although not requiring it, the state sufficiently intertwined itself with private discriminations to constitute state action.

There are close parallels with WTOP–AM's censorship of BEM. Section 3(h) of the Communications Act provides that licensees shall not be deemed a "common carrier," and the Commission has interpreted this to give licensees the discretion to close their doors to persons seeking to use the station's facilities. See *Letter to Washington Women's Strike for Peace*, Nov. 22, 1965 (cited by the majority in the instant case). I believe that Section 3(h) of the Communications Act, together with its interpretation and enforcement by the Commission, provides similar "encouragement" for discrimination by private licensees of the sort involved here. *Cf. Lombard* v. *Louisiana*, 373 U.S. 267 (1963) (statements by Mayor and Superintendent of Police encouraging private discrimination found to be state action). This encouragement should suffice for state action.

6. State Action Through Quasi-Judicial FCC Action.

In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the Court announced that "action of state courts and judicial officers in their official capacities is to be regarded as action of the State. . . ." *Id.* at 14. Although the Court also suggested that state action might not be found where a State through its court merely "abstained from action, leaving private individuals free to impose such discriminations as they see fit," *Shelley v. Kraemer*, 334 U.S. at 19, this distinction between court "action" and "inaction" has apparently been weakened by later rulings. Thus, in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), the Court remarked, in finding the First Amendment to protect the New York Times against a civil suit by a *private* party: "It matters not that the law has been applied in a civil action and that it is common law only. . . . The test is not the form in which state power has been applied but, *whatever the form*, whether such power has in fact been exercised." *Id.* at 265 (emphasis supplied). Rather than forcibly entering the premises controlled by WTOP–AM to broadcast their message through attempted "self-help," BEM has come to this Commission to seek a legal adjudication of its rights. After an investigation of the factual allegations and due consideration of BEM's legal arguments, *cf. Public Utilities Comm'n v. Pollak*, 343 U.S. 451, 462 (1952), the Commission has effectively "ejected" BEM from WTOP–AM's facilities.

Compare *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308 (1968) (state trespass laws used to eject picketers from private property). By adjudicating the rights and liabilities of the parties to this matter, and therefore binding the parties to a certain course of action, this Commission has invoked the "full panoply of its power," *Shelley v. Kraemer*, 334 U.S. at 19, to banish BEM to silence. This, I believe, should provide sufficient state action to invoke the restraints of the Constitution. This is particularly so when the broadcast licensee essentially performs a "public function." See *Marsh v. Alabama*, 326 U.S. 501, 507 (1946).

B. State "Inaction"

The division between state and private action is by no means distinct. In essence the decision to inject the restraints of the Constitution into obstensibly private actions is one of policy. The courts have increasingly felt that where important or "preferred" rights are involved, such as speech and the press, the state cannot tolerate private discrimination or abridgement of those rights; otherwise the purpose of the First Amendment to secure freedom and diversity of expression will be thwarted. Accordingly, the courts have virtually abandoned the requirement of state action in the First Amendment area. Rather than inquire whether the state was sufficiently "involved" in essentially private conduct, the courts have asked whether speech on the property of a private owner substantially interferes with any important property right (such as privacy, or exclusive possession, or absolute right of control, or freedom from obstruction or interference) which is *worth preserving*. As the Court stated in *In re Hoffman*, 434 P. 2d 353, 356 (Cal. 1967) (emphasis supplied):

"If the state curtails First Amendment freedoms to protect an interest that is *nonexistent, whether claimed on behalf of the government or on behalf of a private individual*, it violates the First and Fourteenth Amendments."

The doctrines evolved by the courts are contained in the following proposition: When private property is "opened up" to general use by the public, such that the importance of its use makes that use a "public function," then the "private" owner of that property "waives" his traditional property rights to privacy and exclusivity of use, and cannot abridge the speech rights of individuals seeking to use his "forum" for communication. Under certain circumstances (although perhaps not in the broadcast area) the private owner may entirely close his property to the public; but if he opens it at all, he demonstrates that he has no real property interest of "privacy," and he cannot therefore close it selectively to specific persons or particular views. There are two steps to this proposition: first, that a "public forum" appropriate for communication be opened; and second, that the state, through "inaction" or "permission," has permitted private individuals to discriminate between views in ways inconsistent with the Constitution.

1. Existence of a "Forum"

In *Marsh v. Alabama*, 326 U.S. 501 (1946), a person seeking to distribute religious literature on the streets of a privately owned "company town" was prosecuted for trespass at the instance of the company owners. The Court re-

versed, finding that the privately owned town in fact performed a "public function" similar to that of any town, whether private or publicly owned, and stated:

Ownership does not mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

. . . Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such a manner as the channels of communication remain free.

Id. at 506, 507. Although the Court felt the private corporation could entirely "close the sidewalk" to the public, *Marsh v. Alabama*, *supra* at 502 n.2, once the sidewalk was generally opened to the public, the issue became one of "discrimination" by the corporation against certain religious views. *Id.* at 507.

Many other cases have followed the doctrine of *Marsh* v. *Alabama*, holding that in certain circumstances private property "may, at least for First Amendment purposes, be treated as though it were publicly held." *Amalgamated Food Employees Union Local 590* v. *Logan Valley Plaza, Inc.*, 391 U.S. 308, 316 (1968). See, *e.g.*, *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128 (D. Ore. 1970); *Hillside Community Church, Inc.* v. *City of Tacoma*, 455 P. 2d 350 (Wash. 1969); *In re Lane*, 457 P. 2d 561 (Cal. 1969); *In re Hoffman*, 434 P. 2d 353 (Cal. 1967); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 P. 2d 921 (Cal. 1964); *Amalgamated Cloth. Wkrs.* v. *Wonderland Shop Ctr.*, 122 N. W. 785 (Mich. 1963) (affirmance by equally divided court). For other cases in which the court found the existence of a "public forum" for communication of views, see, *e.g.*, *Tinker* v. *Des Moines School Dist.*, 393 U.S. 503 (1969) (public school); *Wolin* v. *Port of New York Authority*, 392 F. 2d 83 (2d Cir. 1968) (bus terminal); *Zucker* v. *Panitz*, 299 F. Supp. 102 (S. D. N. Y. 1969) (public high school newspaper); *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 438 (S. D. N. Y. 1967) (public subway walls); *Wirta* v. *Alameda-Contra Costa Transit District*, 343 P. 2d 982 (Cal. 1967) (public busses); *Danskin* v. *San Diego Unified School Dist.*, 171 P. 2d 885 (1946) (public school buildings); *People* v. *St. Clair*, 56 Misc. 2d 326, 288 N. Y. S. 2d 388 (Crim. Ct. 1968) (public subway platform).

In sum, these cases all stand for the proposition that where property, publicly or privately owned, is "opened up" for general use by the public, whether or not that use directly involves speech activities, then the facility cannot be closed to speech unless its exercise directly and substantially interferes with the facility's primary use—for example, as a shopping center, bus station, railway terminal, subway, or school.

In the case before us involving WTOP–AM's rejection of BEM's advertisements, there seems little question that the frequency controlled by WTOP–AM is a "forum" for the communication of ideas. Indeed, that appears to be its exclusive purpose, whether those ideas be political, commercial or entertainment. And there is also no question that WTOP–AM has "opened up" the use of that frequency to the general public—by making *commercial* advertising time available to the general public on a first-come, pay-as-you-go basis. See, *e.g.*, *Kissinger* v. *New York City Transit Authority*, *supra*; *Zucker* v. *Panitz*, *supra*; *Hillside Community Church, Inc.* v. *City of Tacoma*, *supra*; and *Wirta* v. *Alameda-Contra Costa Transit District*, *supra*, all cases in which the owner of private or public property opened up his facility for the display of private commercial advertisements. In each case, the court found that a "public forum" for the communication of views was present. Whether or not WTOP–AM's opening of its forum for the communication of private commercial views constitutes an "opening up" for non-commercial (but also paid) views, will be considered below.

2. State "Acquiescence"

In all the cases discussed in the previous section, the court has sought to establish at least some formal connection between private and public action. But in many cases, the "action" necessary to invoke the First Amendment was not direct, affirmative involvement by the government in private conduct, but state "inaction"—the abdication or relinquishment of authority normally or potentially exercised by the state, or the "permission" of private discrimination which the state had the power to prevent. In the First Amendment area, therefore, it seems that the refusal by the state to enforce freedom of speech may provide sufficient "state action" to constrain the speech abridgement activities of private individuals.

In *Marsh v. Alabama*, 326 U.S. 501 (1946), for example, the Court found that the private company town's discrimination involved state inaction, sufficient to invoke the Constitution:

> [*M*]*ere acquiescence* by the State in the corporation's use of its property . . . would still have been performance of a public function and discrimination would certainly have been illegal . . . . And certainly the corporation can no more deprive people of freedom of press and religion than it can discriminate against commerce. . . . . [T]he circumstance that the property rights to the premises where the deprivation of liberty . . . took place, were held by others than the public, is not sufficient to justify the State's *permitting* a corporation to govern a community of citizens so as to restrict their fundamental liberties. . . .

Id. at 507 & n. 4, 509 (emphasis supplied). To be sure, there was technical "state action" present in *Marsh*, in that the state was asked to enforce its trespass laws against an individual invading private property. But this element would not have been controlling. If the company town had sent its corporate officers out to the town's border to restrain Marsh from entering the corporation property, and if Marsh had asked instead for a court injunction to restrain the officers' actions and permit his entry to the corporation's land, the result could have been no different. Compare *Tanner v. Lloyd Corp.*, 308 F. Supp. 128, 130 (D. Ore. 1970) (action to compel entry to shopping center).

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), the Court found that discrimination by a privately owned restaurant that had leased its facilities from the state comprised state action. Again, the Court stressed the element of *in*action as supplying a necessary link between private conduct and the Constitution:

> [I]n its lease with [the restaurant] the [State Parking] Authority *could* have affirmatively required [the restaurant] . . . to discharge the responsibilities under the Fourteenth Amendment imposed upon the private enterprise as a consequence of state participation. But no State may effectively *abdicate* its responsibilities by either *ignoring* them or by merely *failing to discharge* them whatever the motive may be. . . . By its inaction, the Authority, and through it the State, has not only made itself a party to the refusal of service, but has elected to place its power, property and prestige behind the admitted discrimination.

Id. at 725, (emphasis supplied). Other cases are in accord. See, *e.g.*, *Evans* v. *Newton*, 382 U.S. 296 (1966); *Terry* v. *Adams*, 345 U.S. 461 (1953); *Smith* v. *Allwright*, 321 U.S. 649 (1944).

There is, in the case before us, a clear and direct analogy. The government has "delegated" to WTOP–AM the use of valuable and public property. Congress has exercised its power to prevent licensee censorship in Section 315(a), stating that the "licensee shall have no power of censorship over the material broadcast under the provisions of this section." The exercise of this power to prevent private censorship is clearly permissible under the Constitution. *Cf. United States* v. *Price*, 383 U.S. (1966); *United States* v. *Guest*, 383 U.S. 745 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966). By failing clearly to prohibit other forms of licensee censorship, Congress and the Commission have "permitted" a form of private censorship which is inconsistent with the First Amendment.

Many courts and legal scholars have pointed out the need for affirmative action by the government to protect the rights guaranteed by the First Amendment. In *Associated Press* v. *United States*, 326 U.S. 1 (1945), the Supreme Court wrote:

> 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. . . . Surely a command that the government itself shall not impede the free flow of ideas does not afford non-government combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom. . . . Freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not. Freedom of the press from governmental interference under the First Amendment does not sanction repression of that freedom by private interests.

Id. at 20. As Justice Fortas has remarked, "The courts may not and must not permit either public or private action that censors the press." *Time, Inc.* v. *Hill*, 385 U.S. 374, 420 (1967) (dissenting, joined by Warren, C. J., and Clark, J.).

There are only a limited number of ways in which a person can obtain access to the mass media of communication: buy a radio or television station; buy commercial space for promotion of goods and services; develop a situation worthy of news coverage (e.g., demonstrations, street marches, etc.); obtain the sympathy of the editorial staff who will present one's views by "proxy"; obtain rebuttal time under the fairness, personal attack, or equal time doctrines; or, finally, purchase the time for non-commercial speech. In every case except the last, once's access to the most important medium of communication our century has seen depends on someone else's decision. The Commission has already taken step to make "ownership access" even more difficult than it is. See *Policy Statement on Comparative Hearings Involving Regular Renewal Applicants*, 35 Fed. Reg. 822 (1970); *Petitions by B. E. S. T.*, 21 F. C. C. 2d 355 (1970), *reconsideration denied*, FCC 70–738 (July 21, 1970). Commercial space for goods and services both excludes those with purely political or social speech, and abdicates the bulk of radio and television "access time" to monolithic commercial and corporate enterprises. Demonstrations and street marches soon fade in newsworthiness, and people wishing to reach the bulk of the American people must increasingly resort to the tactics of extremism to capture the largess or the television eye.

The sympathy of a radio or television station's editorial staff is often difficult to obtain, and perhaps is nonexistent in those communities with few radio or television outlets. The Commission has been reluctant to apply the fairness doctrine evenhandedly to those with minority or dissenting views. See, *e.g.*, *Letter to Mr. Donald A. Jelinek*, FCC 70–595 (June 4, 1970) (anti-military recruitment announcemnts); Letter to Mrs. Dorothy Healey, FCC 70–658 (June 24, 1970) (attack on members of Communist Party for "unpatriotic" views).

The ability to purchase time, at the going commercial rates, is perhaps the only remaining opportunity many Americans have for electronic speech. The First Amendment was not enacted to sanctify the views of the corporate owners of the mass media. Accordingly, "non-commercial access" may be required under the First Amendment to preserve the "marketplace of ideas" concept in the electronic media. Both commentators and courts have recognized this proposition. See, *e.g.*, *Silver, Free Speech on Private Property*, 19 Cleveland State L. Rev. 372 (1970); Barron, *An Emerging First Amendment Right of Access to the Media?*; Horning, *The First Amendment Right to a Public Forum*, 1969 Duke L. Rev. 931; Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1644–50 (1967); Gorlick, *Right to a Forum*, 71 Dick L. Rev. 273 (1967); Note, *The Listener's Right to Hear in Broadcasting*, 22 Stan. L. Rev. 863 (1970); Note, 22 U. Fla. L. Rev. 293, 304 (1969).

In *Firstamerica & Dev. Corp.* v. *Daytona Beach News-Journal Corp.*, 196 So. 2d 97, 99 (Fla. 1966) the court observed:

> Freedom of the press was never intended to be a special privilege extended to its publishers. On the contrary, it was conceived by the writers of the Constitution and of the Bill of Rights to be a right of the people in a democracy to unrestricted information and presentation of views on government for which the press was a tailor-made medium of dissemination. Freedom of the press, therefore, is a people's personal right rather than a property right. . . .

Other courts have concurred. "Those [constitutional] guarantees are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society." *Time, Inc.* v. *Hill*, 385 U.S. 374, 389 (1967). "[F]reedom of the press is a right which belongs to the public; it is not the private preserve of those who possess the implements of publishing." *State* v. *Buchanan*, 436 P .2d 729, 731 (Ore. 1968). "It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount." *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 390 (1969).

Yet what has happened to that free and open "marketplace of ideas" since the founding of our country? As R. H. S. Crossman has seen, a new political, economic and social revolution "has concentrated coercive power and thought control in a few hands." Power has shifted from those who control the "means of production" to "those who control the media of mass communication and the means to destruction (propaganda and the armed forces)." R. H. S. Crossman, *The Politics of Socialism* 44 (1965). Another commentator has noted, "it is not that the mass communication industry is pushing certain ideas and rejecting others but rather

than it is using the free speech and free press guarantees to avoid opinions instead of acting as a sounding board for their expression." Barron, *Access to the Press—A New First Amendment Right*, 80 Harv. L. Rev. 1641, 1646 (1967). And V. O. Key has warned:

> [A]ttention to the economic aspects of the communications industries serves to emphasize the fact that they consist of commercial enterprises, not public service institutions. . . . They sell advertising in one form or another, and they bait it principally with entertainment. Only incidentally do they collect and disseminate political intelligence. . . . [N]ewspaper publishers are essentially people who sell white space on newsprint to advertisers. . . .

V. O. Key, *Public Opinion and American Democracy* 378–79 (1961).

The growing concentration of power over the media of communication into private corporate hands will require new concepts of "state action" if freedom of speech is to be preserved. Private corporate censorship by radio and television licensees must become a thing of the past if dissent and diversity of views in this country is to flourish. There is, therefore, a direct legal and social connection between the power of the mass media, whose owners stand like a colossus astride the channels of communications, and the state action requirement that the First Amendment's protection does not become operative until speech is abridged by a state-involved entity. *Marsh v. Alabama*, 326 U.S. 501 (1946), is perhaps the opening wedge. It holds that private corporations cannot be unleashed to abridge personal freedoms at will. A. J. Berle, in commenting on *Marsh v. Alabama*, has stated this important principle with great perceptivity:

> The emerging principle appears to be that the corporation . . . is as subject to constitutional limitations which limit action as is the state itself. . . . The preconditions of application are two: the undeniable fact that the corporation was created by the state and the existence of sufficient economic power concentrated in this vehicle to invade the constitutional right of an individual to a material degree. This is new as a rule of law, but it is typically American in tradition. . . . The principle is logical because . . . the modern state has set up, and come to rely on, the corporate system to carry out functions for which in modern life by community demand the government is held ultimately responsible. It is unlimited because it follows corporate power whenever that power actually exists. . . . Instead of nationalizing the enterprise, this doctrine "constitutionalizes" the operation.

Berle, *Corporate Activity—Protection of Personal Rights From Invasion Through Economic Power*, 100 U. Pa. L. Rev. 933, 942–43 (1952); see also, St. Antoine, *Color Blindness But Not Myopia: A New Look at State Action, Equal Protection and 'Private' Racial Discrimination*, 59 Mich. L. Rev. 993 (1961) Miller, *The Constitutional Law of the 'Security State,'* 10 Stan. L. Rev. 620, 661–66 (1958).

I conclude, therefore, from the foregoing discussion, that BEM's advertisements are constitutionally protected speech under the First Amendment, and that WTOP–AM's action in refusing that proferred speech is sufficiently involved with the state to invoke the restraints of the Constitution. I have engaged in this detailed treatment of "state action" for one principle reason: to lay conclusively to rest any argument that licensees have the freedom to censor at will, unrestrained by the First Amendment. They do not. Radio and television licensees, when they act *vis-a-vis* the people, must be treated, for purposes of the Constitution, as if they were agents of the government. Broadcast licensees have no more right to impose bans on speech over their facilities than do groundskeepers in public parks. In all cases involving demands for "access" to the mass media, the only question is whether the broadcaster's restrictions and limitations are reasonable. Of course, a licensee may impose reasonable "time, place and manner" restrictions upon the use of his facility; but he can no more ban certain kinds of speech or types of speakers than the government can ban citizens from public parks and streets. See *Hague* v. *CIO*, 307 U.S. 496 (1939).

III. THE "APPROPRIATENESS" OF THE SPEECH

Every licensee must retain some power to reject programming—if only when it fails to meet certain quality standards, or violates federal law (lotteries, obscenity, etc.). But just as clearly the licensee, as a trustee for the public, does not possess unlimited power to monopolize the use of the airwaves. The Commis-

sion and the courts must begin to draw guidelines for access to the broadcast frequencies, seeking to ensure that the electronic media of twentieth century communication are as open to the public as the soap boxes, public parks, and town hall meetings of the last century. *Cf.* Kalven, Jr., *The Concept of the Public Forum: Cox* v. *Louisiana*, 1965 Sup. Ct. Rev. 1, 21–32. On the one hand, "[t]the rights of free speech . . . do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time." *Cox* v. *Louisiana*, 379 U.S. 536, 554 (1964) (Goldberg, J.). But on the other hand, "the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment." *Red Lion Broadcasting Co., Inc.* v. *FCC*, 395 U.S. 367, 390 (1969).

The FCC and the courts have already begun to develop variants of the access doctrines latent in *Red Lion*. The fairness, personal attack, and equal time doctrines all curtail the licensee's discretion to reject programming. So does the requirement that the licensee ascertain community needs and interests and devote "some significant proportion of [its] . . . programming" to them. *City of Camden*, 18 F. C. C.2d 412, 421 (1969. According to the "state action" discussion above there may well be limits on the ability of a licensee to censor out of a prepared program, during broadcast, the remarks of an invited guest. See *Letter to Cong. Richard L. Ottinger* [*Judy Collins incident*], FCC Public Notice No. 47876, April 20, 1970 (dissenting opinion . In the case here before us, EM is willing to pay the "going commercial rate' 'to gain access to WTOP–AM's facilities. Therefore, unlike fairness doctrine cases, a requirement of access imposed on WTOP–AM with respect to this anti-war announcement *would impose no financial burden on the station.* This is an extremely important point. Compare *Letter to Mr. Donald A. Jelinek*, FCC 70–595, (June 4, 1970) (dissenting opinion at pp. 21–22) (free public service announcements would impose no financial burden on licensee). So long as the party seeking access to a broadcast facility is willing to pay the going rate, we need not face the equal protection question posed by persons financially unable to pay for their "privilege" of electronic speech.

The state and federal courts have, during the past few years, addressed precisely the same question before this Commission—although in the somewhat different context of *spacial* forums (parks, streets, train terminals, etc.), and not *electronic* forums. In every case involving persons who sought only to use the advertising facilities provided to commerical advertisers, the courts decisively ruled that the owner of the property in question could not admit commercial advertisements and exclude political ones.

The germinal case in this area was decided by the California Supreme Court in 1967. In *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P. 2d 982 (Cal. 1967), the members of Women for Peace brought suit against a public transit district, operating the municipal bus service, and a private advertising company which serviced the transit authority's buses. The buses contained advertising space above the passenger's seats, and the transit authority leaed that space to the advertising company which, in turn, re-leased it to private commercial advertisers. (The parallel with FCC licensing of public property to private licensees who re-lease that frequency space to commercial advertisers is obvious.) In 1964, Women for Peace requested that it be allowed to place the following advertisement in defendants' coaches, at the standard rate:

" 'Mankind must put an end to war or war will put an end to mankind.'—President JOHN F. KENNEDY.

"Write to President Johnson: Negotiate Vietnam. —Women for Peace, P. O. Box 944, Berkeley."

Compare Letter to Mr. Donald A. Jelinek, FCC 70–595, (June 4, 1970)

Defendants refused to accept the advertisement, on the ground that the advertisement conflicted with the authority's advertising policy:

> "The . . . District . . . accepts only commercial advertising for the sale of goods and services, except that political advertising will be accepted in connection with and at the time of a duly called election being held within the boundaries of the District, and further subject to the conditions that . . . space be made equally available to opposing candidates or sides of a ballot measure."

The advertisement in question was rejected on the ground that "controversial subjects" were not consistent with this policy. (Again, the parallels with WTOP–AM's policy, as well as the Commission's equal time doctrine, are obvious.)

The court first asserted that the content of the advertisement was "undeniably protected by the First Amendment," despite its status as a paid message. 434 P. 2d at 984. It then observed that the advertisements in question could not conceivably interfere with the district's primary function of providing transportation. 434 P. 2d at 984. And the court then defined the problem as one "in which a governmental agency [the parallel to WTOP–AM has been made in the previous section] has refused to accept an advertisement expressing ideas admittedly protected by the First Amendment for display in a forum which the agency has deemed suitable for the expression of ideas through the medium of paid advertisements." 434 P. 2d at 985. The court concluded:

"[D]efendants, *having opened a forum* for the expression of ideas by providing facilities for advertisements on its buses, *cannot* for reasons of administrative convenience decline to accept advertisements expressing opinions and beliefs within the ambit of First Amendment protection." 434 P. 2d at 985 (emphasis supplied). The "vice" of the district's censorship lay in choosing "between classes of ideas . . . , sanctioning the expression of only those selected, and banning all others." This the court described as "a most pervasive form of censorship." 434 P. 2d at 986.

The court also expressed itself with absolute bluntness on the perversity of elevating commercial speech to a status more important than political speech. "[I]n the totality of man's communicable knowledge," the court said, "that which bears no relationship to material value preponderates." 434 P. 2d at 986. The court observed:

"A cigarette company is permitted to advertise the desirability of smoking its brand, but a cancer society is not entitled to caution by advertisements that cigarette smoking is injurious to health. A theater may advertise a motion picture that portrays sex and violence, but the Legion of Dcency has no right to post a message calling for clean films. A lumber company may advertise its wood products, but a conservation group cannot implore citizens to write to the President or Governor about protecting our national resources. An oil refinery may advertise its products, but a citizens' organization cannot demand enforcement of existing air pollution statutes." 434 P. 2d at 986–87.

Finally, the court relied upon a companion case, *In re Hoffman*, 434 P. 2d 353 (Calif. 1967), to state the controlling issue before it: "the test is, not whether petitioner's use of the station was a railway use, but whether it *interferred* with that use." 434 P. 2d at 356 (emphasis supplied). Because the bus company was unable to show that presentation of political commercials interferred with *any* legitimate function of its transportation function, its refusal to accept political advertising was impermissible.

The analogies to WTOP–AM are almost exact. WTOP–AM is, for purposes of the First Amendment, an "agent" of the state—just as was the private advertising agency leasing "public property" from the transit authority. WTOP–AM rejected BEM's advertisement, also on the ground that it accepted only "commerical" advertising. There was no evidence that acceptance of the advertisement would "interfere" with WTOP–AM's normal function of presenting advertising space to sponsors and entertainment programming to listeners. One must conclude, therefore, that WTOP–AM cannot reject BEM's advertisements any more than the transit authority could reject those of the Women for Peace.

In *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S.D.N.Y. 1967), the court reached precisely the same result as in *Wirta*, and for identical reasons. There too an anti-war group wanted to place an advertisement on the walls of the subway; a private advertising corporation, operating under contract to the city, refused, due to the "controversial" nature of the views expressed.

The Transit Authority made two arguments: first, that they accepted only commercial advertisements, public service announcements, and political advertising during elections—and that acceptance of these was not a generalized waiver to include political advertisements. The Court quickly rejected this argument, stating that the Authority and the Advertising Company "cannot accept some posters and refuse the plaintiffs' for reasons that conflict with the First Amendment guarantee of the right to freedom of speech." 274 F. Supp. at 442. Second, the Transit Authority argued that the posters were inflammatory, would be displayed to a "captive audience," and might cause disorder and irritation. Again the court swiftly disposed of this argument. Citing *Terminiello* v. *City of Chicago*, 337 U.S. 1, 4 (1949), the court said:

> [A] function of free speech . . . is to invite dispute. . . . Speech is often provocative and challenging. It may . . . have profound unsettling effects. . . . That is why freedom of speech is . . . protected against censorship. . . . The parallel with the case involving WTOP–MA again is obvious.

In *Zucker* v. *Panitz*, 299 F. Supp. 102 (S.D.N.Y. 1969), a group of high school students brought an action for declaratory and injunctive relief to compel a high school newspaper to accept a paid advertisemenet in opposition to the Vietnam war. The defendant school authority argued that the paper's policy was to accept "only purely commercial advertising" and to reject all advertising (even in support of student government nominees) which was politically oriented. Citing *Wirta*, the court ruled in the plaintiff's favor:

> Here, the school paper appears to have been open to free expression of ideas in the news and editorial columns as well as in letters to the editor. It is patently unfair in light of the free speech doctrine to close to the students the forum which they deem effective to present their ideas.

299 F. Supp. at 105. The court could see no disruption of the newspaper's normal function that could conceivably result from the anti-war advertisements.

Finally, in *Hillside Community Church, Inc.*, v. *City of Tacoma*, 455 P. 2d 350 (Wash. 1969), a church group sought to place "end the war in Vietnam" posters on transit buses operated by the city of Tacoma, Washington, where advertising space was under the control of a private lessee advertising agency. Citing *Wirta* and *Kissinger*, the court ruled that "[o]nce a municipality or public body enters the field of advertising, therefore, the law requires that a showing of a 'clear and present' danger must be made in order to limit such advertising without conflicting with guarantees of freedom of speech under the First and Fourteenth Amendments." 455 P. 2d at 354. The court found the rejection to be "clear acts of censorship" in violation of plaintiff's first amendment rights.

The licensee has argued that subjects of the type contained in the BEM advertisements "require a more in-depth analysis than can be provided in a 10, 20, 30, or 60 second announcement." It seeks to use this pathetically weak justification to overcome the Supreme Court's "clear and present danger" test, see *Hillside, supra*, and the First Amendment to the Constitution. This reasoning must be rejected out of hand. Once WTOP–AM has opened its forum up to 10, 20, 30, and 60 second commercial spots, it cannot withhold similar time periods from persons seeking to fill them with political speech. It borders on arrogance for WTOP–AM to assert that $4–5,000 automobiles which pollute the air and endanger human life may be sold to an unsuspecting public in 30 second spot announcements, but that the simple message, "End the War in Vietnam," cannot. Neither the government, nor a licensee, must be permitted to arrogate to itself the totalitarian role of deciding, *for the people wishing to speak*, how they will be permitted to present their thoughts. Similarly harsh and unjustifiable restrictions have been struck down in many other related cases, and I need not detail their reasoning here. See, *e.g.*, *Wolen* v. *Port of New York Authority*, 392 F. 2d 83 (2d Cir. 1968); *Tanner* v. *Lloyd Corp.*, 308 F. Supp. 128 (D. Ore. 1970); *In re Lane*, 457 P. 2d 561 (Cal. 1969); *People* v. *St. Clair*, 288 N.Y.S. 2d 388 (Crim. Ct. 1968); *In re Hoffman*, 434 P. 2d 353 (Cal. 1967); *Schwartz-Torrance Inv. Corp.* v. *Bakery & Con. Wkrs. U.*, 394 P. 2d 921 (Cal. 1964).

The argument has been made that if WTOP–AM is forced to accept political advertisements, then commercial space will become limited. These arguments have also been considered by the courts, and summarily rejected. In *Kissinger* v. *New York City Transit Authority*, 274 F. Supp. 328 (S.D. N.Y. 1967), the court remarked:

> Defendants also argue that if they accept the posters for display, they will have to accept other posters relating to [political issues] * * * with the result that commercial advertising will become curtailed and the subways will become a political and ideological battlefield. Even if the Authority and the Advertising Company are required to accept the posters for display, however, it does not follow that others must be accepted. * * * [T]he Authority and the Advertising Company could impose reasonable regulations on the display of plaintiffs' posters and others of a similar nature as to the number to be displayed and the time and place for their display.

See also, *Farmer* v. *Moses*, 232 F. Supp. 154 (S.D. N.Y. 1964); *Wirta* v. *Alameda-Contra Costa Transit Dist.*, 434 P. 2d 982 (Cal. 1967). Access to WTOP–AM's facilities for a "reasonable" number of political advertisements need not

open the floodgates to a limitless political battleground—although in many respects this might be preferable to the existing commercial wasteland we see spread out before us today. Nothing would prevent the licensee and the Commission from limiting the number of both commercial and political advertisements to be broadcast.

