Mr. DECONCINI. Mr. President, this amendment will modify Public Law 93-531, the Navajo-Hopi Settlement Act, which was designed to resolve the Hopi-Navajo joint-use area land dispute.

The Navajo-Hopi Settlement Act established procedures for the resolution of a century-old dispute between the Hopi and Navajo Tribes over joint-use area lands in Arizona. The act basically provides for a negotiated settlement of the dispute, or failing agreement, a mediated settlement to be approved by the district court. Guidelines for mediation and court settlement are set forth in the act and mechanisms are established for the transition period following a settlement.

Negotiations having failed, the mediator, William Simkin, filed his report to the court on December 12, 1975. The report recommended partition of the lands between the tribes and set out a line of partition. Hearings and filings of briefs were held through 1976. On February 10, 1977, the court issued its judgment of partition in which it confirmed the report of the mediator and ordered that the lands be partitioned in the manner set out in the report.

Since the issuance of the partitioning judgment by the U.S. District Court for the District of Arizona, the Relocation Commission—a three-member panel, established by Public Law 93-531 to administer the required relocation of trial members—has begun to formulate its relocation plan for approximately 3,500 Navajos and 32 Hopis who must move. However, on May 15, 1978, the U.S. Court of Appeals for the Ninth Circuit vacated the original partition decree. Although the substance of the court's opinion is important, its most dramatic effect will be to delay the submission of the relocation plan to Congress. The Relocation Commission, according to Public Law 93-531, cannot submit its plan until the district court issues its decision on the full, final line of partition.

Thirty days following the plan's submission to Congress it becomes effective. According to the law, the Commission must complete the entire relocation plan 5 years after its effective date.

The act directs the Commission to make relocation incentive payments of decreasing value each year after the plan is in effect to households which voluntarily enter into relocation contracts with the Commission. Additionally, payments and programs to make restitution for dwelling and improvements, as well as funds for new housing after relocation, are authorized.

Mr. President, the intent of this law to resolve a century-old land dispute is admirable. However, implementation problems have arisen which should be considered. The law authorizes the Secretary of the Interior to transfer, upon the payment of fair market value, up to 250,000 acres of Bureau of Land Management lands to the Navajo Tribe so as to restore a portion of the Navajo land base lost in partitioning. The additional land would be used by those Navajos required to relocate.

Although a draft environmental impact statement has been issued, and hearings were completed last Friday, no land has been transferred to the Navajos. Bureau of Land Management land in the House Rock Valley-Paria Plateau area of Arizona is one of the areas being considered for purchase. The purchase of land in this area is strongly opposed by ranchers in the vicinity and various environmental and wildlife organizations. Even if this land transaction were consummated, it is estimated that only 10 percent of the Navajo families now living on the Hopi portion of the joint-use area would be accommodated.

An alternative suggestion has been to relocate at least a portion of the Navajos in urban areas such as Gallop, Flagstaff, or Albuquerque. Many of these relocatees have no skills that would allow them to become productive members of an urban population and in all probability they would be forced onto the welfare rolls.

The Senate Committee on Interior and Insular Affairs, in its report which accompanied H.R. 10337, as amended, now Public Law 93-531, recognized the serious impact relocation would have if not handled properly:

> The Committee believes it vitally important, that the plan take into account all social, economic, cultural, and other adverse impacts of relocation on persons involved in the relocation and be developed to avoid or minimize, to the extent possible, such impacts. The plan must also identify the sites to which such households are to be relocated and assure that housing and related community facilities are available at the relocation sites. The Committee believes this requirement is particularly important in effecting the purpose of minimizing the adverse impacts of relocation.

In view of the fact that lands have not yet been found for most of the relocatees, the committee's intent "of minimizing the adverse impacts of relocation" may not be implemented.

Mr. President, not only will relocatees possibly suffer "adverse impacts," but many have lived their entire lives on the joint-use area, and it is home. I recently received a letter which vividly illustrates the plight of those residing in the disputed area:

> We, the McCabes, of Tolani Lake (Area 5-B), would like to express our true feelings about our land . . .
>
> Our late father, Everett McCabe, Sr., was born on this land that we now live on and he is buried on the land, too. Our father worked on the land so that we can have a home. We were all born on this land and he raised all 12 of us along with our mother until he died in 1956. Now there are 81 of us including all our children and mother. Our grandmother and her family have been moved three times before for the same problems. It is high time that we, the children and grandchildren, put our foot down and demand our rights. So this is where we all stop and stay for the rest of our lives.
>
> Our father and mother had a grazing permit (350) for this land and they raised sheep, cattle, and horses. They built homes, wells, dikes, fences, and planted trees and corn. To this day we still have all of what they built we still plant corn, and plus fond memories of our childhood and our families. We know every square foot of our land. Our relatives and friends live close by and this is our happiness. . . .

Hearings, conducted by the Senate Select Committee on Indian Affairs in February of this year on S. 1714, a bill I introduced to lessen the impact of relocation, gave me additional incentive to pursue modification of Public Law 93-531. The hearings were held in Winslow, Ariz., with over 200 Navahos and Hopis in attendance.

Also, on May 27, of this year, Senator ABOUREZK and I visited the joint-use area and personally talked with many of those who will be required to relocate. This personal contact indicated to me that the Congress has no choice but to help these people.

Several legislative alternatives have been reviewed, all of which would help alleviate the relocation problems previously discussed. After listening to many of the relocatees and studying various proposals, I am convinced that some form of life estate should be provided—at least for those most adversely affected by relocation.

Therefore, Mr. President, the amendment that I am offering today is a modified version of S. 1714, the bill that I introduced on June 17, 1977. This proposal will assist those who are most adversely affected by relocation—the elderly. They will be allowed to live out their remaining years on their traditional homelands with sufficient livestock for their livelihood.

This amendment provides for limited life estates. In order to qualify for the life estate, one of the spouses of the household must be at least 40 years of age, and it must be determined that the household cannot be relocated within the boundaries of the tribal reservation of which the household is a member.

