IT'S LIKE WALKING ON WATER

There's just no solid ground to stand on when you try to apply the Fairness Doctrine to complex political questions

IN ALL FAIRNESS
Second of three parts

By Martin Mayer

May Day, 1970, was, among other things, the morning after President Nixon's prime-time announcement on all network television stations that he had just sent American troops into Cambodia. And among the headaches of those who opposed this unexpected decision was the discovery that they could not hope to put their objections before a comparable audience. The FCC has pronounced a "Fairness Doctrine" requiring television stations to present differing points of view on controversial matters. For those angered by the Cambodian decision (and by the rest of the war in Southeast Asia), the willingness of the network news departments to present their comments only on the usual news shows seemed damnably unfair.

Of the three networks, only ABC felt obliged to offer a counterweight to the President's talk: after much bitter dispute within the management of the

network, a speech by Democratic National Chairman Lawrence O'Brien was carried live from Minneapolis, officially on grounds of news value rather than to meet any "fairness" requirement. CBS took the position that its intensive coverage of opposition statements on news shows met all obligations. NBC agreed, but this network (alone) had a long-standing policy permitting—on a highly selective basis—the sale of broadcast time (in segments of 15 minutes or longer) to responsible, affected parties who wish to present arguments on public issues to a television audience. During the Medicare debates, the AMA had bought time to put a program on NBC, and now the network sold the half-hour after Huntley-Brinkley to a group supporting the Hatfield - McGovern "Amendment to End the War." The cost of the time was about $70,000, but the senators who appeared on the program were permitted at its end to solicit funds for the cause, and some $480,000 was contributed by the television audience.

The President took the bucket back to the well in mid-June with a talk on the economy, criticizing the Congress for failure to respond to the more formal messages. On April 30, President Nixon had spoken as the national leader making a decision for the country; but now he had presented himself as a fighter with a domestic adversary. The networks, greatly relieved, saw an obvious case for giving time for direct replies from those whose judgment the President attacked. NBC and ABC made an offer directed to the Congressional leadership, and Senate Majority Leader Mike Mansfield led a rebuttal team in time slots similar to the President's.

CBS decided that the moment had come to make policy, and declared that it would give four or so half-hours a year to the "loyal opposition," the major party not represented in the White House, as automatic balance to the President's access to the home screen. The time offered to the Democratic National Committee was taken by O'Brien himself, and what he put on the air was a half-hour attack on the President and all his works, professionally produced and nothing but political. The Republican National Committee hit the ceiling and demanded . . . equal time.

All these disputes were dumped into the lap of the FCC, there being no other place to put them. In early August, the Commission ordered the three networks to give time to opponents of the war to present their disagreements with the President—and told CBS to give the Republicans their chance to answer O'Brien, thus putting a stop to the "loyal opposition" ploy. After reading the newspaper stories on these decisions, Chairman Dean Burch issued a "clarification," stressing that the commission had not established any "right of reply" to the President. What was required of the broadcasters was that their *total* coverage of an issue should be reasonably balanced. As a normal matter, broadcaster-controlled news and discussion shows which presented the views of opponents would be enough to meet the FCC "standard of fairness." But when the President speaks five times in nine months on a single issue, as he did on the war, then broadcast coverage becomes unbalanced, and opponents must have time to reply as they wish. Even then, Burch insisted, the networks retained their authority to make their own choices among opposition spokesmen.

Early in September, Commissioner Nicholas Johnson issued his own statement about the decisions and the clarification, urging that "leaders of opposing parties, and opposing viewpoints in Congress, be given the opportunity to rebut [a President's] unilateral statements." →

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Johnson's "put-everybody-on" position seems closer than Burch's both to the spirit of Section 315 and to the relevant Supreme Court decision in the *Red Lion* case. As Justice Holmes once pointed out, however, the life of the law has not been logic but experience. And our experience argues that there aren't enough hours in the year to give time to all "opposing viewpoints."

Those who disliked the Cambodian decision, for example, ranged from suicidal kids who wander around waving Vietcong flags to sober businessmen with impeccably Republican voting records. Neither Abbie Hoffman nor Noam Chomsky can be taken to represent the views of Gen. James M. Gavin or W. Averell Harriman—or vice versa. In applying Section 315, the FCC at least has solid ground to stand on, because only candidates who have qualified to get on a ballot are entitled to receive time. Deciding on fairness to political positions would be like walking on water. By what criterion, indeed, did the FCC award time to doves but not to superhawks who would like to hydrogen-bomb North Vietnam to ashes? How crazy does a man have to be before a broadcaster can refuse him time under a uniformly applied fairness doctrine? Section 315 and the *Red Lion* opinion and Commissioner Johnson seem to be saying that the sky's the limit—but they don't really mean it; they can't.