In sum, BEM's advertisements are protected speech under the First Amendment; WTOP–AM's actions in refusing to accept the advertisements subject it to the restraints and policies of that Amendment; and WTOP–AM has presented no justification for its speech censorship. Accordingly, I would grant the petitioners' request, and enforce their demand for access to the public facilities guarded so zealously by the licensee. I dissent to the majority's action in this proceeding.

REMARKS OF COMMISSIONER NICHOLAS JOHNSON, FEDERAL COMMUNICATIONS COMMISSION, PREPARED FOR DELIVERY AS THE FERRIS LECTURE IN JOURNALISM AND PUBLIC RELATIONS OF THE WOODROW WILSON SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS AND THE COUNCIL OF THE HUMANITIES OF PRINCETON UNIVERSITY, PRINCETON, NEW JERSEY, THURSDAY, APRIL 2, 1970, 8 P.M.

POLITICS AND POWER IN RADIO AND TELEVISION LAND

The revolution is over. The coup has occurred. There's a new gang in town. It's called "television."

We now have a government
Brought to you by
A small screen of glass
A bird and an eye
. . . and the advertising agencies of the top 100 corporations

Today's democratic dialogue is on the tube. The President gets his time on television by sending out Vice President Agnew to frighten the media verbally. The Panthers get their time on television by sending out their vice presidents to frighten the media in other ways. As Miss Tricia Nixon says, "you can't underestimate the power of fear."

So much for free speech. For, as befits a commercial nation, most of our free speech has given way to paid speech, to profitable speech.

The top 100 television advertisers include many of the top 100 corporations by any measure. These are the same companies that, together, control one-half of all the manufacturing assets in the United States. They control about 85% of all network television advertising. The presidents of these companies, with the support of the three network presidents, determine what the American people will be permitted to see (and prevented from seeing) on television.

It is they who made the decision to show a fifth rerun of "I Love Lucy" rather than Senator Fulbright's Vietnam Hearings—and thereby triggered Fred Friendly's resignation. It is they who change the subjects, or the treatment, of documentaries—or, what is more likely, ban them altogether. It is they who censor Tommy Smother's comments opposing the war (or Elke Sommer's and Carol Burnett's appeals for letters for peace to Mrs. Martin Luther King)—while Bob Hope comments favorably about the war (and appeals for funds for an "Eisenhower Medical Center").

We should not be surprised that this same group is also buying and controlling the television time during which the nation is permitted to consider its political affairs, and the election of its public officials. In an age in which most aspects of our lives have become a facet of big business we should not be startled that politics is no exception. In this instance, however, the big business is called television. Some politicians spend all of their campaign funds on television-related activities. Senators who spend over $200,000 on a campaign, and Congressmen who spend over $50,000, spend at least 50% of their campaign funds on television. The total spent just to purchase radio and television time in 1968 was $59 million—up from $35 million in 1964. When the related television production costs are included the total is more like $90 million.

Who buys this time? Where does the money come from? Principally from the same corporations that buy all the other television time. Roughly 90% of the political campaign funds in the United States are provided by 1% of the people. And, for federal office, most of that 90% comes from big business (and big labor). Why?

Suppose, for example, you represent one of the corporations that receives over $1 billion a year in Defense Department contracts. (The top 10 defense contractors split $10.7 billion between them.) How much would it cost you to make a modest campaign contribution to all elected federal officials? Let us assume a contribution of $2000 for every incumbent Congressman, $6,000 for every incumbent Senator, and $100,000 for each of the two major parties' candidates for President. The total bill? A mere $585,000 a year. Assume a few additional well-placed contributions of $50,000 to those 15 Congressmen and 10 Senators who hold special power over your company—enough to bring the total to $1 million a year. This is still an extraordinarily modest investment of 1/10 of 1% of your annual return from the federal government. In fact, of course, no one corporation needs to contribute to all Congressmen and Senators, so the total costs would actually be much lower.

Now I don't mean to suggest that all companies operate with such a crass view of the governmental process, or that all elected officials vote their contributions rather than their consciences. This country has always been blessed with a great many elected officials of integrity, intelligence and independence. Many offiicals try to avoid big money campaigning, and refuse to accept large contributions from donors of questionable motive. But all are caught up in a system of ever-escalating television costs and broadcaster power, a system they did not create and cannot control. And the late Speaker Rayburn's counsel, "To get along, go along," has never been more true than it is now for incumbents who want to be re-elected.

There have been some exceptions, of course, but on the whole the system of high cost television politics has worked extraordinarily well for incumbents. The politics of big business is the politics of incumbency, of stability, of status quo. That happens to accord with the personal desires and career plans of most elected officials. It's an almost irresistable marriage. And a very successful one. Since 1954, 92% of all incumbent Congressmen have won reelection; 85% of all incumbent Senators have been returned. These are scarcely figures to give support to those who argue that disaffected, alienated protesters ought to be content to seek solutions within the conventional political process.

And the system has also worked quite well for big business. Take the federal budget, for example. When you total all the expenses associated with the entire legislative branch of government, the entire judicial branch of government, all the major independent regulatory commissions (and even some of the executive branch personnel costs), it comes to something on the order of one-half of one percent of the $200 billion federal budget. In other words, you could abolish much of the federal government and scarcely notice the difference when you make out your income tax return a couple weeks from now. One-half of one percent.

Now it takes a tremendous capacity for propaganda and persuasion (as well as a lot of gall) to convince the American people that they should fight rising taxes by cutting back on the appropriations to those activities that total one-half of one percent of the federal budget—while urging them to support additional expenditures for weaponry and the unwarranted subsidy programs that contribute to the 99 and one-half percent. (If you abolished the FCC entirely, it would still take 1,000 years to save the equivalent of 10% of one year's federal budget.)

How else could you get a President to cut back on the education budget the same week he announces an ABM program expansion? How else could you get him to propose an increase in a maritime subsidy program (already running $700 million a year) that virtually all economists concede has no economic justification whatsoever? How else could you sustain an agricultural subsidy program that pays each of the 264 largest farming units in the country an average subsidy of $200,000 annually? Why else would we permit oil import quotas that provide the poverty-ridden oil companies with an additional $6 billion a year at the consumers' expense? How could you possibly justify the hypocrisy of publicly-proclaimed governmental efforts to cut back on the 300,000 deaths from cigarette smoking each year—while at the same time providing $80 million annually in subsidies to tobacco growers? How else could we justify food distribution programs that permit rich businessmen to eat at the public's expense (the "business expense" half paid for by consumers in excess product costs, and half paid for by taxpayers) while denying equivalent feeding privileges to the poor?

The songwriter put it well:

"And to support this style of living
See the system they devise
While for the rich we've socialism
We give the poor free enterprise"

These programs require support from elected officials—and ignorance on the part of the people. And it is the financial power of corporate America, and the ideological power of Big Broadcasting, that makes it all possible.

Televised government and politics may not be an insignificant cost of doing business, but it's far more profitable (and predictable) than turning the running of the country over to an educated and informed populace. Besides, what's an additional $59 million for political television time for corporations that are already investing $3 billion to control the other programming? It's interesting that, with all the concern over the "rising costs of campaigning," we haven't heard many complaints from the presidents of the top 100 corporations.

Of course, there are many ways that a broadcaster can affect his elected representatives' fortunes besides the sale of time during campaigns.

It begins with the attitudes of his audience about government and politics generally. Is the federal government portrayed as the enemy ("pointly-headed, briefcase-carrying bureaucrats in Washington") who take excessive taxes and give nothing in return? Or are politicians viewed as respected persons in the community? In one southern community a black disc jockey was told by the white station owner that he could not provide the listeners even occasional news among the records because, "You're not going to educate the Negroes of this community at my expense." Is the audience told of the problems of war, injustice, overpopulation, hunger, pollution, civil rights, education, and so forth? Or do they view anyone who talks of the major social and political issues as if he were speaking a foreign language?

The general level of education, information, opinions and attitudes of elected representatives' constituents are something over which the broadcaster has a great deal of influence.

Then there is the matter of how much time the elected official has on the station, and how he is portrayed. Does he have a weekly "report to the people"? That is wholly within the station owner's discretion. Does the station have a Washington "news bureau" (devoted almost exclusively to obtaining filmed clips of the region's elected Senators and Congressmen)? That, too, is wholly within the discretion of the station owner. Does it use the items the official may send the station on his own? How are they portrayed?

The election is, of course, the crucial time. This is when the broadcaster's power is most directly felt. He can make time available to the candidates—or make none available at all (old reruns are always more profitable than old politicians). He can make the time available free—or charge full commercial rates. He can be flexible, or rigid, in demanding cash payments and the scheduling of time well in advance. And, as always, he has control over the "news"—how much will be carried from the campaign, who "makes news" and who doesn't, how flattering the film may be, and how it is introduced by the newsman. (News programs are exempt from the "equal time" doctrine, and the vague "fairness doctrine" protects only against the grossest abuses.) Finally, there is always the matter of editorial endorsements of candidates.

Is it any wonder that when a "Pastore Bill" is introduced (substantially curtailing the right to contest license renewals, guaranteed to the public by the Communications Act of 1934) that it is supported by 23 Senators and 118 Congressmen? The broadcasting industry is, without question, the single most powerful lobby in our nation's history.

What should we do about it? What can we do about it? Once the Big Broadcasting–Big Business axis has kidnapped and run off with the democratic process is there anyway of guaranteeing its safe return? Probably not. But that doesn't mean we are without hope, or that we should not try.

There has been a rising chorus of demand that *something* be done. There is a general cynicism about the relationship between big business and big government. It's symbolized by Mason Williams' observation that, "Government makes better deals with business than it does with people"—and his shorthand expression, "The U.S. Government, Inc."

There is widespread awareness of the increasing costs of "campaigning." And more and more of the people who have examined the problem at all are coming away with the realization that the real issue, almost the only cause of the significant rise in costs, is television time. Of course, we should more rigorously enforce limitations on corporate and individual political contributions. Of course, we should examine the possibility of franking privileges for candidates. There are many proposals. And yet, in general, if we can solve the television time problem the bumper stickers will very largely take care of themselves.

There are a number of proposals kicking about. The Senate Commerce Committee has considered a proposal requiring stations to sell political advertising time at the lowest unit rate charged other advertisers. Senators Hart and Pearson, and Congressman MacDonald, have proposed legislation that would require substantial discounts by broadcast stations for the sale of a fixed number of commercials. The Twentieth Century Fund has proposed that a fixed amount of network television time be made available to presidential candidates—to be paid for by the taxpayers at 50% of commercial rates. (Congressional candidates could purchase time at a 50% discount.) The Committee for Economic Development has suggested that more of the television burden be borne by educational television stations. (The broadcasters have always argued that Section 315 of the Communications Act—requiring "equal time" and "fairness"—and their fear of having to make time available to a myriad of splinter parties, are all that prevent them from making great quantities of free time available. This assertion is rather effectively rebutted by the fact that when there are only two-candidates for an office they seldom if ever make free time available then either. In any event, many of the proposals just mentioned, and others—including a recent statement by the FCC—also address the means for modifying or repealing Section 315.)

Now these are all useful proposals. They have been put forward by experienced men of good will. They are designed to deal with the pressures and powers of the real world: that there is no industry with greater political power than broadcasting, and that our political process is largely controlled by businessmen and elected officials who have a stake in the politics of incumbency. (Note that all the proposals mentioned permit unlimited purchase of time by the big money candidates, and that all recognize the broadcasters' "right" to compensation.)

But wouldn't it be useful to at least begin our analysis of this problem with basics—and a benchmark of how another nation has dealt with it? Can we agree on the following propositions?

(1) Personal wealth is irrelevant to the qualities we desire in our elected office holders.

(2) It destroys the independence of public officials, makes them less responsive to the needs and desires of their constituents, and is demeaning, to have to obtain large financial campaign contributions from contributors who will later seek support for special interest legislation.

(3) Full and open communication between candidates and constituents is essential to a fully functioning democracy.

(4) Television has today largely replaced the soapbox and the handbill as the most effective and powerful means of political communication.

(5) It is inappropriate that any private group control televised communication in ways that both affect the outcome of the election and contribute to its private profit.

(6) It is especially inappropriate that the people's information about candidates come principally, or exclusively, from short bursts of professionally prepared propaganda almost totally devoid of information about the candidate or the issues.

Can we agree on that much? If so, the remedies to our current predicament seem rather obvious:

(1) Television time should be made available free to all candidates for public office.

(2) This time should be equally apportioned among all major party candidates, and made available to others based upon the votes received in prior elections or the number of signatures on petitions.

(3) The purchase of any additional political time on television should be prohibited.

(4) Candidates should be forbidden to use time in less than five minute segments.

(5) When political propaganda films and advertising techniques are used, such presentations should be followed immediately by time during which the candidate is shown by the station in a setting over which he has no control, such as a debate, press conference or news interview.

These general propositions propose purposefully leave a lot of specifics dangling. How much free time? Precisely how would it be apportioned? Such details are important. But first we must agree on the basics. And at least this set of ground rules would give all candidates equal access to television, give all more time than they can now afford, eliminate the influence of corporate and other major donors, minimize the influence of the political TV commercial, and give the viewer-citizen a better opportunity to participate intelligently in the process of self-governing.

Each of these provisions is essential to the success of the reform. If we are to insure that each candidate will have an equal opportunity to talk with his constituents, television time must be free, and the total amount of time must be limited. "Discount rates" only permit the rich to buy even more advantage over the poor than now—and further incent the irresponsible broadcasters to keep all candidates off the air. The 30-second and one-minute announcements contribute little to the democratic dialogue. Just permitting candidates to present them at less cost is little help. On the other hand, we don't want to preclude the use of any modern technique of visual communication. The solution is to permit it all—and then balance it by making the candidate appear on his own.

Before such proposals are cast aside as unrealistic and unworkable, let us examine the practice in England. Most British citizens are appalled at our practice of selling candidates to the citizenry like mouthwash, and permitting the rich (and those funded by the rich) to have the advantage of buying television time. In fact, the British system encompasses most of the features just enumerated. Short spot announcements are prohibited. The purchase of time is outlawed. Free time is made available. It is fairly apportioned, roughly in accordance with demonstrated political strength.

Of course, there are some differences in our politics. But there is no basic reason why their system couldn't work in the United States. No reason, that is, except for the fact that the broadcasters and the FCC have long ago forgotten the premise of the Communications Acts of 1934: that in exchange for the opportunity to make handsome private profit from public property the broadcasters are expected to return some "public service" time, some programming that does not maximize their profits.

What could better qualify as "public service" programming than time spent examining the important public issues of the day, and presenting candidates for public office? The only reason broadcasters feel so put upon when campaign time rolls around is that they haven't been making time available all along for public service. They haven't been keeping up their end of the bargain.

I have proposed what I call the "one-third time rule." This proposal would affect every network-affiliated television station. (These blessed few are the richest—through no effort of their own—the most influential, and the most easily able to provide the service Congress originally intended.) Each such station would have to provide one-third of its "prime time" (generally 7:00 to 11:00 p.m.) for purposes other than profit-maximizing programing. In practice this would be programming from the networks: public affairs, cultural, educational—anything other than the lowest-common-denominator, commercially-laden fare we're now offered. The programming would have to be staggered by the networks so as not to overlap. The net result would be that on any given evening during prime time, every American viewer who could receive the three networks' programs woud have a choice. He would still have a choice of two channels offering westerns, dramatic series, situation comedies, musical variety, feature films, sports and game shows. But he would also have one channel that was offering something else. (Stations could, of course, substitute their own, locally produced, programs in the appropriate categories instead of the network shows.)

The burden on the stations would not be great. The time involved (a little over an hour a day) would generally be substantially less than 10% of their broadcast day. (A modest quantity of institutional advertising might even be permitted on the hour and half-hour to lessen their costs.) The networks and stations would still have complete control over the content of the programs presented. No viewer would be told to watch "what was good for him"—no program type would have been denied him. But the choice available for viewing

would be widened significantly, and the impact upon our country could be immense.

One of the ways in which this impact could be felt would be in political time. Once broadcasters become accustomed to giving their viewers an hour or so of other than profit-maximizing programming each evening, it is a simple matter to make some of that one-third time available for political purposes just prior to elections. The broadcaster would not be concerned about audience size or revenue during that time anyway. The time would be set aside already. He could schedule the political time well in advance according to formulae that minimize pressures, administrative inconvenience, and the last minute rush of shuffling program.

The "one-third time rule" brings the added bonus of better programming year round. Of course, free political time could also be provided by the FCC without the need for the one-third time rule.

Whatever solution is ultimately adopted, the future of our democratic system will turn on our success in capturing back a part of it from Big Broadcasting and Big Business. Their power may ultimately dictate compromises. But it seems to me to be a mistake to start our analysis with the assumption that broadcasters must, as a matter of course, be guaranteed their "right" to go on maximizing profit hours after gruesome hour. I think it is time we stopped worrying about the broadcasters' economic health and started treating our nation's political illness. Free political television time, and the one-third time rule, could be just the remedy we're looking for.

Recently I have been walking to work past one of Washington, D.C.'s many little parks and statues. This one displays a poet's work carved in stone, as if to emphasize its indestructible quality. The words are:

". . . our soul shall never perish,
Freedom knows no dying,
And the greedy cannot harvest
Fields where seas are lying;
"Cannot bind the living spirit
Nor the living word . . ."

Those are sentiments to lift man's spirit in today's struggle to recapture our government from the grip of Big Business and Big Broadcasting. But they are also a trifle sobering when one contemplates the magnitude of our task. For the lines were written by Taras Shevchenko in 1845—about conditions in the Ukraine.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 4, 1970.

Mr. ALAN F. NECKRITZ,
Berkeley, Calif.

DEAR MR. NECKRITZ: This letter is written in response to your complaint received on March 9, 1970, in which you allege that station KFRC, San Francisco, California, has violated the fairness doctrine by airing "public service broadcasts" on behalf of the United States Army, Navy and Air Force and denying broadcast time for the presentation of "opposing" viewpoints. The basis of your complaint is that the armed forces recruitment broadcasts constitute the presentation of one side of a controversial issue of public importance.

In support of your complaint you assert that the "values represented by the present 'peacetime' armed services" are subject to dispute, as are the benefits and advisability of military enlistment. You state that between January 26 and March 1, 1970, station KFRC devoted 405 minutes 30 seconds of air time to armed forces public service announcements, in the form of musical programs presented on behalf of branches of the armed forces which were interlaced with recruitment messages and separate public service spot announcements. You state that "when such a large segment of our population [is] vehemently opposed to our military involvement in Vietnam and the foreign policy that it represents, the advocacy of the benefits and advisability of 'volunteering' or 'enlisting' in the military as opposed to seeking a deferment or exemption definitely constitutes a controversial issue of public importance." Thus, it would appear that you believe recruitment messages to represent a controversial issue of public importance because of the controversy surrounding the participation of the United States armed forces in Vietnam. You further appear to consider that

enlistment has been presented as an alternative to selective service draft and state that deferment from military service represents another alternative to the question of discharging one's military obligation. As precedent for your request you cite the Commission's application of the fairness doctrine to cigarette commercials (FCC 67–641).

Station KFRC refused your request for air time (for you or other representatives of your viewpoint) to present material opposing the merits of service in the Armed Forces. In denying your request the station stated that armed forces recruitment messages did not raise the issue of the war in Vietnam nor did it support military involvement in foreign countries. Further, that the recruitment messages advocate only voluntary enlistment and therefore do not raise the issue of selective service draft and do not claim that military enlistment is the sole source of technical training or future success.

First, we do note, as we stated in the letter to Mr. Kramer issued this day (copy enclosed), that on the draft issue, ". . . non-military and honorable alternatives to service in the military are certainly of substantial interest to the public and, in the coverage of this issue, constitute a facet of a controversial issue of public importance to which a licensee should afford broadcast opportunity, as a part of his obligation to inform the public." However, that is not the issue raised by the recruitment announcements before us.

We have reviewed the arguments advanced in support of your complaint and conclude that station KFRC did not act in contravention of the fairness doctrine in denying opportunity for the presentation of views opposing the military recruitment announcements. Under the fairness doctrine licensees are obliged in the first instance to determine whether one side of a controversial issue of public importance has been broadcast. The Commission will not substitute its judgment, if the licensee acts reasonably and in good faith. See letters to David Tillson, 19 FCC 2d 511 (1959); and Mrs. Madalyn Murray, 40 FCC 647 (1965). In the present situation, station KFRC has clearly set forth the reasons for its refusal and they are not, in our opinion, unreasonable.

The question of whether Armed Forces recruitment announcements constitute a controversial issue of public importance has recently been the subject of a letter to Mr. Donald Jelinek. In that letter, it is concluded that recruitment announcements, in and of themselves, do not constitute the presentation of one side of a controversial issue of public importance. Since we rely here upon the reasons set forth in that letter, a copy of the letter is enclosed.

In view of the foregoing, no further Commission action is warranted. Commissioner Johnson dissented and issued the attached statement (letter to Mr. Jelinek).

By Direction of the Commission,
Ben F. Waple, *Secretary.*

Federal Communications Commission,
Washington, D.C., June 4, 1970.

Mr. Albert A. Kramer,
Citizens Communications Center,
Washington, D.C.

Dear Mr. Kramer: The Commission is in receipt of a complaint filed March 23, 1970, on behalf of Professor David C. Green, individually and as Chairman of the Peace Committee of the Baltimore Yearly Meeting of the Religious Society of Friends (Complainant), against television stations WRC and WMAL, Washington, D.C. The complaint states that the stations continually grant air time for announcements sponsored by the Armed Forces which are designed to encourage and increased enlistment in various branches of the military services. It is contended that these announcements raise a controversial issue of public importance within the fairness doctrine and that the licensees have violated this doctrine by refusing to grant air time in the form of spot announcements for the presentation of argument against service in the Armed Forces and alternatives to, or information regarding exemptions from, military service as a means of fulfilling one's obligation to one's country. It is further contended that military recruitment via Armed Forces spot advertisements or announcements is itself a controversial issue of public importance.

The nub of the issue raised by the complaint is the assertion that "coverage of anti-Vietnam activities and sentiments does not deal with the desirability of

bearing arms versus the desirability of alternative service." Complainants specifically note that the issue to which they seek time for response is the "desirability of regular military service even were there no war raging half a world away [Vietnam]."

Before filing the present complaint, Professor Green contacted stations WRC and WMAL and requested free time "to rebut the claim made by the numerous military recruitment advertisements presented on your station that a career in the Armed Forces is desirable, rewarding, and the best way to serve one's country." Both WRC and WMAL declined Professor Green's request for time to present spot announcements opposing military service. In rejecting Professor Green's request, station WMAL–TV indicated that the issue which he sought to present could not be treated through spot announcements, but should be the subject of more extended discussion within a program. The station offered Professor Green time on its "Outlook" program.

Station WRC–TV also rejected the spot announcements of the Peace Committee. In the station's opinion the recruiting announcements did not present one side of a controversial issue of public importance, since there is no substantial public controversy concerning the need or desirability of having Armed Forces or concerning voluntary recruitment. We have been informally advised that the station has offered the Society of Friends time to appear on two religious program series on which they would have an opportunity to present their views.

The first issue is whether the licensees, in broadcasting the Armed Forces recruitment announcements,[1] have presented one side of a controversial issue of public importance. Station WRC–TV has stated its judgment that the recruiting announcements do not do so, and the question is thus whether that judgment is arbitrary. For the Commission to find the judgment to be arbitrary, there must be a showing or reasonable indication that there is a significant controversy of public importance on whether the United States at this time should maintain armed forces, and, what is essentially the same thing, whether persons should volunteer for service in the armed forces. We appreciate the long-held position of the Friends concerning pacifism, but we cannot say, based on material before us, that the licensee's judgment on this score is unreasonable.

In this connection, we note that the announcement which the Friends Peace Committee seeks to have broadcast does not deal with the issue of whether there should be armed forces, but rather focuses on the draft. Thus, it states that "for every draftee that goes off to war, there is a Christian [girl] left behind—sometimes for good," and that "there are legal alternatives to military service. You may be entitled to one of a number of deferments provided by law. For information write to . . ." As WRC–TV states, there is "substantial controversy concerning the draft . . ."

On this draft issue, non-military and honorable alternatives to service in the military are certainly of substantial interest to the public and, in the coverage of this issue, constitute a facet of a controversial issue of public importance to which a licensee should afford broadcast opportunity, as a part of his obligation to inform the public. The licensees here are covering this issue of public importance—an important aspect of a licensee's obligation under the Communications Act to ascertain and serve the needs and interests of his area. See *Red Lion Broadcasting Company, Inc.*, v. *Federal Communications Commission*, 395 U.S. 367 (1969); *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246, 1250 (1949). It is the responsibility of the licensee to determine the specific manner in which he chooses to fulfill his fairness obligations and the Commission will not dictate the form of the presentation—e.g., discussion or panel shows, news shows, etc. The licensee is of course expected to make judgments in good faith as to the amount of broadcast time to be devoted to any issue of interest to the public and these judgments will vary with the nature of the issues being considered. The most important issues will generally be afforded the most broadcast time.

Turning to this complaint against stations WMAL–TV and WRC–TV, we note that both stations, although they declined to broadcast the views urged by Professor Green and his group in the form of promotional spot announcements, have offered an opportunity for the presentation of such views in the context of substantive programming. Absent evidence that stations WMAL and WRC have failed in their overall programming to achieve fairness in their coverage of the

[1] Promotional advertisements sponsored by the Armed Forces urge service in the military as an honorable way to serve one's country. Absent specific demonstration to the contrary, we can not accept your premise that Armed Forces announcements generally portray service in the military as the only way to honorably serve one's country.

controversial issue here involved (i.e., the draft), the Commission will not disturb the licensees' determination as to how to best inform the public of the various facets of issues of controversial public importance.

In reaching the conclusion that no fairness doctrine violation has been demonstrated, we do not mean to imply that nothing connected with a public service announcement could bear upon a controversial issue of public importance. Such announcements, in particular instances, may present one side of a controversy. Here, we simply note that there is no indication that any such announcement (i.e., one presenting one side of a controversial issue of public importance) was broadcast by any station in the San Francisco area.

In view of the foregoing, we have determined that no further action is warranted at this time. Commissioner Johnson dissented and issued the attached statement (letter to Mr. Jelinek).

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., June 4, 1970.

Mr. DONALD A. JELINEK,
Berkeley, Calif.

DEAR MR. JELINEK: The Commission is in receipt of a complaint filed on February 25, 1970, on behalf of San Francisco Women For Peace, The GI Association and The Resistance (complainants), against numerous radio and television stations in the San Francisco, California area. Briefly stated, complainants contend that the San Francisco stations have violated the fairness doctrine in that armed forces recruitment messages have been broadcast as public service announcements, but the stations have refused to broadcast "military recruitment announcements" which complainants have offered to supply.

In support of their contention that the armed forces recruitment announcements raise a controversial issue of public importance, complainants assert that: There are many groups in the San Francisco area who do not believe it is beneficial to the individual or society at large for people to participate in the armed forces; armed forces recruitment cannot be considered without reference to the war in Vietnam since the primary purpose of the U.S. Armed Forces is to fight wars and a military recruit is very likely to be stationed in the Vietnam war zone at some time during his military career (*U.S.* v. *Sisson*, 294 F. Supp. 511 (D. Mass) 1968, at 513); and there are many groups in the San Francisco area who believe the best course of action for young men "is to seek one of the many possible deferments from military service provided for by Congress." Complainants assert that the Commission's application of the fairness doctrine to cigarette advertising (9 FCC 2d 921 (1967)) is analogous and requires application of the fairness doctrine to the recruitment announcements complained of and that the fact that the U.S. Government is the sponsor does not exclude the matter from application of the fairness doctrine. (*Report on Editorializing*, 13 FCC at 1249)). Complainants also argue that their point of view is entitled to exposure through spot announcements rather than news and discussion coverage because of the more effective motivating factors inherent in an "uninterrupted" "prepackaged message" which "allows the sponsor [in this case, complainants] to prepare the announcements in such a manner as to have a desired psychological effect" rather than the "straightforward manner aimed at persuading the listener's rational sense" which is the way views are presented on news and talk programs. Finally, complainants argue that the fairness doctrine applies to public service announcements because, as opposed to normal commercial announcements, the broadcaster is making an editorial judgment in choosing the particular spot announcement and must therefore be more cognizant of his fairness obligations to preserve his facilities as an "uninhibited market place of ideas" (*Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367, 390 (1969)).

Complainants' presented their request for "substantially equivalent [free] time" to present spot announcements reflecting their views in opposition to the Armed Forces recruitment messages. Fourteen (14) San Francisco area stations formally refused complainants' request and the remainder did not reply. In view of our determination that the stations did not act unreasonably in refusing complainants' request, we need not detail all the reasons advanced by the stations. However, we note that eleven of the fourteen stations who responded

to complainants' request stated that they have presented contrasting views regarding the Selective Service System and the Vietnam War in newscasts and discussions and other programs, and that they did not consider Armed Forces announcements urging voluntary enlistment a controversial issue of public importance.

The fairness doctrine requires that when a station presents one side of a controversial issue of public importance it is obligated to afford reasonable opportunity for the presentation of significant conflicting viewpoints on the issue. The crucial question raised is whether Armed Forces recruitment messages constitute the presentation of one side of a controversial issue of public importance. We are unable to conclude that the presentation of such recruitment messages, in and of itself, involves a controversial issue of public importance.

Under the fairness doctrine, it is the licensee's obligation in the first instance to make a determination regarding the controversial nature of an issue and whether an issue, if it is controversial, is one of public importance. Unless the licensee's judgment is shown to be unreasonable, the Commission will not upset the judgment of the licensee. In short, it is not a question of the Commission substituting its judgment for that of the licensee, but rather whether, in light of the showing before the Commission, the licensee's judgment can be said to be arbitrary.

In the present case, we do not believe that the broadcast of Armed Forces recruitment messages, any more than similar recruitment messages for policemen, firemen, teachers, census enumerators, peace corp volunteers, etc., in and of itself, raises a controversial issue of public importance requiring presentation of conflicting viewpoints. We note that the power of the Government to raise an army has not been questioned; rather the thrust of the complaint is an objection to the use made of the army (war in Vietnam) and the manner in which manpower is conscripted (Selective Service draft).

In reaching this conclusion we also note that complainants themselves reason that recruitment messages are controversial *because* they are inextricably intertwined with the conduct of the war in Vietnam and the Selective Service draft. There is no indication that any of the stations against whom the complaint was filed have failed to treat the issues in Vietnam and the draft (both concededly controversial issues of public importance) in conformance with the fairness doctrine. Moreover, the only indication as to what complainants consider the "opposing viewpoint" to the Armed Forces recruitment announcements is one spot announcement entitled "Draft Counseling," which offers information pertaining to draft deferments. The fact that Vietnam and the draft are controversial issues of public importance does not, in our view, automatically require that recruitment messages also be considered as such, and we are unable to conclude that it was unreasonable for the broadcast stations in the San Francisco area to decline to broadcast the "opposing" spot announcements.