After meeting these two criteria, then it must be established that the head of household does not have the necessary job skills to compete in an urbanized society. Heads of households who are disabled may receive life estates without meeting the age requirement.

The life estate bill I originally introduced, S. 1714, required that the Secretary of the Interior implement the program. A major modification is included in this amendment—the Navajo-Hopi Relocation Commission will be required to implement the life estate program. This change will not extend the life of the Commission because the life estates must be granted prior to the expiration of the 5-year relocation period. Assistance to those receiving a life estate will be provided through the Secretary of the Interior. Thus, the Commission will end its duties related to the relocation process as envisioned in Public Law 95-531.

This amendment will require the Commission to grant life estates with enough land for the family to maintain livestock at a subsistance level. Further, the Secretary of the Interior is authorized to give assistance to those who maintain livestock.

The remaining major provisions in the amendment include:

First. Those receiving life estates will be able to make improvements on the property during the tenure of the life estate.

Second. The life estate will remain in effect until the head of household or spouse dies, whichever is later.

Third. A one-House veto of the Commission's plan is added.

Fourth. The Relocation Commission will be authorized to purchase up to 25,000 acres for relocation purposes. No condemnation authority is granted—the sales are voluntary.

Mr. President, this amendment will provide for a more humane relocation than is called for in present law. I urge my colleagues to support it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. If there be no further amendment, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. DECONCINI. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The title was amended so as to read:

An Act to amend the Act of December 22, 1974 (88 Stat. 1712) relating to the Navajo and Hopi Indian Relocation Commission.

Mr. DECONCINI. Mr. President, I thank the Senator from South Carolina (Mr. HOLLINGS) for permitting time in which to handle this matter. I know he has been here a long time today. I also thank Senator PROXMIRE for permitting this matter to be taken up at this time, as a personal favor to me.

It is not that I would not want to stay and listen to the fine speeches, but I promise to read them tomorrow in the RECORD.

REPORT ON AMERICAN FOREIGN POLICY INTERESTS IN EUROPE, THE MIDDLE EAST, AND INDIA (S. DOC. NO. 95-125)

Mr. PROXMIRE. Mr. President, on behalf of Mr. WILLIAMS, the chairman of the Senate Delegation on American Foreign Policy Interests in Europe, the Middle East, and India, I am submitting the report of the delegation to the Senate and I ask unanimous consent that it be printed as a Senate document.

The PRESIDING OFFICER. Without objection, it is so ordered.

PUBLIC TELECOMMUNICATIONS FINANCING ACT OF 1978

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

UP AMENDMENT NO. 1853

(Purpose: To repeal the equal time requirement and the fairness doctrine as applied to broadcasting solely by radio)

Mr. PROXMIRE. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wisconsin (Mr. PROXMIRE) proposed an unprinted amendment numbered 1853.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of the bill insert a new section as follows:

REPEAL OF EQUAL TIME REQUIREMENT AND FAIRNESS DOCTRINE AS APPLIED TO RADIO BROADCASTING

SEC. 404. (a) Section 309 of the Communications Act of 1934 is amended by inserting at the end thereof the following:

"(i) Notwithstanding any other provision of this part, effective on and after the date of the enactment of this subsection for the purposes of this part as applied to broadcasting solely by radio (excluding television broadcasting), the term 'public interest, convenience, and necessity' shall not be construed to give the commission jurisdiction to require the provision of broadcast time to any person or persons or for the expression of any viewpoint or viewpoints.".

(b) Section 315 of such Act is amended by inserting at the end thereof the following:

"(e) The provisions of this section shall not apply to broadcasting solely by radio (excluding television broadcasting).".

(c) The amendments made by this section shall be effective on the date of enactment of this Act.

Mr. PROXMIRE. Mr. President, the amendment I have just sent to the desk would abolish the so-called fairness doctrine and equal time rule as they apply to radio.

Since 3 o'clock or 3:30 this afternoon, we have been discussing public broadcasting, and it is fascinating that the principal emphasis of the discussion has been on how to keep public broadcasting free of political interference. I think that was a constructive effort. I wholeheartedly support public broadcasting. I believe it has greatly improved the quality of broadcasting generally, as well as enriched the lives of the American people, and I am happy to vote for and support this legislation.

However, we must recognize that public broadcasting is funded by Government, controlled by Government, directed by Government; that all the officials are appointed by the Federal Government. There is no question that there is no way that public broadcasting can be insulated—or should be insulated, for that matter—from the control of Congress, control of the President of the United States, and the direction, fundamentally, of the President of the United States and Congress.

I believe that is consistent with a free society only because the principal broadcasting in this country is not public broadcasting but private, outside the aegis, outside the control, outside the domination of the Federal Government.

My amendment would recognize that it is time, because of technological developments; it is time, because of the fundamental convictions of our Founding Fathers and of the overwhelming majority of Americans, that we should have freedom of the press. It is time to recognize that the reality of freedom of the press can be achieved only if we have freedom of the electronic media from government regulation and government control.

This is a first, small, modest step. We should recognize that the great majority of people do not get their news from newspaper. I think there is an illusion that they do. Seventy-six percent of the people say that they get their principal news—and many of them, their exclusive news—from radio and television.

At the present time there is no question that there is no freedom of the press for radio and television. They are censored; they are licensed; they are subject to not only oversight by the FCC but also to the denial of their license if they do not comply with the Federal regulations. There is no question that this is a censorship.

If you talk to any owner of a station or become involved in any way in a station's operation, you know how sensitive they are to that kind of Government regulation and that kind of Government control.

I contend that, for many reasons, the time has come to end that control, that political control of the private sector, and I think the place to begin is with radio.

We should recognize, for example, the number of newspapers we have in New York City and the number of radio stations. The number of newspapers is something like 3, or perhaps 4, and the number of radio stations is something like 50.

There is no question that with the advent of FM, the number of radio stations in communities throughout this country is going to increase greatly.

So if we really believe in freedom, we should recognize that we no longer can argue the scarcity argument. In the old days, you could say that there were only a certain number of frequencies available and that they could be allocated fairly only by the Government.