FCC General Counsel Henry Geller believes that these problems are manageable by common sense. "We don't quarrel with the networks' decision that they don't have to give time to programs to please a hundred Trotskyites in New York," he says. "We'll accept anything they can defend as reasonable." This is hard on the Trotskyites, but they are used to suffering and presumably can bear it better than the rest of us.

Obviously, no law can secure equal attention for all points of view, or for all candidates for public office. The depressing aspect of the recent debate about fairness and the media is the failure of the debaters to understand that unless the broadcasters' judgment of what is worth attention differs greatly from that of the general public (which is next door to impossible in a feed-back medium like television over any period of time), "access" makes little difference.

Maybe it does in radio; radio is a political tool that can be operated by individuals. A Franklin Roosevelt, a Winston Churchill, an Adolf Hitler—today, in the underdeveloped world, a Gamal Nasser or a Fidel Castro—can use a microphone to communicate personally, a private voice in each individual ear, to millions of listeners scattered in unimaginably varied surroundings. Through the magic of radio, a Huey Long or a Father Coughlin—and finally, at the end of radio's dominance, a Joe McCarthy—could single-handedly make himself a major political force over the geographical reach of the broadcasting stations that carried his voice.

But television is a whole factory of tools, and there isn't much an individual can do. David Attenborough, controller of programs for the British Broadcasting Corporation, said recently, about the difficulty of television symphony concerts, that "the visual always overrides the auditory." One need not accept the fatuous guesswork of Marshall McLuhan to feel the difference between the disembodied voice which absorbs the ear and the picture of a man reading a speech, from which the mind quickly wanders.

To exert its political powers, television needs events. As Presidents John F. Kennedy and Charles de →

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Gaulle saw almost simultaneously, neither the speech to a public meeting nor the fireside chat will be enough of an event to command attention on television. Their substitute was the live press conference, a successful perversion of a device invented by Woodrow Wilson as a way to get the papers to print the Government's side of any story, and then perfected by Franklin Roosevelt (who would not allow his answers to be directly quoted, let alone broadcast). Dwight Eisenhower had permitted his press conferences to be filmed after network representatives convinced him that a new fast film would allow them to eliminate the bright lights he hated. But the films of the Eisenhower press conferences could not be released until the White House had screened, edited and approved them. Kennedy took the gamble of broadcasting the conferences as they occurred, which made them events, appealing not only to audiences which agreed or disagreed with him, but to the vastly larger audiences which on most issues didn't care much either way.

When matters that urgently affect everyone are up for decision, a President obviously does not need the borrowed drama of the press conference. President Kennedy's announcement of the partial blockade of Cuba, President Nixon's televised vetoing of the fiscal 1970 HEW appropriations bill and his announcements of decisions on the war —such moments have an importance that far transcends any subsequent commentary on them by political opponents. They are news; what is said by the President's opponents in response can never be more than opinion. A President can effectively preempt the programs on all the networks, because what he says may affect everyone's son or father or brother. But his opponents must take one network at a time: they dare not risk the wrath of millions who would find all entertainment off the air because Senators X, Y and Z had been given a special license to talk politics. Few stage villains are so thoroughly hated as Shakespeare's Malvolio, and few rebukes so popular with an audience as Toby's challenge to him: "Dost thou think that because thou art virtuous there shall be no more cakes and ale?"

The need to counterfeit "events" to balance a government's command of real news has been a major factor in stimulating the use of the demonstration as a political device. Unfortunately, a Gresham's Law of theatricality—*startling* drives out *thoughtful*—forces the televised demonstration to highlight spokesmen who make only marginal contact with the real world in which the ordinary voting viewer lives. The substance offered in a President's report may be starchy stuff, but it looks mighty nourishing next to the boozy symbolisms that come through in a demonstration. Even when the police cooperate and give the show real live action, the result is often to buttress the government's position with people who might otherwise be questioning it.

Only newsmen finding events which are *not* staged (by governments or others) can counterbalance the political advantages of the men in power—and this, of course, is why Vice President Spiro T. Agnew has (very intelligently) attacked the network news departments. Abuse of the President's use of television for partisan purposes can be curbed only by the sense of fairness of the man himself, or of the public at large; and regulations can do little more than help keep the question alive for all concerned. END

Next week: How other countries handle "fairness" problems, and what their experiences may mean for us.