The Government Formula That Will Remove the Gospel

It is essential that all the Christian people understand how the Fairness Doctrine works. It actually constitutes a formula to be used by a man's opponents to cause a local station trouble. Groups which do not like a particular program can use the Fairness Doctrine by means of complaints to the Federal Communications Commission, to get that program off the air. Individuals who do not like the owner of a station can also use the Fairness Doctrine with complaints alleging violations thereof to cause him trouble. The trouble consists of the consuming of much time preparing defenses, searching out records, and getting texts of tapes which sometimes means hours of listening. Attorneys must be consulted and paid, and the Fairness Doctrine, with the Federal Communications Commission itself being the final judge of all questions involved, places the owner in a very difficult and trying position because so many of the questions relative to the Fairness Doctrine are nebulous, open to question themselves, and even subjective in that there may be divergences of opinion concerning whether it is, or is not, a Fairness Doctrine matter.

There are three main areas in which the Fairness Doctrine deals. These areas may be separate or they may overlap.

The first deals with what is called the "controversial question of public importance." The Fairness Doctrine requires that when such questions are discussed or presented by a station, the contrary views must also be presented. A station is required to go out and find those who can give contrary views. When a radio station touches several states, as does WXUR — New Jersey, Pennsylvania, Delaware, Maryland — there are all manner of questions, some affecting Philadelphia; others Wilmington, Del.; some Trenton or Atlantic City, N. J. Municipalities also — and there are many municipalities covered by the broadcast — are discussing matters at the city council, the school boards, and various civic groups. What is a controversial question in one place may not be a controversial question in another place. No guidelines have thus far been provided by the Federal Communications Commission as to how a controversial question can be recognized and at what point a subject which is not controversial makes the transition to become controversial. Because of this broad, uncertain area a radio station does not have a "Solomon" running it, and since the FCC requires that contrary opinions be presented, if any station is in danger of having trouble, the safest course is to refuse to carry anything. Because a station may lose its license or be fined, every time a station owner or manager makes a decision he has to have in mind the question of how the FCC will understand the matter, and who, it may be asked, knows the mind of the Federal Communications Commission?

The second area is what is called balanced programing. This goes beyond just controversial questions of public importance, and in the WXUR case it is clear from the decision that the various religious programs which were recognized as controversial were not balanced. If the WXUR decision is sustained, every religious station in the nation — and there are fewer stations carrying religious broadcasts than ever before—will have to balance on a nearly equal basis, one way or the other, the religious with antireligious, Christian with anti-Christian, the Gospel with antichrist; and what is so tragic and disastrous is that the "anti" programs have to be carried free if no one will pay for them. And

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(Photographically reproduced from Broadcasting Magazine, November 13, 1972)

The Bazelon mandate

In 23 years on the U.S. Court of Appeals in Washington, the past 10 as chief judge, David L. Bazelon has done more than anyone else to turn the court into a super-FCC, ever thickening the web of regulation around radio and television.

Suddenly Judge Bazelon has developed qualms about the constitutionality of a central feature of the regulatory scheme—the fairness doctrine. By itself, so dramatic a turnabo t would attract unusual attention. Judge Bazelon's will arouse added and lasting interest for its lucidity of exposition. He has written a remarkably persuasive case for the inclusion of the "electronic press" with the print media under the full protection of the First Amendment.

As described in detail elsewhere in this issue, Judge Bazelon's observations have been made in a dissent to a majority opinion affirming the FCC's decision to disapprove the license renewal of WXUR-AM-FM Media, Pa. The dissenting opinion takes on still further importance for having started out to be a statement of concurrence with the majority. The longer Judge Bazelon studied the case, the more he agonized about its constitutionality. "I fear," he was ultimately to write, "that ancient assumptions and crystallized rules have blinded us all to the depth of the First Amendment issues involved here."

In a country where the people consider broadcasting to be their most important news source, "there is no factual basis for continuing to distinguish the printed from the electronic press as the true news media," said Judge Bazelon.

Does the "scarcity" of broadcast channels justify intensive federal regulation to make sure they are used for proper purposes? That argument takes no notice of the profusion of stations now on the air and the development of new technologies of distribution. And besides, added Judge Bazelon: "We should recall that the printed press was the *only* medium of mass communication in the early days of the Republic—and yet this did not deter our predecessors from passing the First Amendment to prohibit abridgement of its freedoms."

It is an eloquent and scholarly presentation of the broadcasters' case, and the question now is: What is to become of it? At the very least it must give heart and cause to those at the FCC who are reconsidering the fairness doctrine. It may also provide the basis for further appeals that will hopefully lead to reversals of recent trends toward suppression of broadcast freedoms.

But whatever its ultimate utility, the Bazelon dissent now belongs with the important documents of broadcast law and regulation. Beyond that it provides inspiration to stiffen resistance to each new venture toward government control.