If we do not require a certain standard of fairness and a standard of equal time, and so forth, of the radio stations, it will mean that the plutocrats, who have the money to buy a radio station, are going to determine—not the Government, not society as a whole—who should have access to it.

We should see what has happened with freedom for our newspapers; because, while it is not unique, it is almost unique in this world that a Government permits its newspapers to operate with an amendment that prohibits any Government censorship or Government interference.

As I say, one-city ownership is characteristic in this country. It is hard to find any city except the big ones, such as New York and Chicago, that has more than one newspaper.

In a metropolis like in our State, Milwaukee, for instance, there is one ownership. The Milwaukee Journal Co. owns both newspapers, and that is true in the overwhelming majority of cities in this country, one ownership, monopoly ownership of the newspapers.

Yet, Mr. President, they are free and they should be free, and the first amendment to the Constitution guarantees their freedom from Government regulation, Government censorship, and Government control.

How is that operated?

Well, years ago I worked on my doctoral dissertation and the subject of it was, "developing standards for evaluating the political content of the American newspaper," and in the course of working on that thesis, which I have never finished, I discovered that American newspapers have vastly improved. They have improved in professionalism. They have improved far more than they would have, in my judgment, if they had an FCC applying to newspapers.

They have op-ed pages where they have an editorial page, of course, expressing their view, but in most cases opposite the editorial page they have the expression of columnists and others who disagree with their viewpoint.

Take a look at the Washington papers. You can see that. Take a look at your own hometown paper. The Chicago Tribune, which I think has been recognized as one of the most biased, one-sided papers in the country, has had that reputation, but it changed and improved vastly. Opposite their editorial page, they have the expressions of columnists who vigorously disagree with the Chicago Tribune line and do so every day.

But even more important is the fact that you have the professionalism of the reporters. It is only a relatively recent phenomenon that we had journalism schools. We have now developed reporters who take great pride in objectivity and they are taught to be objective, fair, and comprehensive, and that has greatly expanded and improved our coverage.

In what other ways have newspapers become more fair and unbiased? Here is how:

For one thing, by expanding their coverage. There was a time—not too long ago—when we could not read stories about environmental and health hazards, such as those caused by insecticides, food additives, and other previously arcane chemicals.

There was time, too, when we did not see stories about social concerns, such as crime-ridden neighborhoods, venereal diseases, old age, population growth, race relations, and school curriculum.

Women's rights, it is true, have been reported on since long before the Bloomer Girls. But now we get searching reports on what women's rights really mean.

The list is endless. But fair coverage means that problems, advances, and experimentation in areas of life affecting all of us are covered in all their aspects.

Mr. President, take the argument that many people for many years—I guess some still subscribe to it—that newspapers can be forced by their advertisers to support a particular viewpoint, an economic viewpoint or a particular social viewpoint, or even an individual who is a heavy advertiser.

Mr. President, anyone who really knows newspapers knows that is no longer true. You rarely hear the charge. When it is made it is made out of ignorance. There is no advertiser who is going to make a newspaper publisher knuckle under. If there is any example of that I would like to hear it because I have never seen it. I do not know anyone who maintains it, and that is no longer the situation. They police their advertising. There is no advertising pressure on the editorial concept.

So, with no licensing, no censorship, just with freedom, responsible vigorous journalism has flourished.

Mr. President, one of the best examples of that, of course, has been with the development during the worst scandal that hit this country in perhaps the last century, and that was the Watergate scandal.

What was the reason why the President of the United States so occupying the most powerful office in this country, maybe in the world, was forced to leave office? There is no question that it was not because of any governmental group or any agency. While the House of Representatives played a part in this matter, there is no question that the drive that forced a correction of this situation in our society and in our Government came from the free press, came from the newspapers.

I think everyone acknowledges that, Mr. President.

Mr. President, I think the clearest way we can understand how unnecessary and improper is the Federal Communications Commission control of radio and television is to ask ourselves why not try an FCC for newspapers. I challenge anyone to propose on the floor of the Senate or the floor of the House of Representatives or propose seriously anywhere that we provide for a new commission which would apply equal time or fairness doctrine for newspapers.

Why not? Why not? Why should not we apply it to newspapers if we apply it to radio? As I point out we have many radio stations in communities throughout the country and throughout the country far more radio stations than newspapers.

It is far easier for someone to start a radio station. It takes far less capital than to start a newspaper. And the radio stations, as I pointed out, are a vital source of news for the American people.

So, Mr. President, I think that anyone who supports the notion that we should have a continuation of the fairness doctrine for radio or equal time rule, I should ask why they would not apply it to newspapers.

Mr. President, let me also point out that the denial of first amendment rights to the radio stations and to television is self-defeating.

Under the fairness doctrine, for example, broadcasters are required to, first, devote a reasonable amount of time to the discussion of controversial issues, and second, afford reasonable opportunities for opposing viewpoints.

In 1972, NBC broadcast a documentary entitled, "Pensions: The Broken Promise," which dealt with corporate pension plans and how they often do not keep faith with the workers they are intended to benefit.

The airing of the program led to the filing of a fairness doctrine complaint with the FCC.

NBC claimed in defending itself that the subject of private pension plans was not controversial because as far as it knew the subject had not been dealt with previously on network television.

CATCH 22

Accuracy in Media, Inc., complained that contrasting viewpoints were not aired on the progrm.

The FCC rejected AIM's allegation of distortion but did decide that NBC had violated the fairness doctrine. It then ordered the network to broadcast balancing material.

NBC said that it had done a fair job and had no intention of giving the subject more air time.

Before moving on to what happened in the courts, I should point out a "Catch 22" aspect of this situation. I do so because it is but one example of the nightmare of complexities that accompanies the attempt to administer the fairness doctrine. Had NBC devoted more time to the subject, giving additional viewpoints, there would have been no issue before the FCC. So in order to prove its point, to test the matter in the courts, NBC could air no more shows on the subject without making its case moot.