In reaching the conclusion that no fairness doctrine violation has been demonstrated, we do not mean to imply that nothing connected with a public service announcement could bear upon a controversial issue of public importance. Such announcements, in particular instances, may present one side of a controversy. Here, we simply note that there is no indication that any such announcement (i.e., one presenting one side of a controversial issue of public importance) was broadcast by any station in the San Francisco area.

In view of the foregoing, it is concluded that no further action is warranted. Commissioner Johnson dissented and issued the attached statement (Letter to Mr. Jelinek).

By Direction of the Commission,
Ben F. Waple, *Secretary.*

ARMED FORCES RECRUITING SPOTS

[In re letter to Donald A. Jelinek, Esq., denying the application of the Fairness Doctrine to Armed Forces recruitment announcements.]

DISSENTING OPINION OF COMMISSIONER NICHOLAS JOHNSON

> "When war begins, all thinking stops."—Zechariah Chaffee, Jr., *Free Speech in the United States*
> "It is the purpose of the First Amendment 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."—*Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969).

Today one branch of the Federal Government ignores the orderly complaints of its citizens and rules that another branch of that same Government, the U.S. Army, can propagandize without preserving for the young their First Amendment right to self-defense. The Army and Marine Corps will be permitted to harness all the seductive merchandising talents of Madison Avenue to persuade draft-age young men to enlist in the armed forces. In support of the Pentagon, the FCC has ruled that Americans have no right to talk back to their television sets—at least on this issue. Quakers, and other groups opposed to military service in general and the Vietnam War in particular, are now left with nothing but the recourse of demonstrations and draft-card burning to attract the largess of the news media's television cameras.

To put it bluntly, the majority has held that the young people of this nation must find their path to the Fairness Doctrine in the streets. I dissent.

I

No one, I think, can ignore the present mood of this country. We are engaged in a vast, officially undeclared land war in Southeast Asia—a war which has killed over 49,000 American soldiers, and in which countless hundreds of thousands of Vietnamese, Laotian, and Cambodian soldiers and civilians have lost their lives. Reputations and careers in our country (including those of Presidents) have risen and fallen on the extent to which the public has believed that our Vietnam policies have been successful. Military budgets and multi-billion dollar weapons systems are being questioned as never before. There is a movement to isolation in America in international affairs. It should be obvious, therefore, that the military has an enormous vested interest in preserving public faith in its policies and programs—indeed its very existence. And one cannot ignore the fact that the military can maintain its "favorable image" in perhaps no better way than through propaganda pumped over the radio and television stations of our country.

Senator William Fulbright has recently warned us of the tremendous machinery that the military has constructed to loose its propaganda upon an unsuspecting American public. According to Senator Fulbright, the Defense Department is spending millions of dollars to promote and justify its activities at public expense. By a conservative estimate, the Pentagon is now spending $40.5 million a year for "Public Relations"—an increase of *1,500%* since 1959 ($2.8 million), when the Vietnam War first began to loom larger and larger in the public eye.[1] See *Cong. Rec.*, Dec. 1, 1969, p. S–15144; Dec. 2, 1969, p. S–15306; Dec. 4, 1969, p. 15649; and Dec. 5, 1969, p. S–15804 (Daily Ed.)

We must heed Senator Fulbright's warning:

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[1] In a recent statement to the Senate Appropriations Committee, Senator J. William Fulbright reported that in 1959 the Congressional limit on Pentagon public relations spending was $2,755,000. (Over-all defense spending was then $43 billion.) By 1970, defense spending had doubled; but public relations spending had increased 15-fold! The total was $40,447,000—roughly double the entire annual appropriation for the FCC. Senator Fulbright reported defense officials maintained that public relations expenditures were $27,953,000 for fiscal 1969. Now it appears these figures may have been deliberately understated. Senator Fulbright observed, "Apparently the department was not completely candid with me since now, apparently in anticipation of the imposition of a legislative ceiling, they state that the public-relations bill for that year was actually $44,062,000." Washington Post, June 22, 1970, p. A–15, col. 1. For further material on military-oriented public relations spending, see text at n. 2, *infra*.

"There is something basically unwise and undemocratic about a system which taxes the public to finance a propaganda campaign aimed at persuading the same taxpayers that they must spend more tax dollars to subvert their independent judgment. I am reminded of W. C. Fields' admonition: 'Never give a sucker an even break.' " *Id.* at p. S–15333, Dec. 2, 1969 (Daily Ed.)

I fear the Commission fails to understand what lies behind the "Public Service" announcements, supplied *gratis* by the Army, and the message they convey. Shortly after assuming office, Secretary of Defense Melvin Laird told the Defense Department that "[p]ropaganda has no place in the Department of Defense public information programs." Quoted by Sen. Fulbright, *Cong. Rec.*, p. S–15145, Dec. 1, 1969 (Daily Ed.). Yet from all accounts the Pentagon's "public information" program is aimed, not at providing the public "with unvarnished facts, but at persuading it that the programs and weapons systems of the Army, Navy, or Air Force . . . should have the first claim on public funds and are the key to peace." Senator Fulbright, *Cong. Rec.*, p. S–15333, Dec. 2, 1969 (Daily Ed.).

I believe that this Commission, as one branch of "The Government," has a special obligation to preserve both the appearance and the actuality of fairness and impartiality when it is called to weigh Fairness Doctrine complaints by a broad range of citizens groups against another branch of "The Government." Chief Justice Burger, then a Judge of the United States Court of Appeals, has condemned this Commission's "curious neutrality-in-favor-of-the-licensee." *United Church of Christ* v. *FCC*, No. 19, 409 (D.C. Cir., June 20, 1969). Yet real neutrality—by the Commission and by broadcast licensees—is indispensible where broad-based but under-financed groups of citizens attempt to debate the military-industrial complex in the public forums of radio and television.

In *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 396 (1969), the Supreme Court warned:

"There is no question here * * * of a *discriminatory refusal* [*by the Commission*] *to require* the licensee to broadcast certain views which have been denied access to the airwaves. * * * Such questions would raise more serious first amendment issues." [Emphasis added.]

I believe this Commission has required petitioners here to sustain a far greater burden of proof than it imposed on petitioners in its cigarette decision, *Applicability of the Fairness Doctrine to Cigarette Advertising*, 9 F.C.C. 2d 921 (1967), and therefore stands guilty of a "discriminatory refusal to require" licensees to broadcast the views of citizens opposing the "Join the Army" campaign of the military.

II

On June 2, 1967, this Commission applied the Fairness Doctrine to cigarette advertising. *Letter to WCBS–TV*, FCC 67–641. In that ruling we stated:

"The advertisements in question clearly promote the use of the particular cigarette as attractive and enjoyable. Indeed, they understandably have no other purpose. [Except, of course, the actual sale of cigarettes.] But 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."

See *Cigarette Advertising*, 9 F.C.C. 2d 921, 938 (1967). In reaffirming the ruling, we emphasized (referring to a June 29, 1967, Federal Trade Commission Report) that the "desirability" of smoking in cigarette advertisements "is portrayed in terms of the satisfactions engendered by smoking and by associating smoking with attractive people and enjoyable events and experiences, and that by so doing the impression is conveyed that smoking carries relatively little risk. * * *" *Id.* at 938.

Petitioners have attached the text of 18 military service recruitment announcements to their petition. A sample of two adequately conveys the mood of these advertisements:

"Announcer: It's a day you can't put into words. You try to compare it with the day you graduated from high school, but there's no comparison. Because somehow the day you graduated from high school, you were still just another guy, and on this day, you're something else. You look taller than you did because you stand taller. You look proud because you are proud. And no wonder * * * you've just gone through the toughest eight weeks a guy ever had. And if you didn't have what it takes, you wouldn't be standing with the rest of them, you

wouldn't be wearing the same uniform. Ask a marine. Ask a marine what it means to graduate from boot camp. He'll tell you. It's a day to remember for the rest of your life. Because that day they separate the men from the boys.

"Refrain: Ask a marine."

* * * * * * *

"Announcer: We understand you're looking for a man's job. Well, we just may have one. Who are we? We've been in business since 1775. We're located in close to 200 places around the world. We'll pay while we are training you. Give you thirty days off per year. Give you a chance to continue your education, and we'll build you a man. We'll build you a marine. And that man and that marine will be you.

"Refrain: Ask a marine."

I think it is clear from just these two advertisements that the "desirability" of joining the Marines is portrayed in terms of the "satisfactions" to be derived from such an experience [you'll "stand taller," you'll be "proud," etc.] and by "associating" membership in the Marines "with attractive people" [real "men," men who "have what it takes," etc.] and "enjoyable events and experiences" [travel, on-job training, thirty days off per year, a chance to continue one's education, etc.].

As with the cigarette advertisements, there is something missing. What is noticeably absent from these advertisements is the view, widely held by many respected citizens, that "for hundreds of thousands of soldiers the pay is poor, the principal 'educational opportunity' is the opportunity to learn how to kill, and the 'travel' is to Vietnam, where the question of whether the military is making a 'really worthwhile contribution to the security of [the United States]' is a highly controversial one." Letter from Mr. Donald A. Jelinek to the FCC, Feb. 16, 1970, Appendix IV, p. 2.[1]

II

In light of the close similarity—and perhaps even identity—of the instant complaint with our *Cigarette Advertising* ruling, let us examine the majority's justification for ruling against petitioner.

In the first place, the majority begins by stating what I believe to be an oversimplified interpretation of the Fairness Doctrine: "*that when a station presents one side* of a controversial issue of public importance it is obligated to afford reasonable opportunity for the presentation of significant conflicting viewpoints on the issue." [Empasis added.] This interpretation assumes that the licensee's obligation to present all viewpoints on issues of controversy and public importance is invoked only when one side is first presented. Were this the case, the licensee could circumvent the Fairness Doctrine by simply refusing to present *any* views on such issues. I believe, on the contrary, that the Fairness Doctrine is invoked, not when one side of an important issue is *presented* by a licensee, but when such an issue *arises*. By my reading, this was the Supreme Court's view of the Fairness Doctrine in *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 369 (1969), where it was described as the "requirement that discussion of public issues be presented on broadcast stations, and that each side of those issues must be given fair coverage."

Next, the majority drags out the customary and familiar boilerplate recitation that the Commission will defer to the licensee's judgment on a Fairness Doctrine matter so long as it is "reasonable." ("In short, it is not a question of the Commission substituting its judgment for that of the licensee, but rather whether, in light of the showing before the Commission, the licensee's judgment can be said to be arbitrary.") Of course, everyone must know that this double talk is nonsense, and is used primarily when the Commission does not want to apply the Fairness Doctrine to particular factual situation. Obviously at some point this Commission must decide that the licensee is wrong in his determination that the Fairness Doctrine is inapplicable, and I do not see how we can do this unless we substitute our judgment for the licensee's. Whatever may be initial responsibility of the licensee, some agency must arbitrate disputes regarding

[1] The internally quoted material is taken from other military recruitment advertisements reproduced in Appendix III, p. 1, to Mr. Jelinek's letter. Some of the material will be quoted elsewhere in this opinion.

the applicability of the Fairness Doctrine—and that task has been assigned to the Federal Communications Commission, with review by the courts. In any case, the majority treats this "throwaway" language precisely for what it is—a useless appendage inserted routinely in Commission opinions—and proceeds to make its own, independent determination anyway: "In the present case, we do not believe that the broadcast of Armed Forces recruitment messages . . . raises a controversial issue of public importance. . . ."

Finally, the Commission majority states why it believes that the recruitment messages do not raise controversial issues of public importance. Its creation is scarcely a monument to clarity. So far as I can determine, however, the majority seems to be saying that advertisements asking young men to join the Army—like "similar recruitment messages" asking people to become "policemen, firemen, teachers, census enumerators, peace corp volunteers, etc."—only raise the issue whether the particular institution in question (here the Army) has the legitimate power to recruit members. (The majority states: "We note that the power of the Government to raise an army has not been questioned. . . ." I cannot imagine why the majority merely "notes" this point if it is the crux of its holding.) The majority then goes on to reject the petitioners' arguments, stating that the recruitment advertisements do not refer to the "use made of the army (war in Vietnam)" and the "manner in which manpower is conscripted (Selective Service draft)."

This reasoning seems faulty on a number of counts.

First, it merely illustrates the principle that determined men, if they try hard enough, can define any problem out of existence. If the Commission had applied similar reasoning to cigarette advertisements three years ago, we would presumably have ruled that cigarette advertisements raise only the issue of whether cigarette manufacturers have the right to recruit customers. Not surprisingly, the broadcasting industry made precisely this argument with respect to cigarette advertising, contending that "no controversial issue of public importance can be presented where a lawful business is advertising a lawful product." Not surprisingly, we gave it suitably short shrift. See *Cigarette Advertising*, 9 F.C.C. 2d 921, 938–40 (1967). What *is* surprising, however, is that the majority now finds such specious reasoning so persuasive.

Second, it seems obvious to me from the text of the recruitment advertisements that they do far more than merely assert the right of the army to recruit members. Indeed, it is difficult to treat this latter notion seriously. What would the average listener or viewer think upon hearing a military recruitment advertisement such as, "SHOULD YOUR BOY JOIN THE U.S. MARINES? . . . IT REALLY DEPENDS ON . . . HOW SOON HE WANTS TO BE A MAN"? Would he assume that this is the Army's effort to persuade him that it can legitimately recruit members? On the contrary, the rather blatant message of these spots is that it is "*desirable*," for a multitude of reasons, for a yonng man to join the military. The principal question, therefore, is whether promotion of the "desirability" of military service raises a controversial issue of public importance.

Third, it seems clear that the majority's references to other types of recruitment—"policemen, firemen, teachers, census enumerators, peace corps volunteers, etc."—are simply misplaced. For one thing, so far as I know policemen, firemen, teachers, etc., are not threatened with the prospect if they do not "volunteer" for service, they will be drafted! Congressional appropriations for "standing armies," the quartering of troops, and the relative role of the military generally have been controversial issues since the very founding of our nation. They are no less so at this hour. This is in part because the military conscripts men against their will, forces them to kill and destroy, and subjects them to the omnipresent threat of death. These risks are simply not shared by census enumerators, whatever else may be the hazards of their job. For another thing, there is no question as to the power of municipalities and schools to hire policemen and teachers. Serious question has been raised, however, as to whether the President can legitimately conduct a war in Southeast Asia, invading new countries at will, without a declaration of war by the Congress, as required by Article I, Section 8, of the Constitution. It is one thing to hire men to teach school; it is quite another to force them to fight and die in a war that may be illegal.

IV

The majority finally advances as its essential argument the proposition that there is no connection between military recruitment announcements and two other issues of admittedly high controversy—the vietnam War and the Selective Service system. This argument is faulty for many reasons.

First, as discussed above, the majority has set up a "straw man" by adopting a highly artificial and narrow definition of the scope, function and impact of the military recruitment advertisements in question, and then knocking it down as "non-controversial."

Even if the recruitment advertisement made no claims that military service was "desirable," but merely contained the exhortation "Join the Army, Join the Army," I believe they would raise an issue of controversy and public importance. The reason is that one simply cannot separate the controversiality of a recruitment advertisement from the nature and function of the job in question. If—to pick a deliberately strong example—the Government were to recruit soldiers for a special commando troop whose function was widely known as encompassing the assassination of civilians in Vietnamese villages, and used advertisements which urged men to "Join the Commandos, Join the Commandos," only a person with the most tenuous grip on reality could reason that nothing more than "the power of the Government to raise an army" had been placd in question. Recruitment advertisements for policemen, firemen, teachers, census enumerators, and so forth, are not controversial because the work they do is not controversial. But I suspect recruitment solicitations for National Guardsmen in the Kent State University region of Ohio, or for the CIA in Berkeley, would be highly controversial. So it is for recruitment into the armed forces generally at this time.

Second, the military recruitment advertisements before us obviously do far more than urge young men to "Join the Army." They make grandoise and wide-ranging claims as to the "*desirability*" of military service, just as cigarette commercials taught the desirability of smoking. And once the desirability of military service is placed in issue, I simply do not see how one can avoid a discussion of what one will be doing there [continuing one's education, becoming "a man," joining "the leaders"], where one will be doing it [in "close to 200 places around the world"—one of which is presumably Vietnam], and how one will be rewarded ["good pay" and a share in the "fight for freedom" and the "protection of our nation and our ideals"].

Third, even apart from the present Vietnam conflict, the issue of military service has traditionally been embroiled in extreme controversy of great public importance. See *United States v. O'Brien*, 891 U.S. 367 (1968) ; *Holmes v. United States*, 891 U.S. 936 (1968) (Douglas, J., dissenting, with a long historical sketch on the controversial nature of the Armed Forces). Indeed, the role of the military in our society in general, and its specialized methods for recruiting members in particular, have generated controversies of such long standing that they extend almost back to the Revolutionary War. See *United States v. Nugent*, 346 U.S. 1 (1953) ; *Hamilton v. Regents of the Univ. of California*, 293 U.S. 245 (1934) ; *Selective Draft Law Cases*, 245 U.S. 366 (1918) ; *Tarble's Case*, 80 U.S. [13 Wall.] 397 (1871) ; *Prize Cases*, 67 U.S. [2 Black] 653 (1862). The history of this controversy is quite distinct from the experience of other public groups, like firemen and teachers, relied upon by the majority. In *Schenck v. United States*, 249 U.S. 47 (1919), for example, the Supreme Court adopted the "clear and present danger" test to convict persons of circulating documents which complained that the Conscription Act violated the Thirteenth Amendment's prohibition against "slavery" and "involuntary servitude," and urged potential draftees to "assert your opposition to the draft." Even today one pressing and important "controversial" issue is the extent to which a young man who succumbs to military recruitment advertisements and joins the army loses those constitutional rights guaranteed to civilians by the Supreme Court in cases since *Schenck*. See Note, *Dissenting Servicemen and the First Amendment*, 58 Geo. L. J. 534 (1970).

Fourth, it cannot be denied that this country is in fact engaged in a serious war, and that the army is playing an integral part in it. A federal court, for example, has acknowledged that service in the Armed Forces, whether by recruit-

ment or enlistment, carries with it "a strong probability of ultimate service in Vietnam." *United States* v. *Sisson*, 294 F. Supp. 511, 513 (D. Mass. 1968). Indeed, almost all our pressing national problems—inflation, campus unrest, racial discrimination, the urban crisis, mass demonstrations and protest—appear linked in some way to the Vietnam War. Highly respected legal scholars have argued, as well, that the President has violated the Constitution in conducting an "undeclared" war. F. Wormuth, *The President Versus the Constitution* (paper published by the Center for the Study of Democratic Institutions, Santa Barbara, Calif., (1968); Hughes, *Civil Disobedience and the Political Question Doctrine*, 43 N. Y. U. L. Rev. 1 (1968); *The Vietnam War and International Law*, Am. Soc. Int'l Law (R. Falk ed., 1968). How can recruitment solicitations be considered anything but controversial?

Finally, consider some simple statistics. In 1969, some 59,000 Americans (49,000 men and 10,000 women) died of lung cancer, and over 90% of these deaths are reputedly linked to cigarette smoking. *Smoking and Lung Cancer*, Public Health Service pamphlet (1970). This means that of the 70,000,000 Americans who consume tobacco in one form or another, approximately 53,100—*or one out of 1,300*—died of lung cancer in 1969. (If one accepts the higher figure of 300,000 cigarette-related deaths per year, the ratio becomes one out of 233.) The enormity of this problem in part lead the FCC several years ago to apply the Fairness Doctrine to cigarette commercials. *Cigarette Advertising*, 9 F.C.C. 2d 921 (1967).

Yet what of the hazards of military service? During 1969, the same period in question, the United States had 3,127,000 servicemen in uniform around the world—many of whom were thousands of miles from Vietnam. Of that total number, however, approximately 11,527—*or one out of 275*—lost their lives in Vietnam. *Source:* Office of Public Information, Southeast Asia Desk, U.S. Department of Defense (June 18, 1970).

Simply stated, it is *at least* as dangerous to enlist in the armed services as it is to use tobacco. This Commission has ruled that invitations to smoke cigarettes raise issues of sufficient controversy and public importance to invoke the Fairness Doctrine. Yet invitations to join the military do not. Why? Frankly, the majority's reasoning—what there is of it—escapes me.

Cigarette advertisements were brought under the Fairness Doctrine—which, after all, requires only that the other side be told—in part because they were inherently deceptive. The ads represented to their audience that smoking was "desirable," without warning that death or serious illness might follow. I believe that solicitations for military service are similarly deceptive, for they do not warn their audience that death or serious injury might follow, as a statistical consequence of enlistment, or that a young man of draft age may have *alternatives* to the "enlist-or-be-drafted" dilemma. Congress itself has, in the Selective Service Act, exempted from military service, for reasons of strong national policy, persons who fall in numerous categories. Persons, therefore, whom Congress did not intend to induct, may be induced into a military obligation which was unrequired, and perhaps even undesirable, as a direct consequence of partial truths contained in the advertisements before us. To the extent these advertisements suggest that young men can satisfy their patriotic obligations to their country only by military service, they are inherently deceptive. Only the application of the Fairness Doctrine can correct this deception by requiring the presentation of alternative views.

V

The majority claims that the military recruitment advertisements do not raise an issue of controversy and public importance. They contend that in any case there is "no indication that any of the stations against whom the complaint was filed have failed to treat the issues of Vietnam and the draft (both concededly controversial issues of public importance) in conformance with the fairness doctrine." In our *Cigarette Advertising*, ruling, 9 F.C.C. 2d 921 (1967), we addressed this problem of sufficiency. Whereas we concluded that the broadcaster was not required to devote an "equal" amount of time to opposing views,

we held that the time must at least be "significant" *Id.*, 9 F.C.C. 2d at 949. In *National Broadcasting Co.* [WNBC–TV], 16 F.C.C. 2d 947, 15 P & F Radio Reg. 2d 1059 (1969), for example, the Commission (over my dissent) ruled that a ratio of one anti-smoking commercial to 8.1 cigarette commercials was "significant."

In the present case, however, so far as I know, we do not have any indication of the ratio involved—military recruitment advertisements to anti-military coverage. The majority's assumption that all the licensees broadcasting such advertisements have fulfilled their Fairness Doctrine obligations, therefore, seems completely unsupported by any evidence. One can only wonder why the majority seems so eager to base such an important precedent-setting decision on so little.

In addition, there are a number of factors that should be weighed in determining whether a licensee has given "significant" coverage to various views. First, an important factor is the frequency and regularity of presentation. The Commission has explicitly recognized this factor in its decision, *Cigarette Advertising*, 9 F. C. C. 2d 921, 941 (1967) :

"We think that the frequency of the presentation of one side of the controversy is a factor appropriately to be considered in our administration of the Fairness Doctrine . . . For, while the Fairness Doctrine does not contemplate "equal time" if the presentation of one side of the issue is on a regular and continual basis, fairness and the right of the public adequately to be informed compels the conclusion that there must be some regularity in the presentation of the other side of the issue."

In affirming this ruling, the United States Court of Appeals in *Banzhaf* v. *FCC*, 405 F. 2d 1082, 1099 (D.C. Cir. 1968), was even more explicit:

"In these circumstances, the Commission could reasonably determine that news broadcasts, private and governmental educational programs, the information provided by other media . . . inadequately inform the public of the extent to which its life and health are most probably in jeopardy. *The mere fact that information is available, or even that it is actually heard or read, does not mean that it is effectively understood.* A man who hears a hundred 'yeses' for each 'no,' when the actual odds lies heavily the other way, cannot be realistically deemed adequately informed." [Emphasis supplied.]

According to the Office of the Controller, U.S. Department of Defense (information supplied June 19, 1970), the American Forces Radio and Television Service (AFRTS) spent *at least* $229,000 in 1969 producing 1,000 radio and 300 television spot annnouncements, all supporting military information themes.[2] Although it is unclear how many of these are devoted to military recruitment advertisements of the sort before us (an interesting question which the majority has failed to ask), it is perhaps insightful that the Defense Department itself budgets the cost of the spot announcements to "recruiting"—an indication that perhaps the Pentagon has something more in mind than mere information to the public when it runs its spots from coast to coast.

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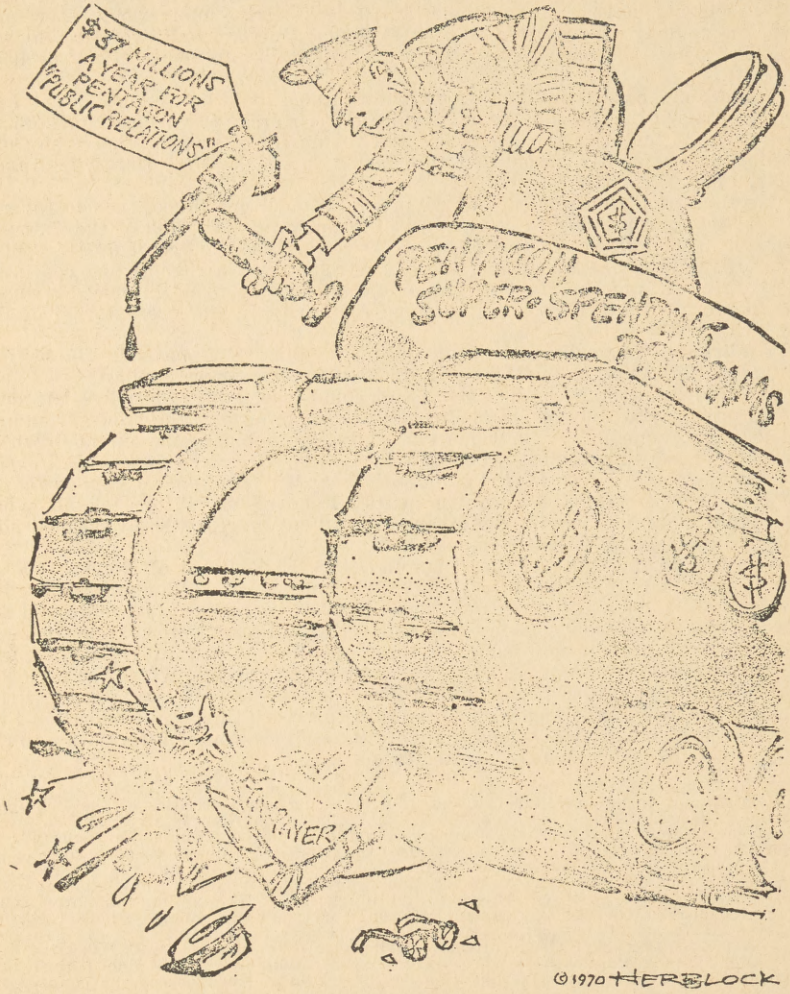
[2] It is difficult to put a dollar value on the recruiting spot activities of the Pentagon. The talent of contributors like Jack Webb, Frank Blair, Jonathan Winters, and so forth, are given without charge. Their commercial value would, of course, be thousands of dollars in the aggregate. The air time is also "contributed" (subject to such coercion as may be involved from the combination of the Department of Defense and the Federal Communications Commission). The value of this time is also virtually impossible to compute accurately, but estimates running well in excess of $10 million annually would appear reasonable. The hidden costs of Defense Department personnel, physical facilities, materials, distribution costs, and so forth cannot be ascertained. But even the Pentagon itself is prepared to acknowledge directly attributable costs of at least $229,000 in 1969. The radio spots are prepaid by three professionals and one clerical aide (salaried at $49,000 a year), who regularly send then to 350 radio stations across the country for systematic rebroadcast. They produced 1,000 radio spots in 1969 alone. The acknowledged cost: $121,000. AFRTS also spent a total of $108,000 in 1969 producing 260 television recruitment spots and 40 five-minute fillers (combining both entertainment and a recruitment pitch) for regular use on 90 television stations across the country. The AFRTS television effort employs six full-time professionals and one clerical aide, also at a cost of $49,000. Thus, AFRTS publicly acknowledges spending a total of $229,000 for radio and television recruitment spots in 1969 alone.

THE WASHINGTON POST, JUNE 26, 1970, A14, COL. 4

"As We Roll Over You, You Can Help Grease The Machine"



How effective are these military advertisements? No one can tell. However, the Chief of Naval Personnel, Vice Admiral Charles K. Duncan, recently reported to Congress that the Navy alone receives from $8 to $10 million in free time over the airwaves for military programming every year—a "significant" amount by anyone's public relations standards. *Hearings on Fiscal Year 1971 Department of Defense Budget*, House Subcommittee on Defense Appropriations, 91st Cong., 2d Sess., Pt. II, at p. 86 (Mar. 3, 1970). Without more direct evidence before us, and in light of this military propaganda barrage, I would

question whether the San Francisco stations have truly fulfilled their Fairness Doctrine obligations.

Second, even if licensees have satisfied the Fairness Doctrine under traditional analyses, I think we must recognize the unusually powerful impact of spot advertising as compared to normal news coverage. Prepared spot announcements should be placed in a class by themselves—a proposition acknowledged by FCC Chairman Dean Burch with respect to political advertising. *Voters' Time*, Twentieth Century Fund Commission on Campaign Costs in the Electronic Era, p. 15 (New York 1969); *Statement of Chairman Dean Burch*, Subcommittee on Communications and Power of the House Committee on Interstate and Foreign Commerce, June 2, 1970. The spot announcements in question invoke the familiar Madison Avenue techniques:

> the enticements of glamour and excitement, the promise of a rewarding future, the allure of travel to faraway places, the invocation of an ethic of masculinity, and the reassuring appearance of well-known celebrities—Jack Webb, Coach Richie Guerin of the Atlanta Hawks, Jonathan Winters, former U.S. Senator Paul Douglas, and "Marine Reservist Ed McMahon"—to intone the blandishments prepared by the army's recruitment officers and public relations specialists. Petitioners seek only to present an alternative to the siren call of the military establishment. This the majority has refused them.

One final point requires mention. The broadcasting industry bitterly fought the anti-smoking announcements, fearing that their insertion into daily programming might eliminate time that otherwise could be used for paying commercials. The military recruitment advertisements before us, however, provide the licensee with no income. They are donated, free of charge, by broadcasters as an alleged "public service announcement." If a station broadcast two such advertisements a day, it could easily reduce this number to one a day, and fill the vacated spot with the proffered anti-military recruitment advertisements. In so doing, the licensee would be out-of-pocket nothing. It seems clear to me, therefore, that the intensity of resistance to petitioner's message may be caused more by "political" than "economic" considerations. Let's face facts. One ruffles no feathers when one supports the military establishment; but opposition to that establishment always seems controversial. I find it revealing, to say the least, that broadcasters find themselves so eager to donate free time to the army to recruit soldiers to fight its wars, yet deny a portion of that free time to opponents of that process. The "robust, wide-open debate" so often publicly cherished by this Commission seems sadly lacking in this decision. That the Commission is a party to both decisions—the implied encouragement to broadcasters to carry the government's "public service" announcements, and support for the exclusion of contrary views—makes today's decision especially vicious.