Government Formula

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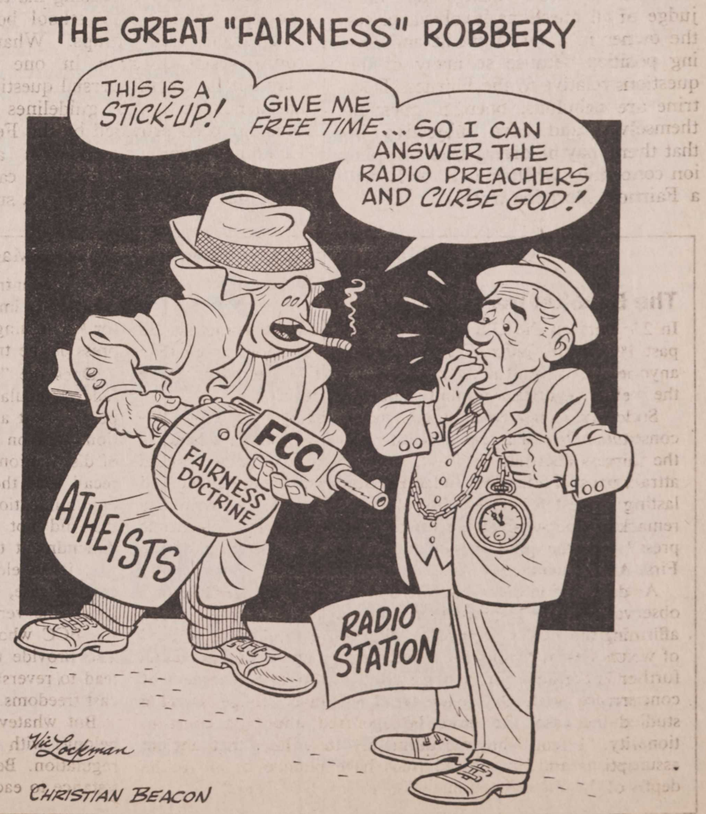
no one is going to pay when it is not necessary to do so.

In all these areas the station is the loser. All the burden is placed on the station, and its decisions are subject to the judgment of the FCC. What is so interesting about the WXUR case is that the examiner, who spent 14 months hearing and offering his decision, said that the station had rendered a normal service, while the FCC said it had not. Thus within the FCC itself — the Examiner versus the Commission — there was a different understanding of the Fairness Doctrine and its application. With a situation like this presented by the FCC itself, how can radio stations expect to be sure of themselves when also the additional factor of political concern and bureaucratic control, with the power of government to sustain it, enters into judgments. And furthermore, as in the case of WXUR, the broadcast bureau itself becomes an ally of the station's opponents. In the case of WXUR it was the Greater Philadelphia Council of Churches and bodies in the World Council of Churches that led the fight against Dr. Carl McIntire, who had been struggling with these religious groups in the great religious battles of the twentieth century — modernism versus fundamentalism, liberalism versus conservatism.

In the third place, the Fairness Doctrine has what is called "personal attack" provisions. If a man, in the course of a discussion of a controversial issue of public importance, finds that his character or motive or integrity are assaulted, he is immediately entitled to reply The station must send in notice in advance, with the text of the attack, or aftterwards within seven days. A fine of $10,000 may be levied for each offense. Here again, even the mention of a man's name may bring the accusation of personal attack. For this reason stations are demanding that no names be used in any of their discussions on their airwaves.

The impact of what is here called the Fairnesss Doctrine is to raise great questions for the radio stations, and if they may lose their license, as WXUR has, the stations, in order to be cautious, will carry nothing that might provoke complaint or give their opponents an opportunity to use the weapons of assault which the FCC has provided them. What is so astounding about all of this is that Government officials, the Federal Communications Commission, and the courts seem to be totally blinded to the conditions which they have created. They are unwilling to recognize or even to admit that such a situation as a result of the broad, uncertain, and subjective areas of the Fairness Doctrine could produce such repression, censorship, and tyranny over the speech and religion of men.

It is important that Christians recognize that the FCC has created a condition which will eliminate all Gospel programs from the air in the United States. The pattern follows in the case of WXUR. Once the Fairness Doctrine is established as legal by the Supreme Court it can be used in every community by those who oppose Christianity to harrass and intimidate station managers so that the Gospel will be silenced. The only remedy is to remove the Fairness Doctrine entirely, in any decisions relative to speech, from Government bureaucrats and politically appointed judges. America has enjoyed a free press from its beginning without such bureaucratic manipulations. The country should demand that radio return to the same statis as the newspapers, free from government conditioning of speech and news. The legislatures have established laws of libel and slander, and these should be adequate in the field of radio and television. There is nothing wrong in talking about another man's opinion and views, and if he is slandered he has the same resource in law that has been provided against the newspapers. The separating of speech on the radio from speech in the press is a part of the contrivance of those forces who want to get at their opponents and to silence dissent or unpopular opinion.●