Now back to the courts. A three-judge panel of the District of Columbia Court of Appeals ruled in favor of NBC, saying that this country needs investigative reporting. Subsequent court actions left this ruling intact.

What is the lesson of the Pensions case? It is this. The fairness doctrine can interfere with journalistic discretion, particularly in investigative reporting.

RESTRICTING BROADCAST EFFORTS

Just think of the implications if the court had decided the other way. Such a ruling would have meant that Government could, in the words of fairness doctrine analyst Fred Friendly:

Substitute its judgment for that of the network as to what issue was involved in a broadcast documentary and order that more

air time be given to elements that the journalist never thought central to the story.

The end result would be to restrict broadcast efforts at investigative reporting of the difficulty in airing any program that took a point of view or was controversial.

But wait a minute, you might say. There is no problem here. NBC won its case. It was home free and clear. There is no lingering aftereffect.

True? Not necessarily.

The result of that requirement is that fear of losing a license persuades stations to avoid controversy. We could have a far more stimulating society, far greater opportunity for people to express controversial views—no question about it—if we did not have the kind of licensing situation we have and the requirement of compliance with equal time and the fairness doctrine.

Mr. President, I wish to call the attention of the Senate to the experience of one television network with the fairness doctrine and how self-defeating that is if we expect to achieve the kind of controversial discussion that we wish to achieve.

NBC's problems in airing two television documentaries help to illustrate the point.

Let us look at how NBC reportedly agonized over its 1975 television documentary on handguns entitled, "A Shooting Gallery Called America?"

According to New York Times writer John J. O'Connor, complaints from the public even before the program was shown caused a rewriting of the script to avoid fairness doctrine complaints to the FCC after the fact.

And, O'Connor further reports, this documentary on a controversial issue of public importance—gun control—drew little response from a national television audience of about 10 million (381 complaints out of the 441 letters received in the 2 weeks after the show) because it failed to take a stand.

CHILLING EFFECT

If O'Connor is right, then this is a good example of the chilling effect on journalism caused by governmental control of broadcasting.

I believe NBC executives should not have felt the hot breath of the FCC and its fairness doctrine on the backs of their necks. For if O'Connor is correct, the existence of the fairness doctrine indirectly restrained the producers of "Shooting Gallery."

And if O'Connor is right, if NBC news executives ordered a new script for the "Shooting Gallery" because of the fairness doctrine, I wonder if it was because of the time and expense NBC went through before the FCC and the courts in the wake of its 1972 documentary on "Pensions: The Broken Promise?"

I firmly believe that broadcast journalists would not be chilled into blandness and sameness if it were not for governmental controls as exercised through the FCC's fairness doctrine.

I believe that without the fairness doctrine there would be more, not less, programing of controversial issues.

Restrictions like the fairness doctrine are, in my view, self-defeating. Their proponents want diversity of ideas and the presentation of controversial and contrasting points of view. What they promote, instead, is sameness, blandness, timidity, and conformity. The American people are the losers.

Now, Mr. President, the most important reason why the censorship of radio through the fairness doctrine-equal time rule is wrong is because it is dangerous.

DANGEROUS DENIAL: THE TYRANNY OF GOVERNMENT

Denying broadcasters their first amendment rights is wrong for a final reason. It is dangerous.

Letting Government be the final arbiter of "fairness," for example, confers immense power. This is especially true when that same Government decides on the granting of broadcast licenses.

Three examples from the recent past remind us how the power of Government—although often exercised in the name of "fairness"—can amount to the tyranny of Government.

These examples all involve past Presidents of the United States. The President, of course, is the head of Government, the same Government that controls broadcasters through the Federal Communications Commission.

In recalling the stories that follow, it is important to remember, too, that the President himself appoints the members of the FCC and designates who shall be Chairman.

NIXON ADMINISTRATION

My first example comes from the Nixon administration. Relevant episodes from that period are still fresh in our minds. I need only cite some of them briefly here.

FCC Chairman Dean Burch called CBS President Frank Stanton in November 1969 to request a transcript of that network's news analysis after a Nixon address the night before.

Vice President Agnew made his famous Des Moines speech 9 days later blasting the network's news coverage and reminding them that they held licenses at the pleasure of the FCC.

CBS President Stanton reported that there were a number of White House phone calls over the succeeding 3 years conveying displeasure with news broadcasts.

There was a memo of September 1970 from Charles Colson to H. R. Haldeman proposing that the White House get a ruling from the FCC on the "role of the President, when he uses TV." This, Colson argued, would have "an inhibiting impact on the networks."

There was, too, the December 1972 Indianapolis speech by Clay T. Whitehead, director of the White House's Office of Telecommunications Policy, condemning the "ideological plugola" and "elitist gossip" of network news.

And there was, finally, President Nixon on tape telling Haldeman that:

The main thing is the Post is going to have damnable, damnable problems out of this one. They have a television station. . . . And they're going to have to get it renewed.

KENNEDY AND JOHNSON ADMINISTRATIONS

But this is not a partisan matter. Fred Friendly has reported that the Kennedy and Johnson administrations, with financial backing from the Democratic National Committee, used the fairness doctrine to subdue right-wing radio commentators who were critical of administration goals.

These clandestine campaigns, which reportedly began in 1963, were also meant to inhibit stations from carrying commentary supporting Senator BARRY GOLDWATER, who was then a prospective Presidential candidate.

Friendly reported that both the Kennedy and Johnson administrations maintained professsionally staffed organizations that monitored stations carrying right-wing commentary and then demanded time for reply under the fairness doctrine.

Such demands for air time, which the stations would have to provide at no cost, were regarded by many broadcasters as harassments that they chose to avoid. As a result, they either dropped the commentaries or diluted them. This, according to Friendly, was exactly what the White House had in mind.

What do these three examples of the abuse of Government power tell us?

It is wrong to deny broadcasters their first amendment rights because a [illegible] press—and that should include [illegible] broadcasters—is needed to protect us all from the tyranny of Government power.