VI

Even if there were no basis in law whatsoever for petitioners' claims (which most assuredly there is), a confident and compassionate government would grant their "humble petitions" (to quote from the Declaration of Independence). Is this Administration really so frightened of the rights of free speech and press and "the right of the people peaceably to assemble, and to petition the Government for a redress of grievances" (to quote from the Bill of Rights) that its critics must be met with intimidation (the Vice President versus the networks), gunfire (at Kent), and slammed doors (at the FCC)? What harm can be done by granting American citizens access to the airwaves they own to present their modest messages of reply to their government, when it would cost the broadcasting industry nothing? If that truly constitutes a threat to national security, then the "Decline and Fall of the American Empire" is closer at hand than any of the modern-day Gibbons have feared to predict.

But the fact of the matter is that—whatever side God may be on—the law is with the petitioners. The FCC and the broadcasting industry together, using U.S. Army commercials, have the "power" to abridge Americans' freedom of speech (subject to review by the courts). But I do not believe they have the legal right to do so. At any rate, as is by now obvious, they do not have the wisdom to refrain from doing so.

[From the Washington Post, July 27, 1970]

TV Prospers as Ad Revenue Rises 10.9 Percent

For a thumbnail sketch of America's television industry, there is probably no better place to look than a dull document the Federal Communications Commission publishes every year called "TV Broadcast Financial Data."

This year s version was quietly released Friday, and, if nothing else, it shows that the inaustry continued to prosper last year on a continually-increasing volume of advertising revenues.

For 1969, total revenues rose 10.9 per cent to $2.8 billion; network advertising increased 10.6 per, national and regional spot advertising (ads to national and regional advertisers for showing on a local station) climbed 10.8 per cent and local advertising increased 13.4 per cent.

Before-tax profits increased by a healthy 11.9 per cent.

Separated from the rest of the industry, the three networks did even better. Their revenues from network operations rose 12.6 per cent to 1.15 billion, but before-tax profits increased an astounding 64 per cent, from $56.4 to $92.7 million.

According to FCC officials, once the networks reach their point, additional advertising revenues result in only small increases in cost so a relatively small change in advertising income can induce a big gain in profits.

But the networks biggest profit procedures lies in the 15 television stations that the FCC permits them to own (five a piece). Last year these stations, all located in the nation's largest television markets, generated $323.3 million in revenues against only $189.9 million in expenses, for a before-tax profit of $133.4 million.

All this represents a remarkably high return on investment. According to the FCC figures, the investment in network facilities and their three stations—at original cost—total $294.1 million. Subtracting depreciation, the investment amounts to $168.8 million. By contrast, most regulated public utilities are permitted to earn less than 10 cents on every dollar of outlay.

If there is a weak spot in the television industry, it is the UHF (ultra-high-frequency) station.

As a group, they have been allergic to profitability. Last year was no exception.

[From the Chicago Tribune, Aug. 3, 1970]

Copter Flight to Los Angeles Was a Busy One for President

(By Aldo Beckman)

San Clemente, Cal., Aug. 2.—The helicopter flight between the western White House here and the Century Plaza Hotel in Los Angeles takes only about 20 minutes.

But when President Nixon made that short flight aboard Marine I last Wednesday, so he could spend all the next day in the hotel preparing for his nationally-televised press conference, he didn't waste his time watching the scenic Southern California coastline.

His mind was already anticipating what questions might be tossed at him, and he was deciding what he needed to study on Thursday so he would be ready for any and all queries.

CHECKS ON MISSILE STATUS

He looked at Henry Kissinger, his assistant for National Security Affairs, and asked for detailed figures on how many missiles the Russians have installed since 1967, when the United States stopped the deployment of land-based missiles. And he also wanted to know how American production of nuclear-powered submarines compared with Soviet production in that field.

The President had both reports on the desk in his 19th floor suite the next morning, and used them Thursday night to emphasize the need for agreement at the arms limitation talks in Vienna—long a favorite theme of the President's.

SEARCHES OUT THE DETAILS

When he boarded the helicopter at the pad just outside his office here, Nixon had a newspaper article in his breast pocket by Douglas Hallett, editorial chairman of the Yale Daily News, who said that college officials must share some responsibility for violence on American campuses, noting that it was unfair to simply blame it all on the federal government.

Nixon pulled out the clipping during the flight and discussed it with H. R. Haldeman, his chief of staff, and during his press conference, referred to it when questioned about the just-released report on campus unrest.

This kind of search for detail went on all day Thursday, with a brief time-out for an afternoon nap by the chief executive.

The preparations paid off for the President and he was ready for all 18 questions thrown at him.

Nixon was so pleased with the results of his first Out-of-Washington televised press conference that he "very likely" will hold one in Chicago, said Ronald Ziegler, White House press secretary.

Such productions tend to give credibility, White House officials believe, to the President's oft-stated intentions of taking the federal government outside Washington and to the people of the nation.

White House aides, led by Patrick Buchanan, one of the President's favorite speech writers, kept an eye on wire service tickers to let the President know about any late-breaking news that might trigger a question.

BRIEFED ON SMOG

Buchanan briefed the President on the smog that was covering the East Coast, and resulting in front page stories throughout the nation, and Nixon asked his aide to call John Whitaker, a deputy assistant in the White House, who is in charge of pollution control programs.

Whitaker dictated a detailed memo on the severity of the smog and briefly outlined the particulars of the administration's anti-pollution program, now pending in the Congress.

Nixon personally placed a number of calls to Washington, getting an update on economic indicators from Peter Flanagan, a White House assistant, and asking Bryce Harlow, counselor to the President, to provide him with details of major appropriations bills and how many dollars the lawmakers had tacked onto his requests.

SPEAKS KINDLY OF LAWMAKERS

The President used only a little of the voluminous information given him by Harlow and went out of his way to speak kindly of the—"well-intentioned" lawmakers whom he might have to overrule with vetoes.

His recent harsh attacks again the "big spenders" in Congress was tempered in an apparent effort to stem any hopes that Democrats could demand "equal time" to answer his attacks.

There were no efforts to rehearse answers to likely questions, such as President Kennedy used to do before his televised press conferences.

"It's better to respond to questions with what you think of, after you have been seriously briefed beforehand," Nixon tells his aides. "That's far preferable to trying to memorize an answer."

PLAY TO LOCAL SCENE

The press conference last week was designed to emphasize local reporters, rather than the White House Press Corps, and all 80 requests for space from West Coast papers were honored, with many of the West Coast reporters being given choice, front-row seats, where they would be more likely to be seen on television.

Nixon made it a point to split the questions about equally between the regular White House Press Corps and the "locals."

It was Ziegler who suggested that Earl (Squire) Behrends, a long-time political reporter for the San Francisco Chronicle, be permitted to sign off the press conference with the traditional "Thank You, Mr. President."

He discussed it with Frank Cormier, the Associated Press reporter, who normally closes off such sessions, and Cromier glady agreed to permit the elderly Behrends to have the honors.

ONLY 2 SURPRISE QUESTIONS

Only two of the 18 questions were not expected.

Both came from west coast reporters—one concerning local unemployment and the other questioning the President about hiring more Mexican-Americans in the federal government.

The final question was not only expected by the President it was "planted" by White House aides with a friendly reporter and gave the President a chance to defend himself against critics who have suggested he is spending too much time outside Washington.

Then came the nod from Ziegler, and the veteran San Francisco reporter rose and officially ended President Nixon's 11th televised press conference—a press conference planned several weeks ago in Washington, altho announced here only a few days before it was held.,

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SEPARATE STATEMENT OF COMMISSIONER KENNETH A. COX, MEMBER, FEDERAL COMMUNICATIONS COMMISSION

I agree generally with Chairman Burch's statement, but would like to add the following comments.

I believe that the public interest would be served by more programming dealing with our most critical national issues. I believe that this programming should, to a significant degree, feature the Congressional leaders responsible for dealing with the problems which should be discussed. Broadcasters now present such programming, in the form of newscasts, news interviews and documentaries, and they often call on Congressional leaders to participate. I think more is needed if our people are to understand and resolve the issues which confront us. Whether this should be achieved through legislation requiring broadcasters—realistically the national networks—to give time to Congressional leaders. I don't know. Certainly such periodic programs could gain greater attention and impact than present Congressional appearances, especially if they were broadcast simultaneously on all three networks. At the same time, there are problems with the proposal contained in S.J. Res. 209, as the Chairman has pointed out. But I think the need for better communications between the Congress and the public is so great that something should be done. Perhaps a Concurrent Resolution outlining the problem and calling on the broadcast industry to step up its efforts in this area would improve the situation, without getting involved with formal changes in the Communications Act. Certainly broadcasters could be of real assistance to Congress in advising as to the problems to be considered, the program formats to be employed, and the selection of the individual members of Congress best qualified to present the matters to the public. In any event, I hope something will develop from these hearings.

I think a good deal of the current concern over the problem of communications between the government and our people has arisen out of President Nixon's stepped-up use of television for the presentation of his views on the war in Vietnam. Clearly our presidents need such access to the public, though I think the privilege should be used with great self-restraint. Equally clearly, whatever the President says is a major contribution to the discussion of perhaps the most critical controversy of our times, and as a consequence the Commission's Fairness Doctrine applies. It seems to me that the networks have tried to discharge their responsibility largely by presenting the views of those who differ with the President in newscasts or news interview or panel programs, all of which are presented on a single network, nearly all of which are broadcast outside of prime time, and none of which permit the opponents of the war to present their views at length and without interruption. This seems so inadequate, when compared to the enormous impact of the President's appearances, that the Commission has been petitioned by members of the Congress, the National Committees of both major parties, and groups of private citizens who wish to compel stations or the networks to give or sell them time to express their views. The Commission is trying to resolve the very difficult question which these requests pose.

I think one reason for the general dissatisfaction with the handling of these matters is that the networks' natural self interest leads them to claim that they have achieved a balance of viewpoints without resorting to any special programming, especially in prime time. Whenever the President is given time to address the public, the resulting displacement of regularly scheduled commercial programming costs the networks and their affiliates many thousands of dollars. If they were to give his opponents comparable time, it would cost them the same amounts again. In their effort to avoid this, they try to persuade our petitioners that they have already satisfied their Fairness Doctrine obligations, but although they may have presented a good deal of matter on both sides of the issue, it seems clear to me that the American people are not being given a reasonable opportunity to hear both sides as fully as they should. This is why I think that some action by the Commission or by the Congress may be needed to resolve the question.

I appreciate this chance to express my separate views on this important issue.

Senator PASTORE. Anyone else who has any statements to make may file them for the record. We will keep the record open 8 days in order to afford them that opportunity.

Thank you very much.

(Whereupon, at 2:35 p.m., the hearing was adjourned.)

ADDITIONAL STATEMENTS AND LETTERS

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., August 5, 1970.

BUSINESS EXECUTIVES MOVE FOR VIETNAM PEACE,
% Asher & Schneiderman,
Washington, D.C.

GENTLEMEN: This is with reference to your complaint dated January 22, 1970, against the licensee of Standard Broadcast Station WTOP, Washington, D.C., and to statements subsequently submitted by you and the licensee.

From information before us it appears that the complainant, Business Executives Move For Vietnam Peace Organization (hereinafter called BEM), a national organization of more than 2700 business owners and executives sought, in June 1969, to purchase time on WTOP for the purpose of broadcasting one-minute announcements urging immediate withdrawal of American forces from Vietnam and from other overseas military installations. While there is some indication that the complainant was informally given a favorable response, WTOP declined to sell time. BEM renewed its request in July, 1969 and again in January, 1970 with the same negative result. The licensee cited its long established policy of refusing to sell spot announcement time to individuals or groups to set forth views on controversial issues and stated that "subjects of this type require a more in-depth analysis than can be provided in a 10, 20, 30 or 60 second announcement."

Complainant's initial request to the station made no reference to the fairness doctrine and after being turned down in its attempts to purchase time, complainant made no further demands upon the licensee in terms of fairness doctrine, i.e. that the station in its coverage of the Vietnam issue present views similar to those expressed in BEM's statements. Complainant now alleges, however, that in refusing to sell or to provide free time for the announcements, the licensee has violated the fairness doctrine, infringed on the public's right to hear contrasting views such as those contained in BEM's announcements, and violated the First Amendment to the Constitution by suppressing free speech. Therefore, complainant contends, the Commission should order the licensee to present its announcements, either free of charge, or, in the alternative, at commercial rates. In response, the licenee denies complaint's charges and asserts that it has complied fully with all relevant statutes and Commission rules and policies. We shall deal first with the fairness aspect of the complaint. Normally, fairness complaints arise as a result of unsuccessful negotiations between the complainant and the station licensee. The Commission has developed procedures for the filing of a complaint under the fairness doctrine in the following manner:

> * * * 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.[1] [2]

In short, by the time a complaint under the fairness doctrine reaches the Commission, the parties (both the complainant and the station) will have had an opportunity to fully crystallize their positions and delineate their areas of agreement and disagreement.

In the case before us, BEM initially made a request to purchase air time for the presentation of a number of spot announcements dealing with United States presence in Vietnam. The same request was made on at least three occasions

[1] The complainant can usually obtain this information by communicating with the station.

[2] *Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance,* 29, Fed. Reg. 10415, 10416.

with the variation that if WTOP would not sell time for this purpose, that it should provide it free of charge. The pleadings before us do not indicate that at any time BEM sought station coverage of views similar to those urged in its spot announcements by WTOP in its program coverage of the Vietnam War.

Consequently, while we will consider the complaint of BEM in its entirety, we believe the issue would have been immeasurably sharpened if the procedures set forth above had been observed.

BEM states that the Vietnamese war is unquestionably a controversial issue of public importance; that although WTOP has regularly presented the views of government officials and others supporting the Administration's position, it has not devoted a significant amount of time to contrasting views; that the war has provoked a wide diversity of responsible views, rather than merely views on "two sides;" that BEM advocates views in contrast to those already broadcast;[3] and that only by permitting BEM to air its views can WTOP comply with the legislative policy that it "afford reasonable opportunity for the discussion of conflicting views on issues of public importance."[4]

In response, the licensee states that it has tried to provide balanced coverage of the Vietnam war issue in news reports, news interviews, commentary and statements by both supporters and opponents of the Administration policy. It cites extensive coverage of Moratorium activities last fall, including press conferences, meetings and rallies of numerous anti-war groups, and its handling of the President's speech of November 3, 1969, following which it presented five leaders generally supporting the President's position and six leading critics of his policy. It states that it has broadcast the diverse views of its own commentators (Carl Rowan, Drew Pearson, Rod MacLeish and James J. Kilpatrick) and also carries the CBS programs, "Face the Nation" and "Capitol Cloakroom," which it states have provided opportunity for national leaders to present views both for and against the President's policy. WTOP alleges that BEM's complaint lacks the specificity which the Commission requires to establish unfairness, and states that "A complete quantitative evaluation of the coverage of any station, let alone an all-news and information station [WTOP], of as long-continuing an issue as the Vietnam War and President Nixon's policy with respect to that war would be virtually impossible as a practical matter." However, it states that a spot check of the three-month period, April–June 1969, reveals that its news reports and other programs included the views of a variety of Administration critics on the war on numerous occasions. The licensee has submitted an affidavit by the Executive Editor of WTOP Radio, stating that "of my own knowledge . . . each of the viewpoints embodied in the BEM announcements has been expressed on a number of occasions in various types of broadcasts over WTOP. . . ."

The fairness doctrine requires a station which presents one side of a controversial issue of public importance to afford reasonable opportunity for the presentation of significant contrasting viewpoints on the issue in its overall programming, which may include news programs, interviews, discussion, debates, speeches and the like. No particular person or group is entitled to appear on the station, since it is the right of the public to be informed which the fairness doctrine is designed to assure, rather than the right of any individual or group to present personal views. As we stated in our *Report in the Matter of Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949):

> 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 idividuals who might be more appropriate spokesmen for the particular point of view than the person (or group) making the request.

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[3] A review of BEM's announcements reveals that the following views are expressed: (1) that the bloodshed which may result from United States withdrawal from Vietnam does not compare with the bloodshed presently going on in Vietnam; (2) that the United States should not remain in Vietnam, because the war is morally corrupt, politically inept, and militarily stupid; (3) that the war is destroying the United States internally; (4) that the South Vietnamese government does not represent the people; (5) that "Vietnamization" of the war will prolong the war; (6) that the United States should try to save lives by withdrawing and not try to "save face;" (7) that the war is a "national disgrace;" (8) that our withdrawal must be total; (9) that remaining in Vietnam is based on a pseudo-patriotic principle; and (10) that the United States needs to overhaul its entire foreign policy.

[4] 47 U.S.C., § 315.

In the present case, because of the multiplicity of spokesmen available to express views on the Vietnam war, it is obvious that a licensee must exercise its judgment in choosing appropriate spokesmen to insure an orderly and effective presentation of the many conflicting views. The question, then, is whether a licensee has exercised reasonable, good faith judgment in applying the fairness doctrine to a particular issue or issues.

In the letter to *Mrs. Madalyn Murray*, 40 FCC, 647, 5 RR 2d 268 (1965), we stated:

> A licensee, in applying the fairness doctrine, is called upon to make reasonable judgments in good faith on the facts of each situation . . . as to what viewpoints have been or should be presented, as to the format and spokesmen to present the viewpoints, and all other facets of such programming. 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.

On the basis of BEM's complaint and the licensee's response, we are unable to find that the licensee acted other than reasonably and in good faith in refusing to make time available for the broadcast of BEM's announcements. On the one hand, we have the licensee's assertion that it has presented a wide variety of views on the Vietnamese war, including those embodied in the proposed announcements. The licensee has cited a number of specific instances in which it has presented views opposed to further American participation in the conflict. On the other hand, we have no more than a general allegation that WTOP has failed to present significant contrasting views on the subjects covered in the announcements. As we stated with regard to similar vague allegations in our letter of November 25, 1969, to *Allen C. Phelps and the Federation of Citizens Associations of the District of Columbia*, 21 FCC 2d 12, where it was charged that this same licensee had presented only the "liberal" viewpoint on a number of issues such as racial discrimination:[5]

> Absent detailed and specific evidence of failure to comply with the requirements of the fairness doctrine, it would be unreasonable to require licensees specifically to disprove allegations such as those as those made here. The Commission's policy of encouraging robust, wide-open debate on issues of public importance would in practice be defeated if, on the basis of vague and general charges of unfairness, we should impose upon licensees the burden of proving the contrary by producing recordings or transcripts of all news programs, editorials, commentaries and discussion of public issues, many of which are treated over long periods of time. Accordingly, although the Commission intends also to employ other appropriate procedures to insure compliance by licensees with the fairness doctrine (e.g., in-depth spot checks at renewal time), it has long been our policy normally to require that fairness doctrine complaints (a) specify the particular broadcasts in which the controversial issue was presented, (b) state the position advocated in such broadcasts, and (c) set forth reasonable grounds for concluding that the licensee in his overall programming has not attempted to present opposing views on the issue. See *Applicability of Fairness Doctrine in the Handling of Controversial Issues of Public Importance*, 29 Fed. Reg. 10415 (1964).

In short, where, as here, the complainant has made only a general allegation and the licensee has answered by affidavit that it has presented such viewpoints on numerous occasions, pointing also to example coverage of the Vietnam war, it is not unreasonable that the burden be placed on the complainant to come forward with some indication why a more detailed showing should be required—why it is he believes that the licensee has been unfair. Here the complainant has wholly failed to do so. We stress that we are not requiring complainants in this area to prove their case ahead of time. To place any undue burdens on such complainants would be inconsistent with the public interest since the Commission does depend for purposes of enforcement to a large extent on complaints in this area. However, the complainant must have some basis for his complaint that a licensee has been unfair and that basis can and should be set forth (e.g., several days monitoring of news or public affairs programming, with the assertion that

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[5] The *Phelps* complaint charged that WTOP's violation of the fairness doctrine was manifest by one-sided coverage of issues such as "liberal v. conservative" political philosophy, coverage of the Nixon administration, hostility toward the South, problems of the District of Columbia including crime, race relations, law and order and the station's attitude toward mass demonstrations.

only one viewpoint is presented). For just as an undue burden should not be placed upon complainants, so also it is inappropriate to place such a burden on the licensee. A complainant cannot simply say the word, "Vietnam," "racial discrimination," "pollution," and require a licensee to devote extensive man-hours to cull over his past programming to show fairness on general issues of this nature. This would be particularly burdensome to smaller stations, and would not be a policy promoting "robust, wide-open debate." Cf. *The New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1964). In sum, as a public trustee, the licensee must shoulder certain burdens, including upon an appropriate complaint the burden of showing that he has complied with the fairness doctrine, but based on our experience we find that the public interest also requires some reasonable specificity in a complaint to trigger this detailed showing by the licensee. There is no such specificity in this case, just as there was none in the *Phelps* case.

Before passing to the next particular of the complaint, we take cognizance of BEM's contention that licensee's policy of refusal to sell time for the broadcast of spot announcements dealing with controversial issues violates the fairness doctrine and amounts to "picking and choosing among topics so as to give exposure only to those which it prefers." It states that WTOP does broadcast announcements "on such controversial subjects of public importance as religion, the environment, the national economy, armed forces recruiting and smoking," and that it presents brief editorials taking positions on controversial issues. WTOP replies that it does not believe that the public service announcements it carries involve controversial issues of public importance; that it does not broadcast cigarette advertising, and that it believes that the anti-smoking announcements which it carries are in the interest of public health and welfare, comparable to consumer reports "to help protect the public from fraudulent or deceptive business practices." It states that its editorials are two minutes in length and "provide enough time for development of position," whereas, it asserts, "The actual substantive portion of the BEM spots [ranges] from about 20 seconds to 35 seconds . . ."

We find no reason to reverse our prior ruling in *Women's Strike for Peace* that the WTOP policy in question does not *per se* violate the fairness doctrine or any other Commission policy.[6] Citing Section 3(h) of the Communications Act of 1934, as amended,[7] as we pointed out in that ruling that a broadcasting station is not a common carrier under the Act and therefore is not required to open its doors to all persons seeking to use the station's facilities for whatever purpose. As we stated in our letter to *Mrs. Madalyn Murray, supra*, it is within the licensee's judgment to determine the format for presentation of controversial issues "and all other facets of such programming." The licensee here has asserted, without rebuttal other than the unsupported assertions of complainant, that it has presented contrasting views, including the viewpoints embodied in complainant's announcements on the recited issues, and we find no reason to require that it present in addition the views of any particular group or in any particular format. We need not develop this point further, in view of the extensive treatment given the legal and policy consideration in the DNC ruling, Part I, issued this day, FCC 70– We rely here on those considerations.

In the second part of its complaint, BEM asserts that WTOP has frustrated the public's right to hear the views of BEM and thus has denied "the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences. . . ."—citing *Red Lion Broadcasting Co., Inc.*, v. *Federal Communications Commission*, 395 U.S. 367, 390 (1969). However, as we noted above, the licensee has furnished or tendered evidence that it has provided suitable access to the public on the ideas which BEM wishes to express, and it is clear that in this passage the Supreme Court was stressing the essential nature of the fairness doctrine, rather than the right of a particular spokesman to obtain access to the air, except in cases of personal attack and editorials endorsing or opposing political candidates. The Court stated:

"To condition the granting or renewal of licenses on a willingness to present *representative* community views on controversial issues is consistent with the ends and purposes of those constitutional provisions forbidding the abridgment of freedom of speech and freedom of press." *Id.* at 394 (emphasis added).

And in distinguishing between the general fairness obligation and the special obligations imposed in the case of a personal attack or a candidate endorsement, the Court noted that,

[6] Letter to *Washington Women's Strike for Peace*, November 22, 1965.

[7] Section 3(h) of the Act provides, in pertinent part, that "a person engaged in radio broadcasting shall not, insofar, as such person is so engaged, be deemed a common carrier."

"These obligations differ from the general fairness requirement that issues be presented and presented with coverage of competing views, in that the broadcaster does not have the option of presenting the attacked party's side himself or choosing a third party to present that side." *Id.* at 378

Inasmuch as WTOP appears to have presented "representative community views" on the issues here in question, we find that it has not acted contrary to the principles laid down in *Red Lion*. See discussion in *DNC* ruling, *supra*.

Finally, BEM argues that the Commission would be violating the First Amendment rights of BEM's spokesmen by sanctioning the licensee's policy of refusing to sell BEM time. Complainant relies principally upon the *Red Lion* decision. We do not believe that the Court's decision supports complainant's conclusion. As noted above, the Communications Act specifically provides that a broadcaster shall not be deemed a common carrier, and thus he may exercise his judgment as to the particular program matter he will present. The licensee is thus constantly called upon to make choices between types and formats of programming and the persons to participate therein. If the licensee were required to present any matter brought to him which was not obscene, etc., the result would be not only chaotic but a wholly different broadcasting system which Congress has not chosen to adopt. *DNC* ruling, *supra*.

Based on the foregoing, we cannot find that the licensee of WTOP acted unreasonably or in bad faith with respect to the fairness doctrine, nor do we believe that its conduct was inconsistent with the principles laid down by the Supreme Court in *Red Lion* or infringed the First Amendment rights of BEM's spokesmen. Accordingly, the complainant's request for relief is denied.

Commissioner Bartley concurring in the result; Commissioner Cox concurring and issuing a statement; Commissioner Johnson dissenting and issuing a statement.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary*.

CONCURRING STATEMENT OF COMMISSIONER KENNETH A. COX

I concur in this action because BEM has not made an adequate showing that its members' views have not been reasonably reflected in matter broadcast by WTOP. It is implicit in this ruling, of course, that if the station had not devoted reasonable time to the issues involved in the Vietnam War—including the positions espoused by BEM—it could have been required to do so. But that marks the extent of its obligation to the public in this regard. To require more would pose serious problems for the continued health of our broadcast system and would clearly discourage the full and effective practice of broadcast journalism. The fact that BEM is willing, if need be, to pay for time to broadcast its views does not alter this. In the first place, if stations were required to carry all spots dealing with controversial issues for which time was ordered, this might occupy much of the time which can be devoted to nonprogram matter and could, in time, impair the effectiveness of the broadcast media for advertising purposes. Furthermore, although BEM is willing to pay, our ruling in *Letter to Cullman Broadcasting Co., Inc.*, FCC 63–849, would subject any station carrying its messages to the risk that those holding contrary views might claim free time for reply. I fully support the *Cullman* doctrine in those cases where broadcasters elect to accept sponsored controversial issue programming or paid spots, but think that to *require* them to accept such matter would unreasonably expose them to erosion of their advertising revenues. I have made it clear that I do not think broadcasters should escalate commercial time or seek to maximize their profits, but our system depends upon profitable commercial operation and I am not prepared to try to change that fundamental fact.

I do not think our ruling should be understood as holding that it would have been contrary to the public interest for WTOP to carry BEM's announcements, as other stations apparently did. While the brevity of the messages makes it impossible for them to develop ideas to any significant degree, I do not think we are in a position to rule that those who oppose the war in Vietnam should be completely barred from using this technique for getting their viewpoints across to the public. But I think their right of access to time on a station which has already adequately treated the war issues and has already reflected a particular claimant's position must depend on that station's willingness to accept such spots, with full understanding of its resulting obligations under the Fairness Doctrine, including the *Cullman* ruling.

FCC 70-861
51940

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

In re Democratic National Committee, Washington, D.C.

Request for Declaratory Ruling Concerning Access to Time on Broadcast Stations.

MEMORANDUM OPINION AND ORDER

(Adopted: August 5, 1970; Released: August 12, 1970)

By the Commission: Commissioner Cox concurring and issuing a statement; Commissioner Johnson dissenting and issuing a statement.

Background—Request and Pleadings

1. On May 19, 1970, the Democratic National Committee (DNC) filed with the Commission a request that the Commission issue a declaratory ruling that "A broadcaster may not, as a general policy, refuse to sell time to responsible entities, such as DNC, for the solicitation of funds and for comment on public issues."[1]

2. DNC seeks a declaratory ruling on these matters because of its desire to purchase time on individual broadcast stations and networks for the purpose of presenting programs and spot announcements of varying duration, some of which would be devoted to the solicitation of funds while others may contain comment on various controversial issues of public importance. The campaign envisioned will, according to DNC, require the expenditure of "thousands of dollars" and thus it seeks assurance that it will be able "to obtain the access to the broadcast media which implementation of the plan demands." It appears that in the latter part of March, 1970, CBS rejected a request by DNC to purchase one-half hour of prime time for the presentation of an issue-oriented program which would have included an appeal for contributions to the Democratic Party. It is said that CBS' position at that time was that it would sell time for political purposes only during election campaigns. DNC also approached NBC and was told that that network would make available prime time for purchase by the Committee for a program presenting the views of the party on important public issues and including a solicitation of funds for the party. It is not clear that DNC approached the ABC network in view of the latter's alleged general policy against solicitation of funds other than for charity and with network approval. By reason of the foregoing and the alleged common policy of individual broadcast stations to decline to sell time for spot announcements or programs for the broadcast of views on controversial issues of public importance or for the solicitation of funds, DNC states that its problem—access to broadcast licensees for the presentation of its programs—can be resolved only through the issuance of the blanket declaratory ruling described in paragraph 1, *supra*.

3. We believe that the policy matters raised by DNC are, to a subtsantial extent, appropriate for consideration and that a full statement of our views will provide helpful general guidance for the public and Commission licensees. We, however, do not believe that all of the various matters raised by DNC are susceptible to the declaratory order sought and we cannot at this juncture rule upon every conceivable factual situation which may arise.

4. In support of its request, DNC has set forth some pertinent financial considerations of present-day political campaigning and the development of a narrow rather than a broad-based financial support of political parties.[2] DNC contends that access to mass media, particularly radio and television, is necessary to attract the attention and seek the support of potential small political

[1] Comments with respect thereto were filed by the American Broadcasting Company (ABC) on June 11, 1970 and by the Columbia Broadcasting System (CBS) on June 22, 1970 and a statement by the National Broadcasting Company (NBC) was filed on June 22, 1970.

[2] For example, in 1968, $90 million was expended on political use of radio and television (equaling about one-third of the total expenditure on political campaigning for the year). See Alexander and Myers, *A Financial Landslide for the GOP*, Fortune, March 1970, pp. 104, 189. Another indicative statistic is the fact that in 1956, only 40% of the contributions to the Democratic Party exceeded $500 whereas the figure had increased to almost 80% in 1968. According to DNC the narrowing of the political contribution base can result in a dangerous concentration of the sources of revenue in special interest groups which, in turn, threatens the entire democratic process.

contributors. It is only in his way, DNC contends, that a healthy political system can function. DNC urges that its proposed broadcast campaign should not be precluded by a variety of differing station and network policies and that the question of access to broadcast media for responsible groups should be subject to a uniform national policy. The arguments advanced by DNC are based upon constitutional, statutory and public policy grounds.