WHY NOT TAKE A CHANCE ON FREEDOM?

What I have been saying tonight can be reduced to this simple thought: Why not take a chance on freedom? If it is power we are concerned about, and we should be, the power of the electronic media is a pygmy compared to the power of Government.

In 1977, U.S. News & World Report surveyed the leading citizens of this country in business, labor, the universities, the newspapers and the Government as to who were the people who ran America.

Where did the electronic media rate? Think of this:

The only person from the media who was rated in the 10 most influential Americans was Walter Cronkite and he was a distant ninth. In fact, Cronkite was the only electronic media per[illegible] in the 30 most influential Americans.

Who are the most influential? The answer is emphatic. It is Government. Eight of the top 10 persons who run America were Government officials.

By denying the electronic media their first amendment rights, we give the big guy—Government—more power and from the less influential—the media—we take it away.

To those who would claim that it is safer to take a chance on Government than a chance on freedom and a free press, there are two clear rebuttals.

GOVERNMENTAL POWER

First, governments traditionally have gathered more and more power unto themselves without regard to the liberties of their citizens. Europe and South America and Asia are replete with such examples. And we in this country can cite some near-misses, the most recent being, of course, what we have come to know by the shorthand term of Watergate.

And second, it is easy for a government, with its power to give jobs and favors, to present a solid front in con-

trolling information about itself. But it is impossible, with members of a free press competing among themselves, to conspire to suppress information about Government or anything else. As Jefferson once said, whoever heard of a newspaper suppressing a government?

You might say whoever heard of a radio station suppressing a government? The reverse, as I demonstrated here, has happened. It happened in this country, it happened recently, and it is likely to happen again and again.

Freedom of the press can be abused by individual reports, papers, magazines, broadcasters, or broadcasting stations. But, with competition the drive to be best, to be first with the news, to make money—there is little or no danger of all elements of the press forming a clique or cabal to take over the Government, or—and most important—to deceive the citizens, their customers.

FREE SOCIETY IS BEST

As long as the Government is kept from the neck of the press by the first amendment, the public should be informed. And that is why the first amendment was written the way it was—as a direct prohibition against governmental interference with five basic freedoms: Of religion, of speech, of press, of assembly, of redress.

Let us not brush away the wisdom of the men who wrote the Constitution and its Bill of Rights.

But it is easy to do that. Look at what the Government has done already through abridging the freedom of the press by imposing controls over the content of radio and television broadcasts.

If there is any risk in the belief that, in Jefferson's words:

> . . . the people . . . may safely be trusted to hear everything true and false, and to form a correct judgment.

And there is—then it is the risk inherent in any free society. But a free society is not the safest way of life. It is only the best.

Mr. President, for the reasons that I have been discussing, I shall continue my efforts to secure enactment of S. 22, so that not only radio—but all broadcasters—may be freed from the burdens of the fairness doctrine and the equal-time rule.

MODEST STEP

But if I am right in pursuing the goals sought to be realized through enactment of S. 22, then surely it is proper to ask that we take this more modest step of abolishing the fairness doctrine and the equal-time rule in the case of radio broadcasting.

And that is what can be achieved through approval of the amendment that I offer today.

Am I pursuing a hopeless cause through the introduction of this amendment? Some may think so.

And I am the first to admit that this fight has been a long one. I have been trying since 1975 to get Senate approval of my bill to abolish the fairness doctrine and the equal-time rule for both radio and television.

Earlier this year the Senate Communications Subcommittee held hearings on this bill. But nothing further has happened. The measure still languishes in subcommittee.

I confess, too, that I am partly to blame for this state of affairs. After all, I had a part in the establishment of the fairness doctrine. I was one of its early supporters.

But since then I have seen the light. And I hope my colleagues will join me in this new vision and this new insight.

Mr. President, I do not stand alone in wanting to take this limited but important step toward giving fuller meaning to our first amendment's guarantee of freedom of the press.

The same concept is included as a part of the Communications Act "rewrite" that was introduced earlier this year in the House of Representatives by Congressman LIONEL VAN DEERLIN, the chairman of the House Communications Subcommittee, and that unit's ranking Republican, Congressman LOU FREY.

Mr. President, this is coming. The Senate is going to have to face it. The House is going to have to face it. There are those in the committee on the House side that favor this kind of freedom for the communications media.

SCARCITY ARGUMENT

Chairman VAN DEERLIN has stressed—and quite rightly, in my view—that the so-called "scarcity argument" can no longer be used in attempting to justify continuing governmental control over radio programing content.

Mr. President, the hard facts speak for themselves in this regard. On January 1, 1977, the latest date for which figures are available, there were 8,173 radio stations on the air in this country. This compares with a total of 2,946 radio stations on the air for that same date in 1952, an increase of over 177 percent.

And contrast these figures with similar data for newspapers in this country. In 1977, we had only 2,412 newspapers in the United States; 25 years earlier, in 1952, the figure was 2,331.

Let us look, too, at related comparative figures for two cities in the United States—Milwaukee and New York.

In Milwaukee, at the end of 1977, there were 24 radio stations on the air—21 commercial and 3 public. And contrast this with the two newspapers that were being published in Milwaukee on that same date.

In New York City, there were, at the end of 1977, 40 radio stations operating—33 commercial and 7 public—as compared with 10 newspapers.

These same kinds of relative figures are repeated in city after city throughout the United States.

MULTIPLICITY OF VOICES

In view of this multiplicity of voices that radio provides, how can a "scarcity argument" be reasonably offered as a sound basis for restrictions like the fairness doctrine and equal-time rule?

These restrictions are even more ill-conceived when we stop to realize that our Nation's citizens receive information and ideas not only from radio but also from a multitude of other sources, including television, newspapers, books, magazines, newsletters, educational institutions, private and public organizations, and many more.

The pluralism reflected in these competing sources of news and views is the best protection we can have against possible "abuses" by radio broadcasters.

And once a democratic society gives up on this kind of protection—and looks instead to Government "protection"—the freedoms we all enjoy are put in jeopardy.

Mr. President, having said all this, I am going to withdraw my amendment at this time. The bill presently before us—S. 2883—may not, in the view of some, be the most appropriate vehicle through which to attempt to achieve what my amendment seeks.

I do not want to see the important issue that lies at the heart of my amendment obscured by procedural diversions that might accompany its introduction at this point.

But I do want my colleagues to know that I shall continue to pursue the vital aims of this amendment—and other related efforts on behalf of fuller first amendment freedoms for the broadcast media—whenever the opportunity arises.

Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

Mr. HOLLINGS. Mr. President, I learned before I ever saw public service that once a judge has ruled with you, you never continue to argue the case.

The PRESIDING OFFICER. On what amendment is the Senator speaking?

Mr. HOLLINGS. I will take time on the bill to answer my friend on a most important doctrine even though the amendment has been withdrawn; because, yes, we will be here fighting just as vigorously on the other side, because I feel, as a new student of this field, that there is no question about the efficacy and wisdom of a fairness doctrine.

The Senator starts out by saying, "Wait a minute, you can't insulate the public radio or public TV from the control of Congress, from the control of the President; you have to take things right on down; you have to admit it is being controlled, and continually, by the doctrine."

Then what is the point of a fairness doctrine to try to protect you from political controls? It is a non sequitur. If you follow the Senator's argument, the only thing that has really faced us at all, and established credibility, and continues to get support for public broadcast media generally, is the fairness doctrine.

This started out some years back, after the Radio Act was passed in 1912, and there is a reference to it in my general statement, which I ask to have inserted in the RECORD at this point.

WHAT S. 22 WOULD DO

S. 22 would eliminate the ban on editorializing by public broadcasting stations and repeal the equal time provision for candidates for public office. It would also wipe out all of the Commission's other powers to review the content of programing broadcast by commercial

stations. The effects were summarized by Robert L. Shayon in his testimony at the 1975 fairness doctrine hearings, which dealt with an earlier incarnation of the Proxmire bill containing language similar to this year's bill:

Now, if the Congress passes this bill, the FCC would be precluded from comparing rival proposals for program service both in applications for construction permits or from considering past and promised performance in license renewal applications. Program service could not be considered in petitions to deny or in "jump applications." The entire process of ascertainment . . . would be thrown out. The Commission could not require information from licensees about categories of programs nor could it specify percentages for either adequate, substantial or superior service. A licensee could with impunity drop all news and public affairs programs, all local programs, broadcast his or her partisan political views and make personal attacks without according anyone the right to reply or the public the opportunity to hearing opposing views. A television station could put on an hour of children's programs on Saturday morning and devote as much as 30 minutes of that hour to commercials addressed to children. . . . (I)t would throw the whole question of obscenity into the criminal statutes. . . . The Commission would have no discretion or review of content including four-letter words.

A POSSIBLE HIDDEN AGENDA: ALTERNATIVES TO THE FAIRNESS DOCTRINE

The fairness doctrine is tolerated and even embraced by some broadcasters because they believe that its demise would precipitate the passage of more draconian measures designed to break up the concentration of control in the broadcasting industry.

William Sheehan, president of ABC News, candidly admitted that strategy in the 1975 hearings:

One difficulty we have with the outright repeal proposal is that there is no assurance that if the fairness doctrine were taken off the books, it would not be replaced with a new and more onerous obligation. . . . The large vacuum which some perceive would result from a complete elimination of the fairness doctrine would likely lend renewed credence to those who have argued for a system of mandatory broadcast access. In our view, such a system would be wrong for the public, and unworkable for the broadcaster.

Not only would the repeal generate political pressures for mandatory access and related measures; it might give the courts a plausible basis for imposing such measures on constitutional grounds. Henry Geller has compared the broadcast license to public auditoriums to find such a requirement:

Suppose the Government were to license the use of the main park in Jackson to one party, the White Citizens Council, for three years, and allow no one else to use that park for parades, rallies, etc.; and suppose black groups sought the right to present their parades or rallies. Clearly they would succeed in striking down the above governmental action as unconstitutional.

Public interest groups have supported the doctrine as a second-best choice; many have stated that they would prefer to replace the fairness concept with more basic changes. Thus, Frank Lloyd, representing the Citizens Communications Center at the 1975 hearings, stated that his organization had—

Consistently attempted to foster alternatives * * *. We have argued for structural, economic, and other objective, content-neutral forms of regulation that would better insure the first amendment goals of diversification of viewpoints and increased public access. We have fought for these alternatives, arguing that they pose less risk than existing, potentially, subjective forms of FCC regulation.

Lloyd then listed a series of structural reforms which he had advocated. Most of them involved an antitrust approach designed to break up concentrations of ownership. They included:

The Prime Time Access Rule, now a part of FCC regulations, which bans the networks from using 1 of the 4 prime-time station hours each night.

Divestiture of local newspaper-television-radio crossownership, partially implemented in FCC rules and subject to possible expansion by the courts.

Elimination of coowned AM and FM radio stations, still allowed under present regulations.

Enforcement of the "top 50 markets" policy. Now under review by the Commission, it would prevent broadcasters from acquiring more than three television stations—or two VHF stations—in the top 50 cities.

Breakup of clear channel radio stations into numerous local outlets.

Drop-in of additional VHF channels and improvement of UHF television.

Elimination of restrictions on pay cable, which has since occurred in the Home Box Office case.

Elimination of broadcast-cable crossownership, currently imposed by FCC rules.

Elimination of newspaper-cable crossownership, already in effect under a rule affecting acquisitions and subject to expansion under a court challenge which could apply it to existing crossownerships.

In addition to his antitrust measures, Lloyd supported a mandatory access concept proposed by the Committee for Open Media. In a subsequent 1977 decision, *National Citizens Committee for Broadcasting* v. *FCC*, 41 RR 2d 1311, the District of Columbia Circuit Court of Appeals directed the Commission to reconsider the COM proposal, which would establish a presumptive compliance with the fairness doctrine for stations which set aside 1 hour per week for public access. Half of the time would be opened up on a first-come-first-served basis, and the other half would be offered to representative spokespersons selected by the licensee.