5. The constitutional argument advanced by DNC is essentially that the Supreme Court's decision in *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367 (1969) reaffirmed the public's First Amendment right to hear contrasting views on issues of public importance and "employed language that would extend to members of the public the right of access to broadcast facilities." DNC argues that the network policies of ABC and CBS represent arbitrary barriers to broadcast facilities contrary to the law as expressed in *Red Lion, supra.* DNC suggests that under the *Red Lion* standard reasonable restrictions by broadcasters are permissible—e.g., limitation of use of broadcast facilities to responsible spokesmen and protection against use of facilities for libelous presentations or those in bad "taste."

6. According to petitioner, the overriding public policy consideration requiring the declaratory ruling is that the public airwaves—the most powerful communications medium in our society—which are used to solicit funds for "soaps, brassieres, deodorents and mouthwashes" should be utilized to solicit funds to enhance the exchange of ideas. DNC contends that regardless of whether the Commission issues the declaratory ruling requested, the refusal of a broadcaster to sell time to DNC should be evaluated adversely to such broadcaster at time of renewal. The reason for this, DNC urges, is the importance of the broadcast media to political expression (*Farmers Ed. and Coop Union* v. *WDAY*, 360 U.S. 525, 529–30 (1959)); the public interest consideration inherent in broadcasters making time available for political broadcasts (*Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 20 RR 1901 (1960)); the Commission's prior holding that an arbitrary limitation of coverage of an election campaign prior to the campaign was contrary to the public interest (Citing *Homer R. Rainey*, 3 RR 737 (1947); *City of Jacksonville*, 12 RR 113 180j (1959); and *Loyola University*, 12 RR 1017, 1099 (1956)) and that the Commission's ruling in *Women's Strike for Peace* (letter of November 22, 1965) predates *Red Lion* and, to the extent it conflicts with that decision, is no longer controlling. Finally, DNC notes that it is seeking not a ruling which would require a broadcaster to accept particular programs or announcements, but only that broadcasters may not establish arbitrary barriers to access by responsible groups, such as DNC, contrary to the First Amendment and *Red Lion, supra*, or that the establishment of such barriers is contrary to the public interest.

7. *Response of the Networks:* In response to the DNC request, American Broadcasting Companies, Inc. (ABC) submitted portions of its "standards and policies" (The complete version has been filed in BAL–5733, Exhibit I–B, Attachment B, Section III). ABC recites its standards relating to solicitation connected with appeals for charity (no solicitation without specific permission of ABC) and appeals related to religious broadcasts (solicitation permitted in prescribed manner not here relevant), but states that its policy is not to sell time for solicitation of funds in other situations, absent special public interest considerations. It is ABC's judgment that DNC's request is concerned with "the continued strength and viability of our two party system" and is thus a "special public interest consideration" justifying an exception to its normal policy of not selling time for solicitation purposes.

8. ABC states that with respect to controversial issues of public importance, there are "dozens" of "responsible entities" who would wish to purchase time to present their views "were we to open the door." ABC contends that it would be "reasonable to anticipate a flood of such requests." Thus, ABC states, it will adhere to its general policy against the sale of time for controversial issue programs and announcements. However, ABC under its "special public interest considerations" standard would ". . . be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis."

a. CBS' lengthy response to the DNC complaint advances three major arguments: (1) that DNC has misunderstood CBS' policies relating to presentation of controversial issues and that CBS' policies insure full and fair presentation of such issues; (2) that a regulatory policy which imposes common carrier obligations on broadcasters would be contrary to the public interest; (3) that there is no constitutional or statutory right to compel broadcasers to carry the DNC

programs; and, (4) that such obligation would be contrary to the Communications Act and Commission precedent.

9. With respect to the first major argument, CBS argues that DNC has not alleged violation of the fairness doctrine but rather seeks to take presentations of controversial issues away from the control and supervision of the licensee. CBS states that if licensees were required to permit the purchase of air time for the presentation of views on controversial public issues, the nature of broadcasting would be radically altered to the detriment of fair, objective and balanced information available to the listening public.[3] CBS has followed a policy of refusing the sale of broadcast time for presentations of controversial issues in favor of providing "significant opportunities" for such discussions without charge to proponents of various viewpoints through news and information broadcasts. To sell time for presentations on public issues, argues CBS, would result in the preemption of the limited broadcast frequencies by those with strong financial resources which would "necessarily distort the manner in which issues were presented" to the public. CBS asserts that under its present policies, it provides a "high proportion of direct presentations of views" by "the actors in the events of the day" and thus, aside from fully informing the public of differing viewpoints on controversial issues, also provides an opportunity for those holding differing viewpoints to present their own views. These direct presentations, CBS, notes, are part of its overall effort to inform the public fully and fairly and are not permitted to become an instrument of "partisan advocacy." The First Amendment, CBS argues, is primarily concerned with the right of the public to be informed—as opposed to the right of the public to speak or to be heard.

10. CBS' policy against sale of time for the presentation of views on controversial issues does not apply to broadcasts on behalf of political candidates or ballot propositions. This exclusion is based upon CBS' belief that the intent of Section 315 is to facilitate the discussion of political issues by legally qualified candidates; such political broadcasts may include a direct appeal for funds so long as CBS is not involved in the collection or handling of such funds. CBS also states its intention to permit the purchase of a special category of spot announcement (up to one minute in length) for the purpose of political fund raising which need not be on behalf of political candidates or ballot propositions.

11. With respect to the common carrier argument, CBS states that such a policy would be contrary to the public interest because partisan presentations would diminish the time available for other news, sports and entertainment programs and would result in an "auction" to the highest bidder to determine what issues will be discussed and how such discussion will be conducted. Moreover, CBS queries, would the broadcaster then be responsible for restoring the balance? How would a network choose among competing bidders if not enough time were available for all? What standard is to be used to determine "responsible entities?" CBS argues that DNC's proposal would divest the licensee of responsibility for controversial issue programming and would ultimately require the Commission to make judgments as to the specific programs which are presented or rejected.

12. The legal arguments which CBS advances—i.e., that DNC's request is without constitutional or statutory basis, that Commission compulsion to carry DNC's programs is barred by the Communications Act, and that the action which DNC requests of the Commission is contrary to the Commission's own policy and precedent—are based primarily upon the assertion that no particular person or group has the right to speak over broadcast facilities and that to assert such a right would ultimately require the Commission to assume the role of a censor or arbitor of specific programs, contrary to its long-established policy of avoiding such governmental involvement. CBS asserts that the *McIntire* case[4] stands for the proposition that "broadcasters, though licensed by the Commission and subject to its valid regulations, are not publicly owned facilities, and there is no

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[3] CBS asserts that it has served the public by presenting issues and viewpoints within a balanced program schedule utilizing newsworthiness as the sole criterion. CBS emphasizes the growth of public affairs and news presentations during 1968–69 v. 1956–57—e.g., total hours of news and public affairs broadcasting—1,354 v. 675; prime presentations—192 v. 34; regularly scheduled hard news 6:00 p.m.—11:00 p.m., 338 v. 130; and total hours of news documentaries 100 v. 37. In addition, CBS also presents a comprehensive exhibit to demonstrate the coverage given one of the major issues of the day by CBS and WCBS–TV—the Indochina War and domestic reaction to it. This Indochina exhibit includes a minute and second analysis of CBS' total coverage of this issue and runs over 100 pages.

[4] *McIntire* v. *Wm. Penn Broadcasting Co.*, 151 F.2d 597 (3d Cir. 1945) *cert. den.*, 327 U.S. 779 (1946).

First Amendment right to purchase time on radio or television stations." CBS further asserts that nothing in *Red Lion*[5] indicates that *McIntire* is no longer good law or that, apart from Section 315, there is any legal obligation for broadcast licenses to sell time. Rather, CBS says, *Red Lion* merely sustained long-standing Commission policies which are wholly inconsistent with DNC's request.

13. To accede to DNC's request, CBS argues, would violate Sections 3(h) and 326 of the Communications Act, which taken together establish that the licensee—not the Commission—is to exercise the power of program selection. The right of *personal* reply to material previously selected for broadcast is limited to equal opportunity for political candidates, replies to personal attacks and replies to station political endorsements. CBS contends that the legislative history of the Communications Act supports its assertion that the statutory scheme envisions a system in which the broadcaster is left with the initiative of assuring that programs presented are in the public interest.

14. Finally, CBS asserts, DNC's request is "fundamentally inconsistent" with the concept of licensee responsibilities and specifically, contrary to the Commission's prior holdings that "the Commission has no power to require a broadcaster to carry or refrain from carrying any particular program, or to prescribe the content of any program presented over the aid." Letter to *Women's Strike for Peace*, November 22, 1965.[6] Nothing in the *Red Lion* decision, *supra*, states CBS, indicates that the Court contemplated the abandonment of "traditional FCC fairness policies" and the adoption by the FCC of a common carrier theory as set forth in the DNC request.

15. NBC has no policy which would prevent the purchase of program time envisioned by DNC or the solicitation of funds for the party during such a program. DNC states that it is not clear whether NBC would permit short spot announcements designed for the solicitation of funds for a party, but this simply points up the desirability of a concrete factual situation—namely, of DNC making a specific request, instead of the general, more vague approach which it has taken here.

Discussion

Part I—The right of responsible entities to purchase time for comment on public issues

16. The DNC petition raises two separate questions: (i) the asserted right of political parties to purchase broadcast time to solicit funds, and (ii) the asserted right of responsible entities to purchase time for comment on public issues. In this Part I, we deal with the second question.

17. That question goes to the heart of the system of broadcasting which has developed in this country—i.e., the licensing of private entities under the public interest standard. While the issues raised by the DNC petition are fundamental, they are not open. They have long been settled adversely to the DNC position, by the statute, by the Commission, and by the Courts. We shall discuss the present systems and its statutory support, the relevant precedents, and the policy considerations.

18. The system which Congress has evolved has been described in full in the landmark decisions in this field—*NBC* v. *U.S.*, 319 U.S. 190 (1943), and *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367 (1969). We shall not repeat that discussion here. It is sufficient to note that it is based upon the unique nature of radio—that "unlike other modes of expression, radio inherently is not available to all. Because it cannot be used by all, some who wish to use it must be denied." (*NBC* v. *U.S.*, *supra*, at 226.)[7] To resolve the chaotic situation which had resulted, Congress decreed a system of licensing private entities for short terms, upon the condition that their operations serve the public interest. It is thus incumbent upon these public trustees to fashion schedules which do not meet the needs and interests of the public. To do so, the broadcaster must allocate programming among the several categories (e.g., entertainment, instruc-

[5] *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969).

[6] To support this proposition, CBS also cites *McIntire* v. *Wm. Penn Broadcasting Co.*, *supra*; 1949 *Editorializing Report*, 13 FCC 1246; 1960 *Report and Statement of Policy in the En Banc Programming Inquiry*, 25 Fed. Reg. 7291 (Aug. 3, 1960); and letter to *Judy Collins*, Mar. 24, 1970.

[7] The Court recently reaffirmed this vital distinction in *Red Lion* (*supra*, at 388):
"Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."

tion, news, public affairs) and, within those categories, must choose among the many competing requests for air time. See *Report on Editorializing*, 13 FCC 1246, 1247–48 (1949). However, there is one special obligation which the Commission has stressed—that broadcasters must ". . . 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" (*id.* at p. 1249). Indeed, the Commission has stressed that it has allocated so much spectrum space to broadcasting, basically because of the great contribution which broadcasting can make to an informed public opinion on the vital public issues of the day. *Ibid.*, *Storer Broadcasting Co.*, 11 FCC 2d 678. It follows that the Commission can and must require the achievement of that allocation purpose by its broadcast licensees. See Section 303(b); *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, *supra*, at p. 394. In short, as stated by the Court in *Red Lion*, *supra*, at p. 394, the licensee is ". . . given the privilege of using scarce radio frequencies as proxies for the entire community, obligated to give suitable time and attention to matters of great public concern."

19. The Commission has consistently made clear that with some exceptions not here pertinent, the licensee has discretion in discharging that obligation. Thus, in its basic *Editorializing Report*, the Commission 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 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. . . ."

This same policy is set out in the Commission's 1964 *Fairness Primer*, 29 Fed. Reg. 10415, 10416; cf. also 1960 *Programming Statement*, 25 Fed. Reg. 7291 (1960). In line with these general precepts, we have consistently held, in case after case, that with certain exceptions not here involved, no individual has a right to express his particular views by means of a broadcast facility.[8]

20. While the licensee thus has considerable discretion in discharging "the twofold duty" stated in *Red Lion*, *supra*, at 377—to devote a reasonable amount of time to public issues and to do so fairly—that discretion must be exercised consistent with the public interest standard. The most basic consideration in this respect is that the licensee cannot rule off the air coverage of important issues or views because of his private ends or beliefs. As a public trustee, he must present representative community views and voices on controversial issues which are of importance to his listeners (*Red Lion*, *supra*, at 389, 390, 394). This means also that some of the voices must be partisan. A licensee policy of excluding partisan voices and always itself presenting views in a bland, inoffensive manner would run counter to the "profound national commitment that debate on public issues should be uninhibited, robust, and wide-open." *New York Lines Co.* v. *Sullivan*, 376 U.S. 254 270 (1964); see also *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367, 382 (n. 18) (1969); *Storer Broadcasting Co.*, 11 FCC 2d 678 (1968); *Anti-Defamation League of B'nai B'rith*, 9 FCC 2d 190, 191 (1966), affirmed *Anti-Defamation League* v. *F.C.C.*, 403 F. 2d 169, 170 (1968) (C.A.D.C.), *cert. den*, 394 U.S. 930 (1969). In sum, as stressed in the *Editorializing Report*, *supra*. at p. 1249:

"It is this right of the public to be informed, rather than any right on the part of the government, and 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."

See *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, *Supra*. at p. 390:

"It is the right of the public to receive suitable access to social, political. esthetic, moral and other ideas and experiences which is crucial here."

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[8] *Dowie A. Crittenden*, 18 FCC 2d 499 (1969); *Mrs. Margaret Z. Scherbina*, 21 FCC 2d 141 (1969); *Democratic State Central Committee of California*, 19 FCC 2d 833 (1968); *Boalt Hall Student Association*, 20 FCC 2d 612 (1969); *Mrs. Madalyn Murray*, 40 FCC 647 (1965).

21. With this as background, we turn to the DNC petition. That petition seeks to overrule the above policy and to require licensees to sell time to any responsible entity to comment on a public issue. Usuing the CBS response as an example, we note that it would require a holding that CBS' policy in this area is inconsistent with the public interest, because although it recognizes its obligation to devote a reasonable amount of time to controversial issues of public importance (and has submitted a showing of its increasing efforts in this respect, including during prime time hours), and to do so fairly by providing ". . . significant opportunities for such [broadcast] discussion without charge to partisans of various viewpoints in [its] news and information broadcasts" (p. 3, CBS Response), CBS will not sell time for the expression of viewpoints on public issues (with the exception of political broadcasts). It is important to bear in mind that DNC has not alleged that CBS or any other licensee has failed to discharge the above-noted obligations of the fairness doctrine. Thus, what is involved in the DNC request is a question whether there is a right of access to broadcast facilities by "responsible entities" over and beyond the fairness doctrine right of the public to be informed.

22. The DNC position—that the licensee, upon request, must sell time to any responsible entity for comment on public issues—runs counter to the statutory language and the legislative history. That history shows that Congress specifically debated and rejected the idea of the licensee being required to act as a common carrier with respect to transmission of comment on public issues. See Sen. Rep. No. 772, 69th Cong., 1st Sess., p. 4; 67 Cong. Rec. 5560–5561, 12501, 12504. The Act reflects this. Section 3(h) states that a broadcast shall not be deemed a common carrier. Section 315(a) sets out the pertinent statutory standard—that the licensee must operate in the public interest and must afford reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance. This language cannot be squared with the DNC position; had Congress adopted such a position, the statutory prescription would have been entirely different (e.g., . . . "including the sale upon request of time to resopnsible entities for presentation of a viewpoint on controversial issues of public importance"). The legislative history makes clear that the language of Section 315(a) is a "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H. Rep. No. 1069, 86th Cong., 1st Sess., p. 5 (1958)—that is, as the legislative history shows, the principles set forth in the basic *Editorializing Report*. That this is the statutory scheme is further shown by the consideration of the second sentence of Section 315(a)—that "no obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate." The purpose of this provision is to make clear that the broadcaster is not a common carrier as to political broadcasts—that he may exercise discretion as to the time to be afforded broadcasts by candidates. See *Memorandum of F.C.C.*, Hearings before the House Subcommittee of the Interstate and Foreign Commerce Committee, 88th Cong., 1st Sess. on H. J. Res. 247, pp. 84–90 (1963) (to the effect that while the licensee has discretion, he cannot adopt a policy of not devoting a reasonable amount of time to political broadcasts). It would make no sense to hold that the licensee has discretion whether or not to sell time for the most important controversial issue programming of all-the political broadcast by the candidate (see discussion within as to the preferred position of such programming), but has no such discretion as to other controversial issue programs (e.g., by a candidate's supporters; by partisans of a particular viewpoint on some public issue).

23. The administrative and judicial precedents reflect the statutory scheme. The Commission's pronouncements are long established and consistent. See, e.g., *Report on Editorializing*, 13 F.C.C. 1246, 1249 (1949); 1960 *Programming Statement; Women's Strike for Peace*, November 22, 1965. The court cases are to the same effect. *McIntire* v. *William Penn Broadcasting Co.*, 151 F. 2d 597, 600–601 (C.A. 3), *cert. den.* 327 U.S. 779; *Massachusetts Universalist Convention* v. *Hildreth and Rogis Co.*, 183 F. 2d 497, 501 (C.A. 1). DNC argues that these cases are no longer relevant in light of the Court's decision in *Red Lion*, and that that decision establishes the correctness of its position. We do not so read *Red Lion*. The Government's brief pointed up the nature of the licensee's responsibility under the *Editorializing Report*, *supra*, at pp. 14–17, 31–32, and the Court recognized the report "as the principal summary of [the Commission's] *ratio decidendi* in cases in this area" (p. 1251). The Court at the outset noted "the twofold duty" imposed by the *Editorializing Report* and the manner in which the obligations under the general fairness request differed from those under the personal attack

corollary (pp. 371–379).[9] The Court's decision is based, we believe, on this foundation. The thrust of that decision is not that the broadcast licensee is a common carrier, required to sell time to all comers on public issues, but rather that he is a public trustee—a proxy—who must present *representative* community views and voices on controversial issues. The Court's decision thus stresses the right of the public to be informed—not the right of the broadcaster or any individual or group to speak over broadcast facilities. The private censorship by broadcasters which the Court rules out is that which would prevent the presentation of representative community views or voices.

24. There are strong policy arguments in support of the Congressional scheme. We have noted that broadcasting is inherently not open to all (paragraph 18, *supra*). That is true equally with respect to the common carrier access approach urged by DNC. The result could well be a return to the chaotic situation of radio's early days. Since the broadcast medium is a limited one, the amount of time to be devoted to public affairs—as against the other needs and interests of listeners—is also limited. This balance between the categories could be drastically skewed by a requirement that the broadcaster must make available time slots for the discussion of a controversial issue. Further, the public's agenda for discussion of public issues would then be set substantively and increasingly by the affluent—by the person or group which ". . . has the financial resources and interest to purchase sustained access to the mass communications media . . ." (*Banzhaf* v. *F.C.C.*, 405 F. 2d 1082 (C.A.D.C. 1968), *cert. den.*, 396 U.S. 842). Since the amount of broadcast time for discussion of controversial issues is limited and since the licensee must afford reasonable opportunity for discussion of both sides, the purchase of substantial blocks of time for a campaign by, say, the oil industry to discuss the issue of the oil depletion allowance would impose the burden to present reasonably the other viewpoint, and in turn would inevitably cut down on the amount of time for discussion of other issues. But we believe that such allocations of limited time are to be made on the basis of the *public* interest—not that of any private group, however powerful or affluent. Further, the public trustee would lose control over the important aspect of the manner in which the public is to be informed. We recognize that in some instances short spot announcements may serve a useful purpose in this area (see *infra*, p. 17). But we have also pointed up the limitations as to many issues of this manner of informing the public. See e.g., Hearings before the Senate Commerce Committee, H.R. 6543 (1969), pp. 142–143; *Voters Time Rept.*, p. 15. A licensee which reasonably made the judgment that an issue was too complex to be discussed in a 30-second commercial—that "hawking" the issue like a soap did not serve the public interest—would find that judgment frustrated by the DNC policy; it would be required to sell the spots and ordered to make time available to opponents on a similar basis. See *Cullman Broadcasting Co.*, 40 FCC 516 (1963); *KING Broadcasting Co.*, 10 FCC 2d 968, 970 (1967).

25. This last point—the application of *Cullman*—merits further discussion. The *Cullman* principle was developed to deal with the situation where the broadcaster has sold time to one side to present its views, has not presented or made plans to present the contrasting viewpoints, and rejects programming which he deems suitable to present those viewpoints, unless the party offering such programming will pay for its presentation. We held that the licensee could not properly insist upon payment in such circumstances. The paramount public interest, we stressed, is the right of the public to be informed. The licensee has adjudged that an issue is of importance to its area by presenting the first viewpoint; that being so, the public's right to hear the other side cannot turn on whether the licensee received money.[10] This approach perfectly fits the public trustee concept. It does not fit a common carrier approach. For under the latter system, the licensee has to sell the time, no matter the amount, and then finds himself having to afford free time to the proponents of the contrasting viewpoint, again no matter what the effect on his ability to serve the public interest.

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[9] Thus, the Court stated:
"These personal attack and political editorializing obligations differ from the general fairness requirement that issues be presented, and presented with coverage of competing views, in that the broadcaster does not have the option of presenting the attached party's side himself or choosing a third party to represent that side. But insofar as there is an obligation of the broadcaster to see that both sides are presented, and insofar as that is an affirmative obligation, the personal attack doctrine and regulations do not differ from preceding fairness doctrine." *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. at 378.

[10] For the different application of *Cullman* to the political broadcast field, see *Letter to Nicholas Zapple*, FCC 70–598 (1970).

Further, under a common carrier approach, each side is usually relegated to purchase, with no "*Cullman*" rights. We believe that *Cullman* is a correct and sound doctrine which ties in with the public trustee concept and best serves "the public interest in the larger and more effective use of radio" (Section 303(g)).

26. In connection with the above discussion, we should note that there is of course no Commission policy thwarting sale of time to comment on public issues. Licensees are free to do so, with the caveat that the fairness doctrine, including the *Cullman* aspect, must be observed. The critical issue is whether the licensee, to discharge either of "the twofold duties" noted at the outset—to devote a reasonable amount of time to issues of public importance and to do so fairly—must sell some time to comment on public issues. The foregoing discussion makes clear that the licensee need not do so. If, for example, CBS chooses not to sell time but rather to fulfill its obligation on a sustaining basis in the manner disclosed in paragraph 9, *supra* (e.g., to provide significant free opportunity for partisan presentations), that choice is within its discretion. What is crucial is that the licensee does meet its obligation "to operate in the public interest and afford reasonable opportunity for the discussion of conflicting views on issues of public importance" (Section 315(a).)

27. Finally, we point out that the Commission does recognize the importance of fostering "a multitude of voices" in the discussion of public issues. Thus, it sought to promote the growth of FM radio, UHF television, and noncommercial educational broadcasting, and is seeking to promote a new technology which can make a most significant contribution in this respect—cable television. Because of the potentially great number of channels, cable opens up the possibility of common carrier channels, public access channels, etc. See Notices of Proposed Rule Making in Dockets No. 18397A and 18874, 23 F.C.C. 2d , released July 1, 1970. But the policy in the broadcast field is shaped by the inherent characteristics of that field. As we have shown, that policy is based on the right of the electorate to be informed, and is an issue-oriented "right of access," not the right of any individual to access.

28. At the risk of some repetition (see particularly pars. 24, 25), we believe it appropriate to take up the position set forth in the dissent of Commissioner Johnson.[11] We cannot accept the position of the dissent that the course we are taking conflicts with the First Amendment. As we understand it, the dissenting opinion of Commissioner Johnson urges that the operation of a broadcast station is analogous to the administration of a public facility, such as a park or a municipal bus (whether publicly or privately owned), and that once the facility is appropriately opened for the expression of views on public issues or commercial advertisements, it is a denial of First Amendment rights to reject or censor a proferred announcement constituting constitutionally protected speech by one willing to pay the customary rate, if there is ordinarily a charge. While we need not disagree with the premise that the Commission's regulation of broadcast stations under the Communications Act must meet First Amendment standards, we think that the dissent—because it ignores established First Amendment policy in this area—posits a non-existent individual right of access to broadcast facilities.

29. First of all, to the extent that the dissenting opinion urges a near-absolute right of any person who has the money to buy time, it would create a common carrier situation which Congress after due deliberation specifically rejected in Section 3(h) of the Communications Act, 47 U.S.C. § 153(h). Apparently recognizing this collision with the statute, the dissent states (page 25) that Congress and the Commission have permitted a form of private censorship which is inconsistent with the First Amendment. We must note in this connection that it is beyond the power of an administrative agency to declare its governing statute to be unconstitutional. *Central Nebraska Pub. P. & I. Dist.* v. *Federal Power Commission*, 160 F. 2d 782, 783 (C.A. 8, 1947). However, if that infirmity did not exist, we would have no constitutional qualms about our present decision.

30. In its assertion of the unconditional (except for suggested reasonable limitations on time, place and manner)[12] right to buy time, the dissenting opinion takes no account of the basic, constitutionally valid policy of the Communications Act that because radio is "inherently not available to all," *National Broadcasting*

[11] That dissent is addressed also to the Commission's decision in the *BEM* case, F.C.C. 70, issued this day. Our discussion here is of course equally applicable to the *BEM* case, and we so stated in that opinion.

[12] The dissent also mentions quality standards, an exception which is hardly consistent with its argument.

v. *United States*, 319 U.S. 190, 226, there is a public duty adhering to the acceptance of a license to give adequate coverage to public issues which reflects opposing viewpoints, if necessary at the broadcaster's own exepnse. *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367. See also 47 U.S.C. § 315(a). As *Red Lion* makes clear, the licensee is a fiduciary with obligations to present views and voices which are representative of his community. It is through this basic approach that the paramount right and interest of the public to be fully informed is protected. The operator of a public park or transit system has no such obligation; if the analogy offered by the dissent were valid, a broadcaster would be free to present only one side of every public issue so long as he did not reject any one who chose to speak. There would be no obligation to present the other side, let alone the obligation imposed by *Cullman Broadcasting Co.*, 25 R.R. 895 (1963) to put on an opposing view without charge. It is clear, therefore, that the analogy to other types of facilities that carry speech to the public, or furnish a place for speech, is fatally faulty.

31. Furthermore, the dissent fails to be adequately specific in detailing the types of limitation which it would permit as inroads to the general principal of an absolute right of access. Presumably, the licensee would not have to turn over all of its time on a first come, first served basis, for this would mean that the issues discussed and the persons speaking would be governed entirely by money. But even if the dissent would permit the licensee to specify amounts of time and issues, the suggested system would appear to be unsound. First of all, the individual right upon which the whole dissent is premised would largely disappear. No person would have the right to discuss an issue of his choosing, at the time of his choosing, and for a duration of his choosing. How could the licensee validly determine that a particular speaker could effectively make his argument in 10 minutes, 5 minutes or a 30-second spot? Yet such determinations would be required. We have said that a licensee may reasonably determine that a position on a complex issue should not be peddled like soap in a few seconds. The dissent would presumably upset that ruling—to what purpose? Beyond these questions is the more important difficulty that depriving the licensee of the discretion to choose representative spokesmen on controversial public issues [13] would lead us to a first come, first served platform dominated by financial considerations—the very result the dissent seeks to avoid and something the Supreme Court has already stated to be undesirable in *Red Lion*.

32. In short, we think the present system of regarding licensees as trustees, *McIntire* v. *William Penn Broadcasting Co.*, 151 F. 2d 597 (C.A. 3, 1945), *cert. den.* 327 U.S. 779, with a duty to present contrasting viewpoints through representative spokesmen, is constitutionally sound and of greater public benefit than the concept of an individual right of access, which as we have shown has great drawbacks in the broadcast field.

Part II—The right of political parties to purchase broadcast time to solicit funds [14]

33. In view of the positions now taken by the three major networks (the only parties whose policies were singled out by DNC were CBS and ABC), no extended discussion is called for in this Part.

34. NBC has stated that it has no policy against the sale of time to a major national political party, to be used for the solicitation of funds for the party, including during non-campaign periods. CBS initially rejected the DNC request since it occurred outside an election campaign, but has now revised its policy to permit the purchase during any period by a political party of spot announcements (not to exceed one minute in length) designed to solicit funds for the party. ABC set forth its policy that "absent special public interest considerations, ABC will not sell time for comment on controversial issues or for solicitation of funds" (p. 3, ABC of June 10, 1970, to William B. Ray), but then stated:

[13] There could be a case where the licensee's policy in this area would be arbitrary (e.g., where he covers the issue, and in announcements of a few seconds duration, and then refuses to let others discuss the issue on this basis). No such case is or has been before us. We have ruled on the assertions of DNC and BEM of general entitlement to time to discuss public issues. Our holding is in that context.

[14] While the DNC petition is couched in terms of selling time to "responsible entities" to solicit funds, the petition before us is that of a political party and our discussion here is confined to purchase of time by such parties for solicitation of funds.

> The continued strength and viability of our two party system are of vital importance. ABC has emphasized in recent Congressional hearings the importance of a wider base for political contributions—small sums from millions of Americans rather than large contributions from a few.
>
> * * * * * * *
>
> Because the strength and viability of the major political parties are vitally important, ABC would be prepared, consistent with its other obligations, to accept such orders for time from major political parties as can be accommodated on a reasonable basis. At the same time, we propose to continue our general policy against the sale of time for controversial issue programs and announcements and solicitations for funds, absent special public interest considerations.

ABC then invited the Commission to address itself to its proposed treatment of the case.

35. We concur in that treatment. We note that Congress has singled out the presentation of the political broadcast as a particularly important aspect of the licensee's public interest obligation. See Section 315(a), *Farmer's Union* v. *WDAY*, 360 U.S. 525, (1958) (citing F.C.C. cases); F.C.C. Memorandum on Second Sentence of Section 315(a), Hearing before Subcommittee of Interstate and Foreign Commerce Committee, 88th Cong., 1st Sess., on H.J. Res. 247, pp. 84–90. It also requires no discussion to establish that political parties are an integral part of our democratic process and that it serves the public interest to promote the widest possible support by citizens of the party of their choice. See *Voters Time Rept.*, The Twentieth Century Fund (1969), pp. 45–47.