The most prestigious proponent of structural reforms has been David L. Bazelon, who in 1975 was chief judge of the District of Columbia Circuit Court of Appeals. In a speech that year at Duke University, Bazelon attacked the main rationale used to justify the fairness doctrine—scarcity of spectrum.

(I)t is important to distinguish between the power gained by oligopoly in the production of news and entertainment programming for radio and TV and the power inherent in the medium. . . . The problem is not "scarcity" . . . but rather simple, old-fashioned concentration of economic power and ownership of TV facilities. . . . (T)he major concentration is caused by the dominance of the networks in the programming field. The dominance of the networks makes enforcement of diversification of ownership policies an insufficient effort to deal with the concentration of economic power in TV programming.

Bazelon then went on to propose a number of policies to increase the diversity of programing outlets:

The first step is to limit the networks' ability to sell blocks of programming to the licensees and to increase the feasibility of new networks. Second, the Commission should act to encourage the development of cable, in both pay and nonpay forms, and the further development of UHF. . . . (T)here should be provision for common carrier public stations or common carrier time periods on regular public stations, to which access may be had by lottery or through bidding. . . . A fourth strategy would be to . . . increase the viability of minority taste programming by introducing some form of subscriber TV service.

Proposals like those advocated by Bazelon and Lloyd raise questions of the possible consequences of a repeal of the fairness doctrine and related measures like the equal time rule. A repeal could generate strong politcal pressure for structural reforms, and arguments that mandatory access in such a context should be viewed as a constitutional requirement by the courts.

LEGAL HISTORY OF THE FAIRNESS DOCTRINE

This section summarizes seriatim the major legal developments leading up to and articulating the fairness doctrine.

The Federal Government began general regulation of the spectrum when Congress passed the Radio Act of 1912, which forbade operation of radio transmitters without a license from the Secretary of Commerce and Labor. Problems of interference were rare prior to the first World War, but military research accelerated hardware development. The first standard broadcast stations were established in 1921, and by 1923 there were several hundred such stations throughout the country. In 1924 the Secretary of Commerce established a policy of assigning specified frequencies to particular stations. When the number of applicants exceeded the number of available frequencies, the Secretary initiated a policy of dividing frequencies into time segments, limiting the hours of operation of stations to enable several stations to use the same channel.

Court decisions restricted the Secretary's power. In *Hoover* v. *Intercity Radio Co.*, 286 F. 1003, the District of Columbia Circuit Court of Appeals held that the Secretary had no statutory authority to deny a license to an otherwise legally qualified applicant on the ground that the proposed station would interfere with existing private or Government stations. In 1926 an Illinois district court held that the Secretary had no power to impose restrictions as to frequency, power, and hours of operation; and that a station's use of a frequency not assigned to it was not a violation of the Radio Act of 1912. *United States* v. *Zenith Radio Corp.*, 12 F. 2d 614. Soon thereafter the Acting Attorney General issued an opinion stating his agreement with the district court, and the next day the Secretary of Commerce announced that he

was withdrawing from attempts to regulate radio transmission.

The resulting chaos led to passage of the Radio Act of 1927, which created the Federal Radio Commission. Its main provisions were later incorporated in the Communications Act of 1934, including power to license in the "public interest, convenience, or necessity." Section 3(h) expressly provided, and still provides, that:

A person engaged in radio broadcasting shall not . . . be deemed a common carrier.

Early decisions laid the groundwork for the fairness doctrine. In 1929 the Federal Radio Commission held that the "public interest requires ample play for the free and fair competition of opposing views and the commission believes that the principle applies * * * to all discussion of importance to the public." Great Lakes Broadcasting Co., 3 F.R.C. Ann. Rep. 32, 33 (1929), rev'd on other grounds, 59 App. D.C. 197, 37 F. 2d 993, cert. dismissed, 281 U.S. 706 (1930). For an extended period the licensee was obliged not only to cover and to cover fairly the views of others, but also to refrain from expressing his own personal views. Mayflower Broadcasting Corp., 8 F.C.C. 333 (1940).

The Commission made its first explicit statement of the fairness doctrine in its 1949 report on editorializing by broadcast licensees. The report repealed the ban on editorializing and established a twofold requirement, first, that the broadcaster cover important issues, and second, that it provide coverage of various viewpoints on the controversial issues it did cover.

Congress endorsed the doctrine in 1959. While amending the statutory requirement of section 315's equal time provision to except certain appearances of candidates on news programs, it added language stating that the change constituted no exception "from the obligation imposed upon them under this act to operate in the public interest and to afford reasonable opportunity for the discussion of conflicting views on issues of public importance." Act of September 14, 1959, 73 Stat. 557, amending 47 U.S.C. 315 (a). The language which survived in the statute is comparatively mild compared to the language initially proposed by Senator PROXMIRE, which read as follows:

(B)ut nothing in this sentence shall be construed as changing the basic intent of Congress with respect to the provisions of this act, which recognizes that television and radio frequencies are in the public domain, that the license to operate in such frequencies requires operation in the public interest, and that in newscasts, news interviews, news documentaries, on-the-spot coverage of news events, and panel discussions, all sides of public controversies shall be given as equal an opportunity to be heard as is practically possible. 105 Cong. Rec. 14457.

The Proxmire amendment was altered in conference and survived in the language cited above.

The doctrine began to take a more definite shape in 1963, when the FCC sent a letter to the Cullman Broadcasting Co. of Cullman, Ala., ordering it to play a tape sent to it by the Citizens Committee for a Nuclear Test Ban Treaty. In language which was often cited in later decisions, the Commission said:

Where a licensee permits the use of its facilities for the expression of views on controversial local or national issues of public importance such as the nuclear weapons test ban treaty, he must afford reasonable opportunities for the presentation of contrasting views by spokesmen for other responsible groups. . . . (T)he public's paramount right to hear opposing views of controversial issues of public importance cannot be nullified by . . . the inability of the licensee to obtain paid sponsorship of the broadcast time. . . .