36. In a 1963 ruling, *Letter to Lawrence M. C. Smith*, 40 F.C.C. 549, we sought to encourage the presentation of free broadcast time for this purpose stating:

"First, we recognize that the announcements described by you constitute an effort to achieve the worthwhile and commendable goal of broadening the base of political contributions. The importance of this effort was recently emphasized when, on May 29, 1962, President Kennedy transmitted to the President of the Senate and the Speaker of the House of Representatives legislation designed to carry out five of the important recommendations contained in the 'Report on the President's Commission on Campaign Costs.' In his letter of transmittal, the President stated, among other things:

> 'In these days when the public interest demands basic decision so essential to our security and survival, public policy should enable presidential candidates to free themselves of dependence on large contributions of those with special interest. Accordingly, it is essential to broaden the base of financial support for candidates and parties. To accomplish this, improvement of public understanding of campaign finance, coupled with a system of incentives for solicitation and giving, is necessary.'

"Furthermore, your proposal has on objective, in common with the broad policy underlying the 'fairness doctrine'—the right of the public in a free society to be fully informed as to controversial issues of public importance, including those involving political parties and candidates. See paragraph 6 of enclosed *Editorializing Report*.

"Second, the question whether to present such announcement is one for the licensee, who is faced with many competing requests to allocate time for public service announcements. The Commission of course expresses no opinion as to how that time should be allocated. But the announcements in question should not be rejected upon the sole ground that the licensee would have to be fair in their presentation." *Lawrence M. C. Smith*, 25 Pike and Fischer Radio Reg. 291, at 293 (1963).

37. Whether such time is afforded on a free basis is a matter for the judgment of the licensee. The issue here is whether the licensee may adopt or follow arbitrary policies with respect to the sale of broadcast time to significant political parties for the solicitation of funds. Thus, the prior CBS policy of confining such sales of time to election periods would appear arbitrary, since the need for the widest-possible financial support for political parties is not confined to such periods; and indeed we note that CBS offered no reason for such a distinction.

38. In this connection, we note that affording time for such solicitations does not raise any offsetting considerations, because of the combined force of a number of factors:

(i) This area can be appropriately singled out, since Congress has singled it out for special attention by broadcast licensees;

(ii) This would appear particularly to be an area where the relatively short announcement, limited very largely to fund solicitations, is both effective and appropriate.[15]

(iii) Theere is no problem under *Cullman*. For, in this regard the principles set forth in *Letter to Nicholas Zapple*, FCC 70–598 (1970), would govern.

CONCLUSION

39. In view of the foregoing, the request of the DNC and ABC for a declaratory ruling is granted to the extent reflected in Part II and in all other respects, is denied.

BEN F. WAPLE, *Secretary.*

CONCURRING STATEMENT OF COMMISSIONER KENNETH A. COX

I concur. The essence of the holding as to sale of time for the discussion of controversial issues—as of the *Red Lion* and *Cullman* cases—is that a broadcaster *must* devote substantial time to the presentation of news and public affairs programming dealing with the principal issues of his area. He can sell time for this purpose—subject to *Cullman*—but we will not require him to do so against his wishes. Or he can—and this is generally to be preferred—give time for both sides. I *assume* here that the networks have given, or will give, adequate time for discussion of the key partisan political issues of our time. If not, then we must hold them to that obligation.

I therefore concur generally in this action, except for the matter contained in Paragraph 27.

FCC 70–881
52120

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION, WASHINGTON, D.C.

In re Complaints of Committee for the Fair Broadcasting of Controversial Issues, against Columbia Broadcasting Systems, Inc., (WCBS–TV, Channel 2), New York, N.Y., and Broadcast-Plaza, Inc., (WTIC–TV, Channel 3), Hartford, Conn.

Fourteen U.S. Senators, against National Broadcasting Co., Inc., Columbia Broadcasting Systems, Inc., and American Broadcasting Co., Inc.

Business Executives Move for Vietnam Peace (Los Angeles Chapter), against National Broadcasting Co., Inc., Columbia Broadcasting Systems, Inc., American Broadcasting Co., Inc., and Stations KNXT, KABC–TV, and KNBC, Los Angeles.

In re Petition of Republican National Committee for relief against Columbia Broadcasting Systems, Inc.

In re Complaint of Eleven U.S. Senators against National Broadcasting Co., Inc.

MEMORANDUM OPINION AND ORDER

(Adopted: August 14, 1970; Released: August 18, 1970)

By the Commission: Commissioners Burch, Chairman and Robert E. Lee issuing separate statements; Commissioner Bartley dissenting; Commissioner H. Rex Lee dissenting and issuing a statement; Commissioner Johnson concurring and issuing a statement; Commissioner Wells not participating as to Dale Petition.

1. The Commission has before it a series of separate complaints and petitions relating to alleged violations of the fairness doctrine by various television networks, their owned and operated stations and individual network affiliated stations in their coverage of issues relating to the war in Southeast Asia (also

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[15] Of course, the licensee may exercise judgment as to how to present these solicitations for funds, and can afford more extensive programming time, if he so chooses. Indeed, we stress again the considerable discretion of the licensee, consistent with the obligations of the fairness doctrine, as to the various facets such as number, placement, length, etc. *Cf. Lawrence M. C. Smith,* 40 FCC 549.

referred to as the Indochina War).[1] We will first summarize the issues raised by the pleadings and then turn to discussion of the matters raised.

Summary of Pleadings

2. *The Committee for the Fair Broadcasting of Controversial Issues* (Committee) filed a "Complaint, Petition for Issuance of Order to Show Cause to Cease and Desist and Request for Expedited Disposition" on May 25, 1970, directed against stations WTIC–TV, Hartford, Connecticut, and WCBS–TV, New York City, for violation of Section 315 of the Act and the Commission's fairness doctrine. Specifically, both stations are alleged to have failed "to afford a fair and reasonable opportunity for the balanced presentation of the contrary views when the President of the United States addresses the Nation on television on the Administration's policies in Southeast Asia." [2]

3. The Complaint: Between November 3, 1969, and April 30, 1970, the President presented his views on the war in Southeast Asia (including the issues of the origins of the war, the alternative courses of action available, "Vietnamization," rate of U.S. troop withdrawal, American incursion into Cambodia) on four separate occasions [3] with wide prior publicity. The speeches were broadcast during prime time and varied in length from 15 to 30 minutes. The President entertained no questions before, during or after the speeches; the presentations were not interrupted in any other manner; and the President's remarks were broadcast live and complete. The Committee contends that neither WTIC–TV nor WCBS–TV has presented any program which presented contrasting viewpoints on the issues the President addressed and which received significant prior publicity, was broadcast nationwide on network owned and operated and affiliated stations during prime time and had the same uninterrupted orderly exposition on a single issue or set of issues. The Committee contends that the programming concerning the Vietnam-related issues presented by WTIC–TV and WCBS–TV is, in and of itself, balanced.[4]

4. The Committee asserts that its members, as part of the listening public of WTIC–TV and WCBS–TV, have not been given reasonable opportunity to effectively hear the presentation of conflicting views on issues of public importance in accordance with their rights as set forth in *Red Lion Broadcasting Co., Inc.* v. *F.C.C.*, 395 U.S. 367 (1969), *Controversial Issue Programming—Fairness Doctrine*, 3 RR 2d 163 (1964), and *Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949). Petitioner emphasizes that its request is not intended to inhibit television coverage of Presidential speeches, but rather to insure that licensees fulfill their "conscious and positive role in bringing about balanced presentation of the opposing viewpoints." *Editorializing Report*, *supra*, at 1251 (paras. 9, 13). The Committee asserts that WTIC–TV and WCBS–TV have failed to comply with the fairness doctrine, notwithstanding the wide discretion permitted the licensee to choose the precise means of achieving compliance bound by standards of reasonableness and good faith. The Committee's argument is that the licensees acted *unreasonably* by failing to exercise the discretion afforded them and thus not attempting to present any program in conflict with the views expressed by the President. The licensees' performance, the Committee asserts, demonstrates a failure to undertake the affirmative responsibility necessary to meet "minimal standards of fairness." The fairness violation, the

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[1] The pleadings before the Commission are listed in the attached Appendix.

[2] Committee for Fair Broadcasting did not initially contact WCBS–TV and WTIC–TV to ascertain their plans for future coverage of the issue. Such prior contact between complainants and licensees is strongly encouraged to ascertain whether a controversy exists and to sharply narrow and delineate the issues involved. (See Fairness Primer, 29 Fed. Reg. 10416 at Part I.) In the case of the Committee's complaint we will consider the matters raised because of the similarity to the complaints of the Amendment to End the War Committee and the Business Executives Move for Vietnam Peace where the normal prior consultation procedures were followed.

[3] In the November 3, 1969 speech the President discussed the historical background of American presence in S.E. Asia, outlined the "Vietnamization" program, including troop withdrawals and training progress of Vietnam army, and the course of negotiations. On December 15, 1969, the President presented a "progress report" and announced 50,000 American troops would be withdrawn. On April 20, 1970, the President gave another "progress report" on the Vietnam situation, spoke of the "substantial increase" of enemy activity in Laos and Cambodia and announced an additional troop withdrawal of 150,000 in the next year. Finally, on April 30, 1970, the President announced the entry of American troops into Cambodia. The Committee's pleading was filed prior to the President's speech of June 3, 1970.

[4] E.g., Face the Nation—10 guests favoring Administration policy and 8 opposed; documentaries are internally balanced with both proponents and opponents included in each show.

Committee argues, has been repeated through the series of Presidential speeches presented by each station. The Committee seeks issuance of an order to show cause why the Commission should not require the stations in question to cease and desist from their violation and failure to observe the provisions of Section 315 and the fairness doctrine in their coverage of additional Presidential speeches concerning the Indochina War.

5. In response WCBS–TV and WTIC–TV submit that they have fairly and fully covered the Vietnam War, the Cambodian incursion and the Administration's war policy in their overall programming. Both stations have submitted exhibits showing extensive news, discussion, interview and documentary coverage of the issues cited by the Committee and contend that their performance cannot be assessed simply in terms of their coverage of the President's addresses, but must be viewed in an overall, issue-oriented context. Moreover, the stations assert, the Committee's protestations to the contrary notwithstanding, the Committee's complaint represents an attempt to apply the "equal opportunities" concept to the fairness doctrine rather than the "reasonable opportunities" concept which has traditionally prevailed. Such a "radical extension," the stations argue, would be beyond the Commission's authority. Finally, WTIC–TV contends that the Committee's objections go to network programming and thus their relief must come from the same source;[5] WCBS–TV contends the allegations are too vague and general to demonstrate violation of the fairness doctrine.

6. *The Amendment To End the War Committee and Fourteen U.S. Senators,*[6] have filed a complaint alleging violation of the fairness doctrine by the three major television networks and their owned and operated stations in their coverage of the President's speeches on the war in Indochina. The Senators are all sponsors of Senate Amendment No. 609, the "Amendment to End the War." The President's five speeches on the Indochina war since November 1969, represents a "series" of programs,[7] petitioners state, which have not been balanced by a "similarly effective presentation of the views of the major Congressional opponents of the President's war policy." Petitioners argue that the President's speeches have presented one side of controversial issues of public importance (e.g., Presidential power to conduct the war; role of Congress in making foreign policy; criticism of Senators opposing the President's war policies; criticism of the McGovern-Hatfield Amendment and the conduct and progress of the war). In sum, petitioners raise the same type of objection raised by the Committee for Fair Broadcasting (paras. 2-5, *supra*)—i.e., the simultaneous dissemination of the President's uninterrupted views by the three major networks in prime time cannot be offset by the internally balanced programs, fragmented news presentations regularly broadcast by the networks and the structural interview programs which do not permit participants to deliver prepared statements of position.

7. Petitioners stated that all three networks have refused the request of the Fourteen Senators for free prime time to respond to the President and have also refused to sell time for that purpose.[8] Petitioners request that the Commission "require networks to provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issue, and the President has initiated debate via national television."[9] Petitioners state that they recognize that some inequity in responding to the President will exist and therefore do not request simultaneous three network

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[5] The licensee is ultimately responsible for assuring that fairness is achieved over the station's facilities; whether this is done through local or network programing is of no moment insofar as the individual station's compliance is concerned.

[6] Harold E. Hughes (D-Iowa); George McGovern (D-S. Dak.); Mark O. Hatfield (R-Oreg.); Charles E. Goodell (R-N.Y.); Alan Cranston (D-Calif.); Birch Bayh (D-Ind.); Frank Church (D-Idaho); Thomas F. Eagleton (D-Mo.); Mike Gravel (D-Alaska); Fred R. Harris (D-Okla.); Philip A. Hart (D-Mich.); Edward M. Kennedy (D-Mass.); Lee Metcalf (D-Mont.); Gaylord Nelson (D-Wis.).

[7] Petitioners term the President's speeches a "series within the definition used in the Commission's Notice of Proposed Rulemaking, Docket No. 18859, 35 Fed. Reg. 7820 (1970) "a series of broadcasts . . . more than one within a reasonably close time period (from 6–9 months or less).

[8] NBC permitted the Committee to purchase one-half hour on May 12, 1970, but refused the same entity's subsequent request on June 3, 1970. The program produced for the NBC slot on May 12 was later broadcast by some local stations including WTOP–TV, a CBS affiliate. We have considered the question of purchasing time for the presentation of controversial issues discussion in three rulings released Aug. 12, 1970: Friends of the Earth (FCC 70–862), Business Executives Move for Vietnam Peace (FCC 70–860) and Democratic National Committee (FCC 70–861).

[9] The obligation petitioners seek to enforce would not be satisfied by granting time to the "loyal opposition" party—since, it is argued, conflicting views on *issues* do not necessarily break down on party lines.

prime time—they would accept individual prime time allocations from each of the three major television networks equalling the frequency of the President's appearances. Commission action is necessary, petitioners argue, because the broadcast media cannot be expected to mediate a dispute between two branches of the government and determine the amount of coverage which the position of each is given.[10] In contrast to the complaint of the Committee for Fair Broadcasting petitioners seek response time for themselves and state that the Senators are the most appropriate respondents to the Presidential addresses.

8. Aside from the requirements of the fairness doctrine, petitioners contend that the relief they seek is dictated by the First Amendment which by judicial interpretation precludes private as well as governmental censorship when the avenues of use are controlled by a few private licensees. To support this theory, petitioners rely primarily upon the *Red Lion, supra*, decision as applying numerous First Amendment cases to the broadcast media. Moreover, petitioners contend that the Senators must appear personally to preserve the First Amendment values involved because of the "impact far beyond the same words spoken by another man" which a Senator's words have. Thus, presentation of the same views by another, "drains from the speech a part of its most important message and best chance to persuade."

9. NBC and CBS (the Networks) have responded to the Fourteen Senators' complaint in essentially the same fashion and by reiterating the arguments advanced in response to the Committee for Fair Broadcasting Complaint (see para. 2–5, *supra*)[11]. We will therefore summarize only the additional points made: CBS states that in an attempt to maintain fairness, assure balance and in response to the President's increased use of the broadcast media, it has initiated a new series, "Loyal Opposition," to provide "the principal opposition party" an opportunity to present its views on the administration policies. CBS criticizes the Senators for seeking the use of the broadcast facilities ". . . to persuade, while the journalist's function is to inform" CBS maintains that as the President's use of television has increased so has that of his critics. Finally, CBS contends, the relief sought by the Senators would result in the substitution of governmental news judgment for that of the licensee—e.g., in determining whether Congress "has a role to perform" in the area, whether the President has "initiated debate" and whether the President is opposed by a "substantial group" of Senators.

10. NBC argues that a right of access to broadcast facilities is "foreign to the fairness doctrine" even if the individuals seeking it are elected representatives. In fact, NBC argues, it would be inconsistent with the fairness doctrine to afford access to favor one group over others as a general policy. NBC also argues that the fairness doctrine does not require comparability of audience (the President commands the attention of a greater share of the audience), format and time slots.[12] In sum, NBC urges that compliance with the fairness doctrine be left to "the *broadcaster* who is to exercise his own good faith judgment in determining such matters as the particular formats of programs and the spokesmen for each point of view."

11. *Business Executives Move for Vietnam Peace* filed a complaint raising questions concerning the networks' compliance with the fairness doctrine stemming from a refusal "to provide time to a responsible spokesman to reply to the address by President Nixon on June 3, 1970." BEM's complaint[13] raises

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[10] We agree with petitioners that such mediation is not the function of the broadcast media. However, we similarly believe that it is not the function of an independent governmental agency to make such judgments. Under the system of broadcasting which has developed in this country judgments as to the coverage given any issue is in the first instance left to the licensee to be made on the basis of the substantive contentions involved in the issues being covered rather than upon the identity of the contestants.

[11] CBS incorporates by reference its comments filed in response to the complaints of the Democratic National Committee and Business Executives Move for Vietnam Peace (BEM) and its comments filed in Docket No. 18859.

[12] NBC has offered a review of its recent Indochina programs which are included in part of our discussion, *infra*.

[13] The procedural aspects of BEM's complaint are somewhat confused. On June 3, 1970, the Commission received a telegram requesting that 15 minutes of prime network time be afforded to BEM to respond to the President's June 3, 1970 speech on Indochina. The Commission's staff responded to the telegram on June 8, 1970, with a letter enclosing information on the fairness doctrine and the procedure for filing complaints. Thereafter, the Commission received a letter dated June 3, 1970, complaining of the failure of CBS, ABC and NBC to afford opportunity to respond to President Nixon's speech to BEM or other responsible spokesmen. On June 10, 1970, a second letter was received by the Commission in which BEM stated it was appealing from the negative response from William B. Ray, Chief, Complaints and Compliance. On June 15, 1970, the Memorandum in support of BEM's application for review was received. However since the June 3, 1970 response did not constitute a staff ruling, we will consider BEM's application for review

as a complaint against the three networks and their Los Angeles stations, essentially the same questions as does that of the Committee for Fair Broadcasting (paras. 2–5, *supra*) and the Fourteen Senators (see paras. 6–10, *supra*)—i.e., must each network provide a substantial block of uninterrupted prime time and permit the format to be controlled by the respondents to answer the President's presentation of views on controversial issues; and that the opposing presentation should follow immediately after the President has spoken. BEM contends that the comparable access and format they seek for contrasting views is required to provide fair and balanced coverage as licensees are required to do under the fairness doctrine and *Red Lion*. BEM argues that programs produced by the networks (e.g., interview and discussion) are internally balanced and that this type of presentation cannot balance the President's uninterrupted presentation.

12. Specifically, BEM asserts that each of the networks presented approximately 5 minutes of commentary after the President's June 3, 1970 speech, that the commentary merely summarized the speech with little critical commentary and the commentators could not provide fair and balanced presentation for the contrasting point of view. BEM says NBC's June 4th special edition of "Meet the Press" (one hour prime time—with one-half hour devoted to President's position and other half-hour to two U.S. Senators who oppose the President's views) came closest to providing reasonable opportunity for the appropriate presentation of conflicting views, but again it was also internally balanced with both sides appearing. However, BEM still contends NBC was deficient because the opposing spokesmen were not presented on June 3 and the June 4 "Meet the Press" program was balanced. Prior to complaining to the Commission, BEM requested that the three major networks and their Los Angeles stations provide BEM or other responsible spokesmen prime time to respond to the President's speech. That request was rejected.

13. NBC in response argues that network coverage of Presidential speeches is traditional and nothing in *Red Lion* requires the equal opportunity to reply urged by BEM. NBC states that no question of its fairness performance is raised with respect to coverage of the overall issue of the Indochina involvement. The format and choice of spokesmen on controversial issues of public importance is a matter which has always been left to the licensee's discretion and, says NBC, should continue to be so.

14. *The Republican National Committee* (RNC) filed a petition against CBS for failure to grant RNC network time to respond to the statements broadcast by Lawrence F. O'Brien on behalf of the Democratic National Committee (DNC) on July 7, 1970. RNC states that it has received no reply from CBS but the public statements of the president of CBS indicate that the reply would be negative.

15. The background of the RNC complaint is as follows: the DNC was given 25 minutes on the CBS network on July 7, 1970, to respond to the President's previously broadcast addresses to the nation; CBS states that Mr. O'Brien accepted and in his presentation covered many controversial issues of public importance, all of which had previously been explored in depth by the President and have been covered many times by CBS news and public affairs programs. RNC claims that Mr. O'Brien's appearance was not confined to the Indochina situation [14] as apparently intended, but was used as a springboard for a "political attack on the President and his party" and addressed mainly the controversial issue of "which political party should hold power," an issue which was not the subject of any Presidential address to the nation. Thus, RNC states that CBS has presented the Democratic side of a controversial issue of public importance—i.e., which political party shall hold power—and must now present the opposing view, that of the Republican Party. On this issue, RNC claims to be the most appropriate spokesman.[15] As to other substantive issues, RNC challenges the "Loyal Opposition" series that CBS has instituted as not being a proper exercise of a licensee's responsibility to choose appropriate spokesmen for each issue. CBS responds that the "Loyal Opposition" program does not represent an abdication of its responsibility to choose appropriate spokesmen but rather a determination that a representative of the Democratic party is an appropriate spokesman to respond to the President.[16] CBS also points out that its policy of affording

[14] Mr. O'Brien, RNC states, devoted only 2 of his 25 minutes to the U.S. involvement in Indochina.

[15] RNC contends that national committees of political parties are not policy spokesmen or policy setters and therefore "are not necessarily appropriate spokesmen to discuss specific political, economic and social issues—the 'gut' issues."

[16] CBS contends that the "loyal Opposition" format is issue-oriented and on each issue the appropriate Democratic spokesmen would be selected.

response time to the opposition party was followed in 1963, 1966, 1967 and 1968, when time was afforded to Republican Party leaders to respond to a Democratic President's appearances.

16. RNC contends that CBS' actions in granting the DNC time represents a handing over of its facilities to "partisan control" and it demands that comparable broadcast time be given over to RNC's control. CBS, in turn, argues that it normally attempts to achieve balance in its presentations of important public issues through news and public affairs programs produced by news professionals but that:

". . . the President of the United States holds a unique position in American life. As we have previously discussed, his every broadcast utterance is *not* subject to mechanical "equal time" rebuttals either under the Commission's fairness doctrine or pursuant to CBS policies. At the same time we have concluded that in view of the tremendous importance of television and radio as a medium of communication, and the increasing use of prime time television and radio by the President, it is appropriate to make time available to the principal opposition party periodically to present its opposing views. For this reason we developed the "Loyal Opposition" broadcasts which we will schedule at appropriate intervals when, in our judgment, they would serve the interest of more fully informing the viewing public and promote fairness and balance in our overall schedule. This is fully supportive of CBS' policy that the public must be fully and fairly informed and in no way inconsistent with our policy that the bulk of the information broadcast should be presented by our own news organization as the most effective method of informing the public." [Footnotes omitted]

RNC's final contention is that office-holders will be inhibited from reporting to their constituents if each report invokes a partisan attack from his political opponents—thus, creating a situation inimical to the public interest.

17. In reply to CBS' response, RNC reiterates its contention that O'Brien's presentation raised the "which party shall govern" issue by its format and the fairness doctrine requires a balanced response by the only appropriate spokesman: RNC. Moreover, RNC says CBS has mischaracterized its position in that RNC does not claim that CBS has not violated the fairness doctrine but is so violating it if response time is not granted to RNC. RNC says it seeks no change in the fairness doctrine, only the application and enforcement of it by sharp partisan debate.

18. *Eleven United States Senators*[17] have requested that the Commission require NBC provide "equal time without cost" for the Senators opposed to the Amendment to End the War (Amendment 609 to H.R. 17123, Military Procurement Authorization Act) to present contrasting views to those expressed on a 30-minute sponsored program, the Amendment to End the War, on NBC-TV on May 12, 1970. NBC declined Senator Bob Dole's request stating that NBC had presented contrasting views on the issue[18]—citing President Nixon's June 3, 1970 address and other NBC programs broadcast between May 13 and July 9, 1970. Senator Dole contended that NBC had not presented contrasting views on the Amendment itself and NBC responded by stating that views opposing it had been presented and would continue to be presented by NBC—but that "equal time" would not be granted Senator Dole for that purpose.

19. In support of Senator Dole's contention that NBC has not fulfilled its fairness obligations[19] the following arguments have been presented: the 30-minute program presented by the Amendment to End the War Senators represented presentation of one side of a controversial issue and NBC has failed to present contrasting views which it was obligated to do whether paid sponsorship was available or not (*Cullman Broadcasting Co., Inc.*, 25 R.R. 895 (1963)). Senator Dole requests that NBC afford comparable time to the Senators joining in the complaint to present contrasting points of view. Moreover, the complaint continues, the appeal for funds made on the Amendment to End the War program represented the presentation of one side of another controversial issue and NBC does not "purport to claim that it has presented contrasting views on this matter." Senator Dole's complaint suggests that solicitation may have been the "real purpose" for the program presented. NBC responded in the following manner:

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[17] Bob Dole, Barry Goldwater, Clifford P. Hansen, Edward Gurney, Paul Fannin, Carl Curtis, Robert Griffin, Ralph Smith, Gordon Allott, Peter Dominick, and Strom Thurmond.

[18] Senator Dole's request was made on July 7, 1970, and NBC responded on July 8, 1970. A second request was made by Senator Dole on July 9, 1970, and NBC reaffirmed its position denying the request on July 9, 1970. On July 10, 1970, a complaint was lodged with the Commission.

[19] The complaint of the Eleven U.S. Senators is referred to throughout the document as Senator Dole's complaint.

NBC in reply states that NBC has covered the various views on U.S. participation in the war and how to end it, of which the Amendment to End the War is one view. Thus, the program to which objection is raised did not raise an additional controversial issue. Any other approach would splinter discussion of the basic issues. NBC has offered a brief analysis of its recent television programs which indicates that views similar to those of the complaining Senators had been presented on some 24 programs between May 1 and July 15, 1970, not including "hard" news programs. Clearly, NBC states, the public has not been left uninformed. Moreover, NBC intends to continue its presentation of contrasting views on the Indochina issue, including the Amendment to End the War.

Discussion

20. We have grouped all these complaints because, to a significant extent, they all involve a common problem—the discharge by broadcast licensees of their responsibilities under the fairness doctrine in dealing with the Indochina war issue. We recognize that other important issues are also presented in some of the complaints and that even as to the Indochina war issue, the complaints differ in significant aspects and thus call for different treatment as to those aspects. We shall of course afford such different treatment. But it is desirable to set forth in this one document the background discussion which is basic to an understanding of our disposition of these complaints. That discussion follows. We shall then turn to the specific complaints.

A. Background Discussion—The Discussion Afforded Licensees Under the Fairness Doctrine

21. We have long stressed the different manner in which the "equal opportunities" and fairness requirements of Section 315 operate. The former is applicable only to uses of station facilities by candidates for public office and calls for *equal* treatment—as to the amount of time to be afforded, the nature of the time slot, etc. It thus works with virtually mathematical precision.

22. The fairness doctrine works much differently. As we stated in our Fairness Primer, 29 Fed. Reg. 10416 (1964) :

> 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 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.

23. The areas where the licensee's discretion has been curtailed, chiefly as to selection of the appropriate spokesman, are the personal attack and political editorializing situations. The reasons are obvious and are set forth in our reports and in *Red Lion Broadcasting Co. Inc.* v. *F.C.C.*, 395 U.S. 367, 378–379 (1969). To a substantial extent, the considerable discretion as to the amount or nature of time to be afforded is also curtailed in these fields. See *Clarence F. Massert*, 10 FCC 2d 968 (1967) ; *George E. Cooley*, 10 FCC 2d 969 (1967).

24. We do not believe that any extended discussion is needed as to why the licensee is afforded so much discretion under the fairness doctrine. In our judgment, based on decades of experience in this field this is the only sound way to proceed as a general policy. A contrary approach of equal opportunities, applying to controversial issues generally the specific equal opportunities requirements for political candidates would in practice not be workable. It would inhibit, rather than promote, the discussion and presentation of controversial issues in the various broadcast program formats (e.g., newscasts, interviews, documentaries). For it is just not practicable to require equality with respect to the large number of issues dealt with in a great variety of programs on a daily and continuing basis. Further, it would involve this Commission much too deeply in broadcast journalism; we would

indeed become virtually a part of the broadcasting "fourth estate," overseeing thousands of complaints that some issues had not been given "equal treatment." We do not believe that the profound national commitment to the principle that debate on public issues should be "uninhibited, robust, wide-open" (*New York Times Co.* v. *Sullivan*, 376 U.S. 254, 270) would be promoted by a general policy of requiring equal treatment on all such issues, with governmental intervention to insure such mathematical equality.[20]

25. On the other hand, we remain firmly convinced that the fairness doctrine *is* workable and does promote robust, wide-open debate. Again, no extended discussion is needed on this score, in light of the *Red Lion* opinion, where the Court indicated that the fairness doctrine is not only constitutional but may well be constitutionally required (p. 390). Suffice it to say that we regard strict adherence to the fairness doctrine as the single most important requirement of operation in the public interest—the "*sine qua non*" for grant of a renewal of license (*Office of Communications of United Church of Christ* v. *F.C.C.*, 425 F.2d 543, 548 (C.A.D.C., 1969); see also *Brandywine-Main Line Radio, Inc.*, FCC 70-686, released July 7, 1970. We have stressed that we have allocated so much spectrum space to broadcasting because of the contribution which it can make to an informed public. See *Storer Broadcasting Co.*, 11 FCC 2d 678. That basic allocation purpose would be largely undermined if the broadcaster could discuss such issues unfairly—by presenting only one side or only the viewpoints with which he agreed.

26. In stressing that the licensee has considerable discretion in discharging his fairness obligation, we do not mean to imply that that discretion is absolute. As stated, we will intervene if the showing establishes that the licensee has acted unreasonably. Under that standard, it is not a question of whether we believe that the licensee has acted wisely or whether we would have proceeded as he did. The issue is not one of substitution of our judgment for that of the licensee on these issues of broadcast journalism, but rather whether the licensee has acted in an arbitrary fashion. Thus, it is patently unreasonable for a licensee consistently to present one side in prime time and to relegate the contrasting viewpoint to periods outside prime time.[21] Similarly, there can be an imbalance from the sheer weight on one side as against the other. But there is no mathematical formula on any of these questions. What is called for is a judgment on the facts of each case, when an appropriate complaint comes before the Commission. See *Fairness Primer*, 29 Fed. Reg. 10416 (1964).

27. The foregoing principles have been long established and consistently adhered to by the Commission. Thus, they are set out in the Commission's "principle summary" of the fairness doctrine (*Red Lion*, at pp. 375-386)—the *1949 Editorializing Report* (see particularly par. 10). They have been reflected in so many decisions over the last twenty years that citation is impracticable. Their support does not rest in administrative declaration. More important, the statute and its legislative history are to the same effect. Thus, Congress early considered and rejected the notion of equal opportunities for controversial issues. (67 Cong. Rec. 12502-12504). In 1959 Congress codified the fairness doctrine, by inserting the provision in Section 315(a) that broadcast licensees "must operate in the public interest and . . . afford reasonable opportunity for the discussion of conflicting views on controversial issues of public importance." The conference report makes clear that this was a Congressional "restatement of the basic policy of the 'standard of fairness' which is imposed on broadcasters under the Communications Act of 1934" (H. Rep. No. 1069, 86th Cong., 1st Sess., p. 5 (1959)). See also Sen. Rep. No. 562, 86th Cong., 1st Sess., p. 13; 105th Cong. Rec. 14440, 14457, 14462, 17830-31.

And, finally, the Supreme Court's opinion in *Red Lion* significantly recognizes the *Editorializing Report* as the statement of the basic principles embodied in the fairness doctrine. See *Red Lion, supra*, at pp. 384-386.

28. Further treatment of the pertinent background is unnecessary in light of the extensive discussion in the *DNC* ruling (FCC 70-861, released August 12, 1970). We therefore refer to that ruling, and particularly with respect to the

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[20] Indeed, since fairness is required, more time may need to be afforded to answer an attack than the attack itself (e.g., a 10 second attack that an individual is a communist).

[21] The licensee has an affirmative obligation to encourage and implement the presentation of contrasting viewpoints. *Report on Editorializing, supra*, at par. 9. The Commission has now under consideration revisions in the doctrine to buttress this affirmative obligation in certain fairness situations. See *Notice of Inquiry and Proposed Rule Making*, Docket No. 18859, 35 Fed. Reg. 7820 (1970).

arguments advanced in these complaints that particular persons are entitled under the First Amendment to access to broadcast facilities. As the *DNC* ruling makes clear, it is the right of the public to be informed on public issues—and not the right of any particular individual or group to speak over broadcast facilities—which is paramount here.

29. Finally, we would note that in view of the foregoing, the fairness doctrine is a term of art. A layman might say that if A got 30 minutes to speak on some issue, it is only "fair" that a spokesman for the other side got 30 minutes in the same time period. Thus, in such a lay viewpoint, "fairness" would always entail "equal opportunities." But, as shown, that is not the thrust of the fairness doctrine, as developed by the Commission and codified in the law in Section 315. The fairness doctrine does not require equality but reasonableness—that in the circumstances there has been "reasonable opportunity for the discussion of conflicting viewpoints on controversial issues of public importance (Section 315(a)).

B. The Complaints that a Spokesman be Given Equal Opportunities to Respond When the President has Addressed the Nation on Broadcast Facilities

30. With the foregoing as background, we turn to the complaints. First, we deal with those complaints which in effect respect that an appropriate spokesman be selected to respond, on an equal opportunities basis, to any broadcast Presidential address on a controversial issue of public importance. As stated in the BEM complaint, each network would be required to provide "a substantial block of uninterrupted prime time and permit the format to be controlled by the respondents to answer the President's presentation on views on controversial issues; and that the opposing presentation should follow immediately after the President has spoken" (BEM, p. 9-a). In the complaint of the 14 Senators, it is that "the Commission should require networks to provide time to any substantial group of Senators opposing the President's views on a controversial issue of national importance whenever the issue is one in which the Senate has a role to perform in seeking resolution of the issue, and the President has initiated debate via nationwide television" (14 Senators' complaint, pp. 6–7). From the foregoing discussion and as amplified below, we deny these requests as contrary to the established principles of the fairness doctrine.

31. There is no question but that the fairness doctrine is applicable to Presidential addresses on controversial issues of public importance. See *Letter to Republican National Committee*, 40 FCC 625 (1964); *Letter to Blair Clark*, 11 FCC 2d 511 (1968). This means that the broadcaster must afford reasonable opportunity for the presentation of contrasting viewpoints on the issues covered in such broadcasts. But it does not mean that the Presidential speeches must be considered in isolation or that the licensee loses the discretion afforded him under the fairness doctrine as to the manner in which he achieves compliance with the doctrine. Thus, it is still up to him to determine the appropriate spokesmen. We find no basis for singling out any "substantial group" of Senators as being entitled to time to respond; it may be that members of the House, Governors, and other public or private officials would be just as appropriate spokesmen.

32. Compainants are attempting to engraft an "equal opportunities" requirement in a fairness area where it is wholly inappropriate. We point out that there is no basis for restricting this concept, once adopted, just to the area of Presidential speeches. It could equally be advanced where the Governor speaks, and the State Senate or House has a role to play, or where the Mayor addresses the community on a matter within the ambit of the City Council, and so on.

33. The same considerations are applicable to the BEM specification that the opposing broadcast immediately follow the Presidential speech. If adopted, it would be applicable to all speeches involving controversial issues. But we have declined such a requirement generally because it restricts robust, wide-open debate. See *Report on Editorializing*, par. 8. We adhere to that long-established policy. What is required is that the public be given a reasonable opportunity to be informed about the other side—not rigid rules which inhibit the opening or presentation of the debate.

34. This is true also with respect to the nature of time to be afforded the contrasting viewpoint. As stated, the question of reasonableness calls for a judgment on the facts of each case. In the case of Presidential addresses, there is no requirement that they be met by countering addresses. Licensees are of course free to do so, and have done so on many occasions in the past, but they

may also make the judgment to use a variety of formates—the presentation of representative partisan viewpoints on newscasts, on news interview programs, and the licensee's own analysis, either after the speech or in subsequent newscasts or editorials. The critical issue is whether the sum total of the licensee's efforts, taking into account his plans when the issue is a continuing one, can be said to constitute a reasonable opportunity to inform the public on the contrasting viewpoint—one that is fair in the circumstances.

35. Just as examples, we shall discuss two precedents. In *Letter to Republican National Committee*, 40 FCC 625, 626 (1964), the Commission had before it a complaint which is directly in point to the situation under discussion—a TV and radio broadcast by President Johnson and a complaint that only the equal time appearance of the spokesman for the opposing party, Senator Goldwater, ". . . can meet the test of fairness in the circumstances of this case, and news clips and other off-hand coverage will not suffice." The Commission, after holding that the fairness doctrine was applicable to the situation, pointed up the different nature of that doctrine from the equal opportunities provision (using the same quotation from the Fairness Primer—see para. 22, *supra*). The Commission stressed that in making the determination whether the networks have acted reasonably, "the licensee's overall performance is considered (i.e., 'all the programs *irrespective* of the programming format, which he has devoted to the particular controversial issue during the appropriate time period'). See, *Ruling No. 15, Fairness Primer, Letter to Cullman Broadcasting Co.*, FCC 63–849)." The Commission then noted that all the networks had afforded Senator Goldwater extensive opportunities to state his position on the issues covered by President Johnson in a large number of newscasts; that two of the networks had presented Senator Goldwater or his representative in speeches (ABC in a half-hour paid broadcast, NBC in a 15-minute broadcast offered to the Republican National Committee); that NBC had invited Senator Goldwater to appear on "Meet the Press," "where it could give him a further opportunity to present his viewpoint in response to questions . . ."; and that CBS was planning a news documentary in which Senator Goldwater was invited, and that "if he accepts the invitation, he will have an opportunity to make a further statement of his views on the events in question." The Commission found, based on these showings, that the networks had not acted unreasonably.

36. The second example case, illustrating the same principles but on the gubernatorial rather than presidential level, is our recent ruling in *Boalt Hall Students Association*, 20 FCC 2d 612 (1969). We believe that these precedents, and others such as *Letter to Blair Clark*, 11 FCC 2d 511, 515 (1968), are sound and should be adhered to. We therefore decline to overrule them and to hold, as these complainants in effect seek, that an "equal opportunities" concept is applicable to broadcast addressed by the President, a Governor, a Mayor, and so on.

C. The Complaints that the Networks or Licensees Have Not Achieved Fairness in View of the Number of Presidential Broadcasts on the Indo-China War and Their Efforts To Present the Contrasting Viewpoint

37. The foregoing dealt with the applicability and requirements of the fairness doctrine as to a single Presidential broadcast on any controversial issue. In this section, we deal with those complaints (or aspects of complaints) that as to the Indo-China War issue, the networks or licensees have presented since November 1969 five Presidential addresses on the Indo-China War in prime time,[22] and that while spokesmen for the contrasting viewpoint have been presented in newscasts, interview programs, and documentaries, no one has been afforded the kind of opportunity which the President had; that the President was the only person appearing during these prime time speeches, he answered no questions, there were no interruptions of the President's presentation commercial or otherwise, and the speech was unedited (Complaint of Committee for the Fair Broadcasting of Controversial Issues; the 14 Senators' complaint; the BEM complaint).

[22] These five broadcasts and the amount of time the President spoke are: 11/3/69—9:30–10:02 p.m.; 12/15/69—6:00–6:14 p.m.; 4/20/70—9:00–9:30 p.m.; 4/30/70—9:00–9:41 p.m.; and 6/3/70—9:01–9:16 p.m. The Vietnam War was discussed in the President's State of the Union Message (1/22/70—12:30–1:30 p.m.), and comparable time was afforded by the three networks to spokesmen of the Democratic Party to respond to this speech on the State of the Union.

38. First, we do not depart from the basic principles governing the application of the fairness doctrine. We therefore stress, as we have in the past cases, that we look to all the programming that has been presented on the issue. In making the judgment whether the networks have acted reasonably, we must take into account the nature of the programming presented on one side of the issue; and in this instance, that means of course the number of Presidential addresses in prime time.

39. There is no question but that the networks have presented extensive programming dealing with the issue of the Indo-China War. CBS submitted a detailed showing in this respect, which we take to be typical for the networks. The showing encompasses presentations in newscasts, news interview shows, documentaries, or on-the-spot coverage of bona fide news events, which involved either analysis by network commentators or very frequent appearances of partisan spokesmen for the contrasting viewpoints on this issue, including in prime time periods. Relevant here also are the analyses by the commentators after the Presidential addresses. In addition to the network newscasts, licensees present their own newscasts, which again deal extensively with the Indo-China War issue. Further, many licensees editorialize. As an example, we point to the showing made by WCBS–TV, where it has editorialized extensively against the Indo-China War and afforded appropriate spokesmen the opportunity to reply (CBS News Exhibit).

40. The question is whether in the circumstances the networks have afforded reasonable opportunity for the presentation of the contrasting viewpoints on this issue. All of the foregoing presentations were roughly balanced—that is, the newscasts, documentaries, interview shows, etc., all presented a balanced number of spokesmen on each side of the issue. The CBS showing indicates that the balance would slightly favor the Administration side of the issue, without consideration of the five Presidential addresses. The critical consideration thus becomes: Are reasonable opportunities afforded when there has been an extensive but roughly balanced presentation on each side and *five* opportunities in prime time for the leading spokesman of one side to address the nation on this issue? We believe that in such circumstances there must also be a reasonable opportunity for the other side geared specifically to the five addresses (i.e., the selection of some suitable spokesman or spokesmen by the networks to broadcast an address giving the contrasting viewpoint). We wish to stress that we are not holding that such obligation arises from a single speech—that where an uninterrupted address is afforded one side, the fairness doctrine demands that the other side be presented in the same format. That is the modified "equal opportunities" doctrine discussed in Part B, *supra*, and rejected by us. Rather, our holding here is based upon the unusual facts of this case—five addresses by the outstanding spokesman by one side of an issue.[23]

41. It is thus critical to examine what the networks have done in this respect, i.e., affording time for an address to answer those of the President on this issue, such as was done when Senator Mansfield was invited to respond to the President's speech on the economy. ABC cites only one program, a May 9th speech of Mr. O'Brien, the DNC Chairman in which, it states, he was "generally critical" of the Administration policy on Indochina. No further details are given, such as the length of time Mr. O'Brien devoted in the 30-minute speech to this issue. CBS has stated its plan to present a series of such programs, with spokesmen selected by the DNC, in order to provide a prime time opportunity to counterbalance the Presidential addresses on public issues. But in the one program which it did present, an uninterrupted presentation by the Chairman of the DNC on July 7, 1970, there was only a few minutes (about two) reference to the Indochina War issue. As to NBC, it has not invited any spokesmen for a speech on this issue, but it does cite the broadcast on May 12, 7:30–8:00 p.m., of a special program paid for by the Amendment to End the War Committee, in which partisan spokesmen gave their views on an uninterrupted basis. The fact that this program was on a paid basis does not take it out of consideration in this fairness evaluation. See *Letter to Republican National Committee, supra;*

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[23] In referring above to the leading spokesman (i.e., the President), we wish to emphasize that we are not in any sense addressing ourselves to the matter of equalizing impact—of the effectiveness of various spokesmen or their presentation. As many of the complainants recognize, the President stands alone in this respect, and obviously, by the very fact of his office, commands very great audiences, particularly when he speaks on a grave national problem such as Cambodia. We thus repeat that our concern is rather the question of reasonable opportunity in the circumstances for the public to be informed concerning the contrasting viewpoint.

Cullman Broadcasting Co., supra. The NBC showing clearly comes closest to satisfying the requirements of the fairness doctrine in this respect. However, in light of the fact of five Presidential speeches on this issue, we believe that more is required of each of the networks in this respect (i.e., affording prime time for a speech by an appropriate spokesman for the contrasting viewpoint to that of the Administration on the Indochina War issue). We do not hold that there is any requirement for "equal treatment" to the five speeches; that is again a modified "equal opportunities" requirement which we reject for the reasons previously stated. While, as shown, all the networks have done something in the area of uninterrupted presentations in covering this issue, the result in each case falls short of what is reasonable in the circumstances. Thus, we require that at the least, time be afforded for one more uninterrupted opportunity by an appropriate spokesman to discuss this issue, with the length of time to be determined by the nature of the prior efforts in this area of uninterrupted presentations (and with thus the least requirement in this respect on NBC). We of course leave entirely to the judgment of the networks the selection of the appropriate spokesmen. See discussion, *supra.* p. 13.

42. We believe it important to make clear two things. First, our holding does not reflect adversely on the networks. On the contrary, we recognize that the networks have been making good faith efforts to inform the public on this vital issue. Further, we appreciate that there is some support for their position in the "theory" of the fairness doctrine, stressed by the networks in their arguments to us. But, as the Supreme Court stated in a different context, "Legal theory is one thing. But the practicalities are different." (*Ashbacker* v. *U.S.* 326 U.S. 327, 332 (1943).) Here "practicalities"—or, stated differently what is "reasonable" in the circumstances of five prime time addresses by one side—clearly call for the greater effort by the networks which we have noted above.

43. Second, in so holding, we do not mean to discourage in any way the networks' presentation of Presidential reports to the nation. It requires no discussion by us to point up the important contribution which such addresses make to an informed public. We note that the networks are unanimous in this recognition. See, e.g., speech of President Frank Stanton, p. 3. Our holding is thus directed solely to the matter of a reasonable opportunity for the expression of the contrasting viewpoint. It is limited to the unusual facts of this case—near balance on an issue, with one side in addition afforded five prime time opportunities to deliver speeches on that issue.

44. Finally, we note that we are dealing here with continuing plans to deal with a continuing issue, in terms of the presentations by both sides. Obviously, the licensee's future efforts must therefore be tailored reasonably to take into account future developments. We thus stress that on an issue of this over-riding importance, there must be continuing and strict adherence to the requirements of the fairness doctrine that the public be reasonably and realistically informed in light of the circumstances.

45. In view of the foregoing, we grant the complaints here involved, to the extent noted above.[24]

D. The Complaint of Senator Dole and Ten Other Senators Against NBC, Involving the May 12 1970 Program on NBC Which Supported the "Amendment to End the War"

46. This complaint was described in pars. 18–19. In view of our prior discussion, we believe it clear that NBC cannot be said to have acted unreasonably in rejecting the request for comparable time without cost to present opposing viewpoints to the May 12, 1970 program, paid for and presented by the Committee for the Amendment to End the War.

47. First, there is again no question but that the program dealt with a controversial issue of public importance and that the fairness doctrine is applicable. The critical question is whether NBC has failed to present contrasting viewpoints on the issue concerned.

48. The complainants urge that the issue is not the Indochina War but rather one of the "Amendment to End the War." However, no showing has been made

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[24] The complaint of the Fourteen Senators is also directed at network refusal to sell time for the presentation of views on the Indochina War by the Senators. In a Memorandum Opinion and Order dealing with the petition of the Democratic National Committee, supra, the Commission has considered this question and re-affirmed its holding that a licensee may reasonably decline to sell time for the presentation of views on controversial issues of public importance.

that NBC's judgment is arbitrary in viewing the "Amendment" as part of the Indochina War issue. The program dealt extensively with that issue, and made clear that the "Amendment" constituted the sponsors' position on the War. See text of the May 12 broadcast, Cong. Rec. May 13, 1970, pp. S–7079–82. A contrasting position is that of the Administration—that the course being followed by the Administration is the one which best serves the nation. As shown by the above discussion, the President has had substantial time to state that position. Further, it has been extensively presented by other spokesmen on newscasts, news interviews and documentaries. See NBC example showing, p. 4, attachment, NBC Reply.

49. With respect to the "Amendment" itself, NBC states that as a part of its continuing coverage of the Indochina issue, it will give coverage to the "Amendment" by the time it is formally presented for adoption on the floor of the Senate. Indeed, as an example, it cites three instances where spokesmen (Senators Cook, Dominick and Packwood) have already been given the opportunity to express their opposition to the "Amendment."

50. Finally, while complainants make much of the appeal for funds by the Committee for the Amendment to End the War, no showing has been made that this appeal in these circumstances constituted a separate issue apart from the "Amendment" on the position against the Indochina War.

51. In view of the applicable principes (Part A), we conclude that NBC has not been shown to have acted unreasonably. See *Letter to Republican National Committee*, 40 FCC 625, 628 (1964).

E. The Complaint of the Republican National Committee (RNC)

52. This complaint has also been described in full (pars. 14–17). As stated, CBS decided to present the Democratic National Committee (DNC) as an appropriate spokesman in a series of prime time, uninterrupted broadcasts to present contrasting views to those expressed by the President in his extensive use of prime time for broadcasts to the nation. RNC asserts that the DNC broadcast of July 7, 1970, was partisan in nature and really dealt with the issue, "which the President had not expressed any viewpoint.

53. Again, we believe that no extended discussion is needed in view of prior precedents such as the *Letter to Nicholas Zapple*, 23 FCC 2d 707 (1970). We hold, based on such precedents, that the fairness doctrine requires that some reasonable period of time be afforded by CBS to the RNC or some other appropriate Republic Party spokesman selected by CBS.

54. In so holding, we wish first to stress that we do not accept arguments advanced by RNC directed to CBS' good faith. It is perfectly clear that CBS has acted in good faith. It has become concerned with the increasing number of prime time speeches by the President, not in whether to present such speeches, but rather in how best to inform the public concerning the contrasting viewpoint (p. 3, Stanton speech, CBS Showing). It therefore decided upon the "Loyal Opposition" concept, and stated that "the CBS policy of making time available for the principal opposing party to answer the President will apply equally to the Republican Party when there is a Democratic President" (p. 7, CBS Opposition). Since CBS was thus responding in good faith to the need for a greater effort in this area, found by us to be appropriate here (see Part C, *supra*), it is to be commended for its concern.

55. However, in practice, the CBS effort, as represented by the DNC broadcast of July 7, 1970, did not fulfill CBS' intention. That intention was to offer the principal opposition party an opportunity to reply from time to time to a President on major public issues treated in Presidential appearances. But as stated the Presidential addresses have concentrated very largely on the Indochina War issue (see n. 22, *supra*; the one other address during this period was concerned with the economy).

The DNC broadcast only referred briefly to the Indochina War issue (i.e., about two minutes just before the conclusion of the broadcast), and thus did not, we believe, really fulfill the CBS purpose.[25]

[25] Indeed, see in this connection the testimony of the president of CBS before the Senate Committee on Communications, p. 140, Transcript of Hearings on August 5, 1970, where in answer to a question whether he thought it was fair to have presented the DNC broadcast and not to give time for an answer, he stated: "I think that if this were to persist, if this is the way the Loyal Opposition broadcast series develops, we would have to reconsider." Thus, in actual implementation as to this first DNC broadcast, the broadcast would appear to have been "person or party" oriented rather than issue-oriented, as CBS stated its intention to be. CBS would not appear to have exercised journalistic supervision to assure fulfillment of its purpose.

Rather, the broadcast would appear to have come within the type which was the subject of our recent ruling, *Letter to Mr. Nicholas Zapple*, 23 FCC 2d 707 (1970).

56. We were there concerned with the application of the fairness doctrine to situations involving spokesmen for political parties. For example, if during an election period, a network sold time to the RNC Chairman who made an attack on the Democratic Party, the fairness doctrine would be applicable, and time would have to be sold, upon request, to the DNC for a response.[26] If the attack had been made on free time, then free time should be afforded for the response. In this really quasi-"equal opportunities" type of situation, it would not suffice for the network to say that it would present the DNC side by news clips or interview shows. Viewing the present case, we believe that despite CBS' clearly good intentions, what occurred did fall within this political spokesmen arena, and thus differed from the case where CBS selected the spokesmen to speak expressly on a subject. Indeed, as stated, CBS in effect, appears to have recognized as much (see n. 25).

57. We therefore hold that fairness requires CBS to extend some time to RNC or a partisan Republican spokesman, to answer matters raised in the DNC broadcast. The exact amount of time and other matters are left to the good faith, reasonable judgment of CBS, since, in view of all the facts here (e.g., that the DNC broadcast is not one on a clean slate and thus did deal to some extent with the Cambodian issue, to which the President has made the five noted addresses), this is not a precise "equal opportunities" situation.

58. Finally, our holding is limited to the facts of this case, and specifically to this one DNC broadcast. Thus, we do not accept the RNC argument that the national committees ". . . are inappropriate spokesmen to respond to policy issues raised by Presidential appearances" (RNC Reply, p. 6). The short answer is that this is an area where the licensee has very great discretion.[27] Perhaps it would be sounder or better policy for CBS always to select spokesmen in each instance.[28] But that is not a matter for this agency. Our holding is thus that whatever the appropriateness of the DNC and its Chairman as a spokesman, the practical result here was one coming within the principles of our recent ruling, *Letter to Nicholas Zapple*—that CBS' arguments, however superficially sound in theory, are defective when viewed against "the practicalities." See discussion, *supra*, paragraph 41.

59. Accordingly, the RNC complaint is granted, to the extent noted above.

FEDERAL COMMUNICATIONS COMMISSION,*

BEN F. WAPLE, *Secretary.*

APPENDIX A

I. Pleadings related to Complaint of Committee for the Fair Broadcasting of Controversial Issues:

A. Complaint, Petition for Issuance of Order to Show Cause to Cease and Desist and Request for Expedited Disposition filed May 25, 1970, by Committee for the Fair Broadcasting of Controversial Issues against WCBS–TV (New York) and WTIC–TV (Hartford, Connecticut)

B. Response of CBS, filed June 23, 1970

C. Response of WTIC–TV, filed June 22, 1970

D. Reply to Oppositions filed by the Committee on June 30, 1970.

II. Pleadings related to Complaint of Fourteen United States Senators and the Amendment to End the War Committee against CBS, ABC and NBC and their owned and operated stations:

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[26] We further held that the *Cullman* principle would be inapplicable.

[27] As a further matter, we note that RNC has no argument to CBS' point that in 1963 the RNC requested time from CBS as the appropriate spokesman to answer an address by President Kennedy, and that this request was granted.

[28] We note that CBS has by no means settled upon DNC or delegated to DNC, the exclusive role of achieving fairness by setting forth views opposing those of the Administration. Cf. *Golden West Broadcasters*, 8 FCC 2d 987 (1967). On the contrary, CBS has stressed that "for the most part, for reasons developed at length in [its] reply to the DNC Request for Declaratory Ruling (pp. 3–10), CBS relies on the efforts of news professionals to produce broadcasts which provide a balanced treatment of important public issues including extensive presentations by partisans of their viewpoints (p. 8, CBS opposition). Thus, CBS' policy is to rely upon its information broadcasters (e.g., newscasts, news interviews, news documentaries, on-the-spot coverage of bona fide news coverage) "as the most effective method of informing the public."

*See attached statements of Commissioners Burch, Chairman; Robert E. Lee and H. Rex Lee; Commissioner Johnson issuing a statement at a later date.

A. Complaint of Order to Show Cause to Cease and Desist and Request for Expedited Disposition filed July 8, 1970
B. Response of CBS filed July 20, 1970
C. Response of NBC filed July 21, 1970
D. Response of ABC filed July 28, 1970
E. Reply of 14 U.S. Senators and Amendment to End the War Committee filed on July 30, 1970.
III. Pleadings relating to Application for Review filed by Business Executives Move for Vietnam Peace:
A. Application for Review filed June 15, 1970 by Business Executive Move for Vietnam Peace
IV. Pleadings relative to Compaint of Republican National Committee:
A. Petition of the Republican National Committee for relief against CBS filed July 13, 1970 and supplement filed July 14, 1970
B. Response of CBS filed July 21, 1970
C. Reply of RNC filed July 30, 1970
V. Pleadings relating to Complaint of Eleven United States Senators (Senator Bob Dole, et al.):
A. Letter to Federal Communications Commission filed by Senator Bob Dole, et al. on July 13, 1970
B. Brief of Eleven United States Senators in support of Request for Time to Present Contrasting Point of View filed on July 16, 1970, and
C. Reply of NBC filed on July 30, 1970.

SEPARATE STATEMENT OF CHAIRMAN DEAN BURCH

On August 14, 1970, the date that the decision in this case was announced by a press release I had no intention of issuing a separate statement. However, having had the opportunity for three days to read the press treatment of this decision, I now feel compelled to attempt to clear up what must be a very mysterious proceeding for those people who have only had the opportunity to read about the decision in the various print media.

First of all, I recognize that the fairness doctrine is a term of art and that any decision in this area is somewhat difficult to explain in lay terms and within the space limitations of newspaper and news magazines. Further, the Commission's procedure in issuing a news release in advance of the text of our decisions helps to compound the problem. The reason for this procedure is an attempt on our part to alleviate the insidious practice of news reports based on internal leaks from within the Commission. Once a decision is reached in this agency it finds its way into the press immediately—hence the press release system is an effort on our part to insure that news reports will be accurate and available to all news media at the same time. Nevertheless, even considering our procedures, the difficulty of the subject, the brevity of the press release announcing the decision and the space limitations of the media, it seems to me that the treatment accorded this decision over the week-end is a classic example of Murphy's law at work.

In many instances the actual news stories are reasonably accurate but the headline writers (as seems to happen all too often) have completely distorted the substance of the ruling.

A good example of the headline writer at work is to be found in the Christian Science Monitor of Monday, August 17, 1970. The story on this decision is headlined "Anti-Nixon TV Time Ordered." I would think that any fair observer would agree that nowhere in this decision is there any statement or implication that "anti-Nixon" time has been ordered. (Perhaps the prize for the most cryptically misleading headline should go to Chicago Today for its August 15 headline which reads, simply: "Anti-Nixon Prime Time.")

The Washington Star in its August 15 edition headlined "Equal Time Ordered on War Issue." It should be noted that on August 17 the Washington Star did run a story by Robert Walters on this decision which carefully interpreted the decision and did not use a misleading headline.

The Chicago Sun Times of August 15 fell into the same trap with its headline "FCC Rules Equal TV Time Is Due War Critics—GOP." The Boston Globe of August 15, 1970, captioned its story on this decision "FCC Says TV Must Give Equal Time to War Critics." The St. Paul Pioneer Press of August 15, 1970, headlined its story "War Foes Win Equal TV Time."

Perhaps some of this confusion can be explained by an AP wire story on this decision which stated in part: "The FCC has ruled broadcast networks must give opponents of President Nixon's Indo-China War policy *equal*, prime-time rebuttal." (emphasis supplied) Here, despite the Commission's careful attempt in the press release to distinguish between "equal opportunity" under Section 315 of the Communications Act and "reasonable opportunity" under the Fairness Doctrine a reporter indicated that the FCC had awarded "equal" time, which simply isn't the case.

Turning now to the bodies of the various stories which appeared throughout the country, the National Observer on Monday, August 17, 1970, in the first paragraph of its story on this decision stated: "The major television networks were ordered to provide *five segments* of prime time to the Administration's leading war policy critics to rebut five Vietnam war broadcasts made by President Nixon since last November." (emphasis supplied) It is difficult to understand how this sentence could have been extracted from our press release on the same subject which, among other things, included the following: "The Commission said that it would 'require that at the least, time be afforded for *one* more uninterrupted opportunity by an appropriate spokesman to discuss this issue . . .'" (emphasis supplied)

This decision did not, as Newsweek opined, establish "a new fairness doctrine" and despite the Commission's statement that "this ruling is not meant to discourage in any way the networks' presentation of Presidential reports to the nation . . .," Time was quick to speculate on "radically changed Presidential broadcast habits." Neither is this decision a proper foundation for the two opening paragraphs in the coverage of this decision by the New York Times (August 15) which said:

"The Federal Communications Commission said today that President Nixon had made such extensive use of television to defend his conduct of the war in Indochina that the networks must now give opponents a chance to present critical replies on prime time.

"The requirement that broadcasters not simply cover the other side but give uninterrupted, premium exposure to the President's opponents was the first of its kind and appeared likely to alter Mr. Nixon's use of the medium."

First of all, the FCC did not say what the Times states it said. Secondly, the Commission was at pains to point out, in its press release, that it was not engrafting an equal opportunities requirement in a fairness area and as pointed out above, the Commission carefully avoided any suggestion that the Presidential reports to the nation be discouraged.

Although I could cite numerous other examples of what has been, at best, peculiar coverage of this particular decision, I think the foregoing will suffice to make the point.

I trust that my concern over the press handling of this decision will not be interpreted as an anti-First Amendment sentiment and I further trust that such errors as I have pointed out will be corrected and, hopefully, in the future will be avoided.

Having dealt at some length with what the Commission did not do in this case, it might be helpful to state what it did.

1. We have not changed, altered or in any way expanded the basic precepts of the fairness doctrine. It still relates to issues, not to people and requires a licensee to make reasonable judgments in good faith as to the presentation of viewpoints on controversial issues of public importance.

2. We have expressly rejected any principle embodying right of reply or rebuttal to the President. In fact, in paragraph 30 of the Order we specifically denied requests that a right of reply exists in anyone to respond to the President or any spokesman, whomever he may be, when speaking on a controversial issue of public importance. We have rejected in paragraph 32 any attempt to "engraft an 'equal opportunity' requirement in a fairness area." In paragraph 34 we find that there is no obligation to provide time for countering address to those of the President. Rather, it is up to the licensee to ensure that whenever any spokesman for a controversial issue is presented reasonable opportunity is made available for opposing viewpoints—the format being left to the discretion of the licensee. This point is made abundantly clear in the language dealing not only with the Presidential addreses but with the CBS "loyal opposition" program.

3. As to the Indo-China War issue, we found that the networks made "an extensive but roughly-balanced presentation on each side . . . without consideration of the five opportunities in prime time for the leading spokesman

(the President*) of one side to address the nation on this issue" and in such circumstances time should be afforded for at least one more uninterrupted opportunity by an appropriate spokesman for the other viewpoint. We reiterate our rejection in paragraph 41 of any concept of "equal treatment" of the five speeches. Rather, those speeches were averaged in by the Commission along with all the other opportunities for presentation of viewpoints in finding whether fairness had been achieved.

4. Our ruling was not intended to "discourage in any way the networks' presentation of Presidential reports to the nation" (para. 43). We recognize their importance to an informed public opinion as do the networks.

5. Further, we ruled that no matter how well intentioned CBS was in developing the "loyal opposition" concept, the Democratic National Committee broadcast of July 7, 1970, was "person or party" oriented rather than issue-oriented as CBS intended and as such the broadcast covered issues in the political spokesman arena and fairness requires CBS to give some time to a Republican spokesman to respond. (The Commission did not treat the difficult question of whether the fairness doctrine can be institutionalized.) In so holding the Commission concluded that contrary to its assertions, "CBS would not appear to have exercised journalistic supervision to assure fulfillment of its purpose."

STATEMENT OF COMMISSIONER ROBERT E. LEE

I voted for the results reached by the Commission in this document. Where a licensee fails to confine a "fairness doctrine" response, such as the one made by the Democratic National Committee, to the issues originally raised, he opens the door to a further response on the additional issue or issues. I would further point out that a licensee is obligated, under the fairness doctrine, to select appropriate spokesmen on a case-by-case basis in terms of the particular issue (*Golden West Broadcasters*, 8 FCC 2d 987) and that the advance selection of the Democratic National Committee as the appropriate spokesman in the future for one side of national issues, as apparently proposed by CBS, could serve to establish its Republican counterpart as the most appropriate spokesman for the other side.

FAIRNESS DOCTRINE

(In re Five Complaints Alleging Violation of the Fairness Doctrine by the Three Networks)

DISSENTING STATEMENT OF COMMISSIONER H. REX LEE

Under the fairness doctrine, the Commission's general standard has always been directed toward testing the reasonableness and good faith of a broadcaster's action. Innocent error or mistakes of judgment, occurring in the broadcaster's overall balance of programming, do not constitute sufficient reason to justify finding that a licensee has failed to perform its obligations in the public interest. In the arena of political debate, both the heat of issues involved and the volume of demands for air time (such as we find in these cases) underscore the necessity for protecting the exercise of reasonable discretion in the broadcasting industry.

In my view there has been no substantial showing that the networks, and involved broadcast licensees, acted unreasonably or failed to fulfill their obligations under the fairness doctrine. Therefore, I believe all the attached complaints should have been denied. Accordingly, I dissent.

DYNAMIC STRATEGY RESEARCH FOUNDATION, INC.,
Santa Barbara, Calif., August 7, 1970.

Hon. JOHN O. PASTORE,
Chairman, Senate Communications Subcommittee,
U.S. Senate, Washington, D.C.

DEAR SENATOR PASTORE: I am writing this letter to express my support of Senator Fulbright's proposal that the broadcasting industry be required to give prime time to the Senate, House and judiciary. Additionally, I wish to express my disagreement with respect to the objections which have been made by broadcasting industry representatives.

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*In using the term spokesman we use it in an issue sense for purposes of the fairness doctrine.

My chief reason for supporting Senator Fulbright's proposal is related to the fact that the average citizen has very little comprehension of the dimensions of the work being done by Congressmen, from the standpoint of both quantity and quality. In this connection, I know that the members of not only your subcommittee but the Congress as a whole would be highly gratified to learn of the experience which I have had in passing on my older copies of the Congressional Record to younger intellectuals. Even well-educated and supposedly well-read junior members of the scientific community have been completely flabbergasted as a result of going through a few copies of the Congressional Record. They have indicated that they realize that they have had no real comprehension of the caliber of the work which is done daily by the members of Congress, not only on behalf of the constituents but on behalf of the welfare of the nation as a whole. In closing, I would like to express my considered opinion that the effectiveness of our democratic process would be greatly enhanced if appropriate mechanics were developed to give the American public a broader understanding of the work which is being done by Congress. I feel that Senator Fulbright's proposal is an important step towards the broadening of this type of understanding and I would like to register my unqualified endorsement.

Yours sincerely,

WARREN WELLS, *President.*

P.S.—I would greatly appreciate it if you would make copies of this letter available to all of the members of your committee.

TEMPLE UNIVERSITY,
COLLEGE OF LIBERAL ARTS,
Philadelphia, Pa. August 6, 1970.

Senator JOHN PASTORE,
Chairman, Senate Subcommittee on Communications, Senate Office Building, Washington, D.C.

DEAR SENATOR PASTORE: Enclosed are two copies of a statement on news coverage by network television. I would appreciate your including this statement in the printed version of your current hearings on S.J. Res. 209.

As you will immediately see, the emphasis of my statement introduces another element into the basic controversy over the fairness doctrine. This element essentially is the claim by foreign-policy experts from the university community that the television networks have grossly neglected their views on foreign policy. I understand that at least one group in the peace movement has interpreted this gross neglect as a violation of the right of free speech and is pursuing its grievance in the form of a law suit against the networks. At the same time, the enclosed statement is currently being circulated for signatures, and when enough have been collected the statement will be sent to the networks and a press conference will be held, announcing a campaign to change network policies.

My own view is that the systematic prevention of access to the networks for the responsible spokesmen of a minority viewpoint represents a far greater danger to freedom of speech than the supposed danger of Government interference, which network executives have rather sanctimoniously warned of. For the networks' exploitation as a conduit of Government policies which these executives sternly warn of in the future is precisely the current state of affairs which has given rise to the Fulbright resolution requiring an opportunity to answer the President. Indeed, nothing could be more of a Government conduit than the President's access to prime time on three networks simultaneously, and Senator Fulbright's resolution would serve to correct this imbalance, rather than making the networks subservient to Government, as television executives have charged. I also argue, *a fortiori*, that the views of social scientists, law professors, and others in the scholarly disciplines ought to receive careful attention on important issues; and that the self-imposed censorship and the virtual blackout which the networks observe on several controversial subjects like the basic facts about the war are inimical to the proper functioning of a democratic society.

A solution to this dilemma which you are probably familiar with has been recommended recently by a panel of distinguished citizens and has also been recommended by Mr. Eric Sevareid. It is that national news programs on television be expanded to an hour or longer, so that subjects of surpassing importance can be explored in depth, and so that spokesmen for minority viewpoints can have a full opportunity to express their ideas on this supremely cogent and impactful medium. Controversial subjects like the war in all its ramifications ought to be debated during this period by competent representatives of all sides.

In short, our country needs a full ventilation of its tension-producing problems and a round of old-fashioned debates, not a domination of the public airways by a single viewpoint emanating from above.

I hope you will give the enclosed document and the thoughts expressed in this letter your close attention.

Sincerely yours,

Prof. MARK SACHAROFF,
Department of English.

U.S. FOREIGN POLICY AND NETWORK TELEVISION

(Prepared by Prof. Mack Sacharoff)

A current problem which has recently begun to assume crisis proportions and which may even pose a threat to the democratic process is the failure of network television—that awesome instrument of shaping mass opinion—to present both sides of the story in the continuing debate about U.S. foreign policy. For example, President Nixon is frequently given ample opportunity to explain his viewpoint on television and to use the power and prestige of his office on prime time to persuade the American public to support his policies. Yet, the networks make no attempt to analyze these speeches in any rigorous way; the commentary which follows them (with the exception of A.B.C.'s commentary on Nov. 3, 1969) is either tepid paraphrase, or a sympathetic discussion of the President's problems." The networks may rationalize their passive acceptance of these speeches with the claim that a critical examination of them would amount to a departure from disinterested reporting of the news. But such a stance surely contradicts the long tradition of critical journalistic practice in a democratic society. Worse, any concerned citizen is obliged to face the fact that the presentation of foreign policy statement by the President without sufficient critical analysis of it by commentators amounts to a tacit endorsement of that statement. Thus, the acquiescence of the networks has the ultimate effect of aiding the Administration in its attempts to sell its history-shaping policies to the public.

Obviously, media of communications should not function in this way in a democratic society. On issues as serious as war and peace, involving the life or death of young Americans and the grief or well-being of their relatives, the media have the responsibility of acting in the public interest by presenting both sides of a controversial subject. Instead, whenever the President has argued his case before the public, they have consistently acted almost as a public-relations arm of the Administration and have cooperated with it in shaping a history which many astute observers believe is inimical to the best interests of most Americans.

To be sure, all the media at various times subject the Administration's policies and claims to critical examination. From time to time, we encounter skeptical comment from the press or radio, or an on-the-spot television story which casts doubts on official assertions by the Administration; and this practice has become more noticeable since the Cambodian invasion. But cautious, implicit criticism of this kind is intermittent and unpredictable. Moreover, it is often masked sufficiently so that the very Americans who need to reflect about the contradictions in U.S. foreign policy may fail to grasp the inner significance of these news stories.

Recently, it is true, Senate sponsors of legislation to limit the war have been enabled to appear on television to present their views. But these appearances, by their rarity, only serve to reinforce the claim that the networks have been neglecting opposition spokesmen. Moreover, the networks continue to be remiss in their representation of a whole segment of qualified observers: namely, those university scholars who have done extensive research on southeast Asia, have written numerous books and articles about the war, and have come to the conclusion that the war is, for a wide variety of reasons, indefensible. The near-absence of these well-informed, rigorous analysts from network television, coupled with the continuous stream of unanswered policy statements by the President, the Vice-President, and other government spokesmen, is no doubt among the ingredients of the massive frustration felt by members of the university community—a frustration which recently reached its peak in widespread student strikes. And the media must take some of the responsibility for the pervasive sense among university individuals of "not being listened to": for the media by and large have been nearly as insulated as the President to the scholarly analysis and criticism of the Vietnam war.

Again, the polarization which many have seen in American society is partially due to the restrictive policies of our information-gathering agencies. Indeed, we could say that polarization is based to some extent on the exsitence of two separate information-systems in our society; (1) roughly eighty per cent of the press, plus almost all of radio and much of television; and (2) the minority press, the liberal and radical journals, and the full-scale studies of political and historical problems, in the form of books. Generally, the information and opinion in (1) fails to analyze the Administration's viewpoint critically and in depth except during unusual crises like the Cambodian crisis. On the other hand, the information and opinion in (2) have been consistently against the Administration on the war, regardless of which party is in power. Unfortunately, however, most Americans do not have at their disposal any of the information to be found in liberal journals like *The New Republic* or *The Nation*, let alone in *Ramparts* or *New York Review of Books;* and they do not normally have the time or inclination to examine one of many full-scale studies of the Vietnam war—almost all of which contain enormously damaging information, at variance with the pronouncements of the State Department, and almost all of which conclude that the war is indefensible. One of the roles of an extraordinarily effective medium like television should be to bridge the gap between these two systems of information, the larger and the smaller, by providing a forum for both—not advocating either, but at least providing the public with sufficient information from both sides, so that Americans can make up their own minds on the basis of facts, not unauthenticated claims.

As a result of the two information-systems, then, one of the grave problems about American life today is that, given the unavailability of many facts about the war except to a small group of readers, a large majority of the U.S. public believes things about the Vietnam war which their government has told them, but which are contrary to the findings of most published scholars and independent researchers. For example, most Americans appear to believe:

(1) That if we fail to defeat the enemy in Asia, our security in America will be endangered.

(2) That if we fail to defeat the enemy in Asia, our sons will have to fight them elsewhere.

(3) That if we withdraw, the North Vietnamese and Viet Cong will carry out a blood-bath which will exterminate "50,000," "hundreds of thousands," or "millions" (according to President Nixon in three different speeches).

(4) That Communists carried out a massacre in Hue in 1968, which took the lives of 3,000 victims.

(5) That Ho Chi Minh murdered 50,000 North Vietnamese in 1954, immediately after the war with the French ended.

(6) That if we fail to defeat the enemy in Asia, our military credibility throughout the world will be damaged.

(7) That we are morally obliged to oppose Communism throughout the world, and in fact consistently do so.

(8) That Communist China is an aggressive and irrational nation with a long history of military belligerence, and it will take over all of Southeast Asia by force if we withdraw.

(9) That North Vietnam carried out a massive invasion of the South in 1965.

(10) That the U.S. began bombing North Vietnam in order to interdict the flow of supplies to the South and to demonstrate the price of aggression.

(11) That North Vietnam violated the Geneva Accords of 1954.

(12) That the South Vietnamese are struggling for freedom and independence.

(13) That free elections were held in South Vietnam in 1967.

(14) That the Thieu-Ky regime, though not perfect, is a promising start for a genuine democracy.

(15) That war-crimes in Vietnam, though unfortunate, are not widespread, are an unavoidable feature of a prolonged war, and are attributable as much to enemy forces as to our own.

(16) That the pacification program benefits the South Vietnamese and is going well.

(17) That Vietnamization is an effective and reliable means of withdrawing American troops from Vietnam.

(18) That the withdrawal of all American troops will mark the end of our involvement in Southeast Asia.

It would, of course, be arrogant for anyone to maintain that the university scholars and the students who read them are in possession of the whole truth, and that these eighteen beliefs are absolutely fallacious. On the other hand, however, since some of the finest minds in the nation claim to have knowledge which exposes the falsity of these beliefs, it would be extremely dangerous for the general public to continue to express, through its representatives, its will about the war without at least being exposed to this knowledge.

Hence, especially in the wake of the furor over the Cambodian invasion and the subsequent uprisings on our campuses, the networks should feel obliged to air once again both sides of the controversy over the war. Moreover, they should feel secure that the issues are grave and newsworthy enough to forestall any new pressure or threats from the Administration along the lines of Mr. Agnew's last November. They should also be confident that this time support from students, faculties, and University presidents would come to their aid, should those pressures arise again.

For all these reasons, we, the undersigned, believe that the crisis in American life will continue to deepen if a significant segment of qualified opinion continues to be grossly neglected on television and if the general public does not have access to the information of this segment, in order to use this information in its deliberations about our foreign policy. If this kind of openness, this access of the university community to the general public and vice versa, does not become available, the ultimate result will be a further polarization—a bifurcation into two societies with two radically different premises, knowledge-systems, and ideologies. At a time when even the President is beginning to draw back from this divisive prospect and is beginning to seek means to improve communications between university people and government, we believe it is incumbent upon the networks to work toward improving communications between university people and the general public—by providing the public with a more rounded picture of what some of the most knowledgeable men in America are saying about our foreign policy. Hence, we urge you in the coming months: (1) to call upon some these scholars—e.g., Gabriel Kolko, Noam Chomsky, Howard Zinn, George Kahin, John Lewis, J. K. Galbraith—and invite them to be guests of honor on your Sunday interviews; (2) to do several one-hour specials on various aspects of the anti-war movement, in which through interviews you get to some of the fundamental questions of the war, such as the answers to the eighteen beliefs described here; (3) to arrange debates between some of these scholars and Administration spokesmen or pro-Administration commentators; (4) to follow major speeches by the President or Vice-President with searching analysis by qualified foreign policy experts *from both sides* (so that you cannot be accused of unfairly criticizing the Administration); (5) to seek out appropriate Senators or university scholars for a contrary opinion whenever an Administration spokesman makes a significant statement obviously designed to mould opinion. (You often seek our Senators now but usually limit them to general and perfunctory remarks.)

We believe that the voice of the whole people must be heard; that the opinion-shaping capabilities of the media should not be made available to the government alone, but should be open equally to the opposition; and that continued failure of the networks to provide a balanced picture of the facts about the war and to present the views of knowledgeable men opposed to the war can only contribute to a further worsening of tensions between the conflicting forces in our divided society.

INITIAL SPONSORS (AFFILIATIONS LISTED FOR IDENTIFICATION ONLY)

Professor Robert Edenbaum, Department of English, Temple University.
Professor Evan Sorber, Chairman, Elementary Education, Temple University.
Reverend Edward Lee, Jr., University Christian Movement, Temple University.
Professor Raymond Bentman, Department of English, Temple University.
Professor Ralph Flood, Department of English, Temple University.

Statement Concerning Political Access to Television and Applicability of the Fairness Doctrine

(By Donald P. Mullally, Ph. D.)

The Federal Communications Commission has recently been faced with the difficulty of resolving several issues regarding the applicability of the fairness doctrine. These cases have arisen because of the desire of certain members of congress to present views contrary to those voiced by the President in his broadcast speeches. Further requests by members of the President's own party for time to counter the views expressed by "The Loyal Opposition" have complicated the problem.

So far as I can determine, there has never ben a previous case in which the position of the President has been characterized as one side of a controversial issue of public importance; there is no doubt in my mind that this is, however, a correct characterization in the present circumstance. If the fairness doctrine is applied uncritically in this case, I believe we will have opened the door to a maelstrom of controversy which, while it might be beneficial in this context, could be used as a terrible precedent in the future. Moreover, I fear the weakening of the fairness doctrine as a regulatory tool if it should become too deeply associated with purely political controversy.

It would be well to reexamine the principle upon which the fairness doctrine is based: it is not the right of any individual to speak which we are here protecting, but the right of the public to be informed of the several sides of controversial issues of public importance. We are therefore not so much concerned whether the party which does not happen to occupy the White House has or has not the time to rebut the position advocated by the President. We are more concerned with whether or not the public is well informed about the many points of view on particular issues.

This analysis raises two questions: assuming that we agree that the President should have the right to address the nation and express his position, does it necessarily follow that the contrary view should be presented by spokesmen for the opposing party? Moreover, is there any indication that the fairness doctrine should be used as the weapon by which members of Congress could themselves gain access to the airwaves to express their views? I am asking whether or not, in the first place, members of Congress should be the ones to present the opposing view, and in the second place, even assuming that Congressmen should be the spokesmen, is the fairness doctrine the appropriate entree to the studios?

But there is a third issue lurking in the controversy: are we talking about a fair presentation of both sides of a controversial issue, or *equal time* for presentation of both sides? Moreover, does the prestige of the Office of the President make it impossible to fairly present views opposed to those of the holder of this important office?

Examination of the problem in a more complete context leads one to ask the question, "Even assuming that the President has access to the media to express his opinion, how could it be that the public would not be informed about the contrary positions?" We might also ask whether it is possible that the public does not know the background against which Presidential and Congressional decisions are made, and the implications of those decisions.

I think most critical observers of the American political scene would agree that most Americans are incredibly ignorant about the background upon which current policy decisions are merely an overlay. Moreover, I believe most of us would agree that the majority of Americans have no conception of the implications of our policies—the kinds of effects our policies will have on the future of both the nation and its citizens. To examine just one case in point: I might ask each reader of this statement to decide what percentage of the population could state *both* sides of the major issues regarding our entry into Cambodia, or explain the implications for American citizens of an immediate withdrawal of all of our troops from Indochina—an action which would have profound impact on such things as unemployment, racial harmony, the economy, education, and virtually every other facet of our lives.

But the more cogent question is whether or not it will really improve the situation significantly to have a group of congressmen tell what they think, or what their party position is. With all due respect to the members of Congress, I suspect that they have neither the time, the talent, the money, nor the feeling

for the electronic media which would make such a presentation much of a success.

There is occasionally a program on television which has such a profound impact on the public's awareness that we are reminded what an excellent job professional television people can do in using their medium to explore and explain important issues. One example might be the controversial—and powerful—"Hunger In America" program, or the most recent program concerning migrant workers in Florida.

I have come to the conclusion that we have not expected enough of our electronic media: they have an important role to fill in a complex society, and they have only begun to do the job. We must expect the *broadcasters*—particularly the networks—to do more to examine all sides of the important controversial issues *in depth*. This is something that cannot be done on a news program. And I have no doubt that there would be some place in these documentary programs for the views of members of congress, especially if these views are carefully prepared and articulately presented.

I believe we are asking of the fairness doctrine something it cannot do, and was not designed to do. It is, in a sense, a guideline for an entire policy of broadcasting. It has become a remedy to be used when the guideline has not been followed.

If we are to accomplish what I believe are the ends desired, we must not stretch the fairness doctrine beyond the limits of its considerable elasticity as a policy guideline. I offer, as an alternative to the use of the fairness doctrine in this situation, the following suggestions:

(1) The Congress should immediately suggest to the Federal Communications Commission that it desires stations and networks to be held to a high standard with regard to the amount of public affairs programming. (Anyone familiar with the so-called Cox Formula will recognize what an incredibly low minimum standard is acceptable as being in the public interest.)

(2) The Commission should be instructed to require that licensees itemize the *types* of public affairs programs which they run, listing exactly what matters were covered in these programs. As things now stand, it is possible to place much superficial and irrelevant material in the public affairs category for license renewal purposes.

(3) The Congress should indicate to the networks that it will expect a more complete in-depth coverage of the important issues and their implications *in prime time*, and that an alternative to this is further regulation of the networks as vehicles of interstate commerce.

(4) It would be well for the Congress to investigate the scheduling practices of the networks to determine:

a. why such programs as "Issues and Answers," "Meet The Press," and "Face the Nation" are aired in non-prime time.

b. why public affairs programs (such as "60 minutes" and "First Tuesday") are scheduled opposite each other.

c. why there is such a dramatic increase in documentary and other special program during so-called "Black Weeks"—weeks in which no ratings surveys are being taken in major markets.

While it may appear to be an elitist statement, I believe it is not a good enough answer to say that the public gets what it wants. For (even if this were a true statement) there is often a profound difference between what the public wants and what it needs. It seems that the public interest is served by filling needs not only for entertainment (and this is an important and legitimate need), but for information as well. Indeed, there is a point at which one can be so ignorant of the facts that he does not know he needs more facts upon which to base his judgments. We have given licenses to broadcasters on the premise that they will serve many of these needs of the public.

SUMMARY OF POSITION

It is my position that the desired goal of fair and balanced presentation of the important issues cannot be attained through the uncautious application of the fairness doctrine to this kind of Presidential-Congressional conflict, for these reasons:

(1) Such application may weaken the doctrine as a versatile tool for the handling of controversial issues generally, due to almost constant association with the political process.

(2) Broadcasters are already required to provide balanced coverage of controversial issues. More categorization of presidential remarks as controversial

does not (and should not) give members of congress the right to present the opposing view. The question is really whether or not broadcasters have been living up to this responsibility.

(3) The fairness doctrine itself is useless unless broadcasters involve themselves more frequently with controversial issues. The thrust of any congressional action should not be to modify the doctrine, but to encourage broadcasters to do more to bring the important issues to the public during prime time.

The legislation proposed by Senator Fulbright may be desirable from the point of view of having worthwhile ends, but it is my position that it attempts to attain these ends through inappropriate means:

(1) The ideal situation would be one in which the public is informed more or less continuously about the issues and the implications of government policy, rather than at fixed intervals.

(2) I do not believe members of Congress can do an adequate job of presenting the issues: as Senator Fulbright has said, communication is power. The broadcasters are experts at communication, and would be able (if so inclined) to present all sides of the issues with maximum force. Any deviation from this could be handled by application of the principles of the fairness doctrine.

(3) In a sense, the proposed legislation begs the real issue: how can the public be best informed about all sides of controversial questions, and how can the implications of government policy be impressed upon the electorate? The answer, it seems clear, is to require higher standards of broadcasters with regard to public service programs, not to provide them with program content which they must air.

DEAR SENATOR PASTORE: I am enclosing a letter to Senator J. W. Fulbright in regard to the Senator's courageous confrontation of what may be an imbalance in the Executive use of the television media.

Central to that exploration into what the Chief Executive's Office means in a free, democratic and representative society, is the more important issue of what the society should become and how the media should be used as an *educational instrument* to that end, and not only by the President, but by Senators, Mayors, and distinguished executives.

If television has become the chief instrument by which the leadership of our society communicates with the rest of society, we must then be on our guard that it never becomes the tool by which a single individual espouses views which are foreign to our traditions.

If a President of the United States, and not necessarily President Nixon, any President, ends up using the media to suggest, even if it is by inference, that a dictatorship is the best remedy for what ails us, we must seek to balance out his views before abrupt and far stricter measures are taken by free men in defense of freedom.

We are as a society beset by many problems, not the least of which is the idea that political participation and the uses of political power will solve everything.

If anything, it will create, if it has not already, a contest of who excercises the greatest immoralities in the pursuit of power. I give you Kennedy, King, Kennedy, Kent and Jackson State.

And that will come to include White Power, Black Power, Irish Power, German Power, Italian Power, Catholic Power, Jewish Power, Protestant Power, North, South, East, and West Power, and as many integrities as we have created in the pursuit of selfish interests and self-serving purposes.

A President, as an expression of his inner thinking, and with the use of the television media can create a force for consent. He can equally create forces of dissent.

He can use it to bring us together.

Or he can use it to ripe us assunder.

And he who seeks to keep us apart, he who seeks to set up group against group, must become deeply suspect.

And it is up to the most moral of us, and to those of us who are entrusted and honored by the leadership positions men have bestowed upon them to act as the guardians for all of us. It can be no other way.

Sincerely and Respectfully,

GILBERT Z. A. BARKUS.

GREENWICH, CONN.

P.S.—We must concern ourselves with the abuses of power, and not its just uses. And from one who knows the abuses of Black Power, White Power, Religious Power and Business Power. Obviously we have created "a power overload" in attempting to transmit the highest precepts of a functioning democracy, and the

blame may well be layed upon the "power engineers" who could not foretell the consequences of a "euphoric blueprint whose circuitry disintegrates when there is a power overload."

DEAR SENATOR FULBRIGHT: I much agree with your courageous broaching of the dilemma confronting a free and representative society, when through the use of the television media the Chief Executive Officer of our society may create an imbalance in the "representation of views" that may not be concurred in by others, who too have been chosen to represent a segment of our society.

Let me state, and almost immediately, in that there be no ambiguity in my views, that I have previously suggested, and to the President himself, considering the changed nature of the circumstances confronting our society, and the ability of everyone and anyone to add his voice to the communications chaos, and that some men of great intellect and wealth may even enter into a "role conflict" with the President due to their own control of some media, well, it seemed that the President's hand should be strengthened rather than weakened in that his role of elected leader of the entire country not be subject to continuous and unwarrented errosion.

I still believe in that view, for it is sound.

However, in a pluralistic society, and with power being a matter of balance, and as perceived by the Founding Fathers, one comes full circle to the dilemma which you have posed, i.e.: Can a President of the United States of America, in the year Nineteen Hundred and Seventy, by his access to the television media create an imbalance of power.

And if that power is abused, may well lead to a defacto dictatorship. That is the control of the mass of highly suggestible minds through sugar coated placebo messages.

The danger being, and as occurs in any other chief executive role, be it in industry or government, that as the pressure mounts, the pressure of circumstance or error, the senior executive officer may seek to cover or bend the truth in such a manner as to create a sense of euphoric acceptance, while the realities are a gross contradiction, and which have been submerged as a temporary management exercise in expedience. And if that does occur, and the corporate board of directors are unperceptive as to the true realities, what eventually happens is that the realities end up discrediting the chief exec.

It is in the nature of any well run corporation that the advocacy procedure is used as a management tool to avoid . . . any rude awakenings later on. When management seeks to be self-protective, and the device of challenge & response is circumvented, the tendency for errors to occur becomes excessive to the point of mismanagement. One need only to recollect on the management debacle which occurred some years back when General Dynamics Corporation actually spent millions upon millions of dollars on the R&D of a new air transport which couldn't even fly!

That plane was areodynamically unsound to begin with and no one apparently had the temerity to question it, that is question the original plans, drawings and wind tunnel tests, much less the progress reports.

It is clear that Governor Otto Kerner submitted a progress report on our society some two years ago, and that the present administration has chosen to ignore it, or what may be more serious is that the means to dealing with it is creating "a placebo effect". The sugar coated pill that relieves psychological pressure while the causes are becoming progressively worse.

1. The crime rate continues upward, though at a lesser pace.
2. The mental disequilibrium rate goes up to the point that one in every ten Americans are in need of psychiatric help.

They are symptoms of a deeper disorder.

There are two ways of dealing with disorders of any sort, you suppress it, hoping and praying that it will go away, or, you confront it for what it is and seek out the root causes dealing with them for what they are, and not for what they are not.

Apparently your deep distress at the imbalance of the use of the television media by the President has something very much to do with your own views and many of your colleagues views of how the President is using the media, i.e.: He is using the media to reinforce the Cambodia Decision, He is using the media to sugar coat Preventative Detention, He is using the media to sell Break & Entry.

In other words he has embarked on a policy, either consciously, or as the direct expression of his own personality, i.e., that the highest expression of family leadership is for the father to create a deep and abiding respect for the symbol and reality of his power. The family dialogue as such becomes limited to polite exchanges with a diminution of the participant members of the family to even think for themselves.

Many families are so run.

The only question that we should ask ourselves at this juncture of our evolvement is, "Is that the kind of family society we wish to evolve towards?"

And in the answer is your own view of how we should evolve.

My own answer has been stated often and many times, and as most clearly defined in This Foundation's Report on *Logical Evolution.*

We must give those who actually have the managerial responsibilities for running various segments of our society the greater responsibility of shaping those institutions, in concert and cooperation, for the benefit of all the participants in the society.

Elected officials should act, as they always have, as watchdogs of the greater public interest.

As to the imbalance of access to the media, particularly from a foreign affairs point of view, there are vehicles by which the opposition may express their views, such as on Meet The Press.

I do suggest, that when an enormous imbalance takes place, *not only in Prime Time vs. Sunday's Intellectual Alley, but in terms of fundamental policy differences, that shows such as Meet The Press, be switched to prime time, and extended to a full hour in that a measure of balance is restored to our continuing dialogue.*

As to who would make that decision?

New problems require new institutions.

Hence, I would suggest a Review Board made up of a balance of both political parties and communication's industry spokesmen. I would also add an equal group from the academic community, as they are indeed entrusted with the shaping of our lives but at a different level. The formative level.

Let the dialogue continue.

Let balance be restored.

And let the truth will out.

Sincerely and Respectfully,

GILBERT Z. A. BARKUS.

GREENWICH, CONN.

P.S.—I would want no misinterpretation to occur, particularly as regards Preventative Detention, or other means to gain control of a society that has erred on the side of permissiveness. We must gain control of our society and its malfunctionings, while simultaneously seeking to correct the immoral imbalances which we have created.

One without the other leads one to a Fourth Reich conclusion.

The use of brute force for no other purpose than suppression.

One dimensional societies are created through the means of suppression, and they are known as dictatorships.

And it is not within our traditions that we would permit something like that to occur. Lesser men have been removed from office through the ultimate expression of means toward ends, before, and there is no reason not to think that those same means would not be used again should circumstances warrant it.

Again, who is to determine those circumstances?

I would say those who are concerned for the highest moral and functional aspects of any given society.

G. BARKUS.

Note.—I am deeply concerned over the entire train of events and circumstances which just "seems to remove men" who would oppose the Administration.

The young lawyer in Boston who was bringing forth the legal action which questioned the legal basis of our nation's involvement in Vietnam, just happening to have a "convenient" heart attack.

The Kent State Killings.

The Jackson State Killings.

And other "convenient" deaths.

It is a pattern of fact and of circumstance that if we are to preserve that which is best in us should not be lightly overlooked, much less ignored.

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