The background of the Cullman letter did not become public knowledge until 1975, when Fred Friendly published an article on the fairness doctrine in the New York Times magazine. It stated:

It was in 1963 that the doctrine began to change from a vague public-interest policy to an instrument of politics and inhibition. That year, President Kennedy worried that one of the noblest goals of his Administration—the nuclear test-ban treaty with the Soviet Union—was being jeopardized by right-wing commentators who denounced the treaty and argued against its ratification. His political strategists monitored stations broadcasting such commentary and then prompted test-ban treaty advocates to demand time to state their side of the issue, citing the fairness doctrine in their letters to the stations involved. The campaign resulted in a dramatic number of broadcasts favoring the treaty in areas of the country where such views might not otherwise have been heard. The White House believed this political use of the fairness doctrine hade made an important contribution to the eventual Senate vote to ratify.

The most famous fairness doctrine case came in 1969—*Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367. The Red Lion decision actually involved two cases which were consolidated for purposes of review. In one of them, the FCC had ordered the Red Lion Broadcasting Co. to offer reply time following a personal attack on a journalist named Fred J. Cook. The attack had come during a 15-minute broadcast by the Reverend Billy James Hargis as part of a "Christian Crusade" series. Hargis attacked Cook's latest book, "Goldwater: Extremist on the Right," and claimed by that Cook had been fired by a newspaper for making false charges against city officials; that Cook had then worked for a Communist-affiliated publication; that he had defended Alger Hiss and attacked J. Edgar Hoover and the Central Intelligence Agency; and that he had now written a "book to smear and destroy Barry Goldwater."

The Supreme Court upheld the FCC's directive to provide reply time for Cook, and it also sustained the Commission in the face of a challenge to its personal attack rules, adopted after the Red Lion litigation was begun. Those rules had been challenged in a separate action by the Radio Television News Directors Association.

Fred Friendly's New York Times Magazine article in 1975 created a minor scandal and played a significant role in that year's fairness doctrine hearings with its revelations about the background of the Red Lion case:

Fred Cook, it turns out, did not bring his action against WGCB simply as an offended private citizen; instead, his actions grew out of a politically motivated campaign to use the fairness doctrine to harass stations airing right-wing commentary, an effort inspired and managed by the White House and the Democratic National Committee and financed in large measure with political contributions.

Emboldened by the Red Lion opinion, the commission revoked the license of a station in Media, Pa., which was indirectly controlled by the Reverend Carl McIntire. *Brandywine-Main Line Radio* v. *FCC*, 473 F.2d 16 (1972) upheld the decision. The station had refused to offer reply time after broadcasting statements by McIntire which were said to be "deliberate distortions of the facts relating to various public issues such as race relations, religious unity, foreign aid, et cetera." The minister was also said to have made "'intemperate' attacks on other religious denominations and leaders, various organizations, governmental agencies, political figures, and international organizations."

In *Columbia Broadcasting System* v. *Democratic National Committee*, 412 U.S. 94 (1973), the Supreme Court overturned a lower court ruling which might have provided a mandatory access alternative to the fairness principle. The decision upheld an FCC ruling that television stations were free to impose a flat ban on all paid public issue announcements. The Burger opinion stated that Congress had consistently rejected efforts to impose on broadcasters a "common carrier" right of access for all persons wishing to speak out on public issues. The chief justice emphasized that the Commission was—

Entitled to take into account the reality that in a very real sense listeners and viewers constitute a "captive audience." . . . The "captive" nature of the broadcast audience was recognized as early as 1924, when Commerce Secretary Hoover remarked at the Fourth National Radio Conference that "the radio listener does not have the same option that the reader of publications has—to ignore advertising in which he is not interested—and he may resent its invasion of his set." *Id.* at 127–128.

The Court nevertheless held open the possibility that:

(c) Conceivably at some future date Congress or the Commission—or the broadcasters—may devise some kind of limited right of access that is both practicable and desirable. *Id.* at 131.

Twenty-five years after its first report dealing with the fairness doctrine, the Commission issued a second fairness report in 1974. The main accomplishment of that document was to reverse the earlier direction set by the FCC in the 1960's. In a decision which was upheld in *Banzhaf* v. *F.C.C.*, 405 F. 2d 1082 (D.C. Cir. 1968), the Commission had issued a ruling requiring radio and television station which carried cigarette advertising to devote a significant amount of broadcast time to presenting the case against cigarette smoking. Though it later sought to distinguish cigarettes as a special case, the Commission found itself in trouble when the District of Columbia Circuit Court of Appeals refused to accept the limitation and found no logical basis on which to distinguish advertisements for high-powered auto-

mobiles. The excessive pollution caused by such automobiles was said to constitute a public health threat. *Friends of the Earth* v. *FCC*, 449 F. 2d 1164 (D.C. Cir. 1971). In its 1974 fairness report, the Commission's response was to retract the Banzhaf decision and limit the doctrine's application to commercials "which are devoted in an obvious and meaningful way to the discussion of public issues."

A case which is often mentioned in discussions of the fairness doctrine is *Miami Herald Publishing Co.* v. *Tornillo*, 418 U.S. 241 (1974). That decision struck down a Florida statute which sought to provide a right of access to persons attacked in newspapers.

The last major case dealing with the doctrine was National Broadcasting Co. against FCC, a 1974 D.C. Circuit ruling popularly dubbed Pensions.[1] In it the court reversed a Commission ruling that NBC had failed to present both sides of a controversial public issue, the quality of private employee pension plans. The FCC had acted in response to a petition by Accuracy in Media, Inc., which complained about the allegedly one-sided presentation concluding with the following summation by narrator Edwin Newman:

> Our own conclusion about all this, is that it is almost inconceivable that this enormous thing has been allowed to grow up with so little understanding of it and with so little protection and such uneven results for those involved.
>
> The situation, as we've seen it, is deplorable.

The Court of Appeals reversed the Commission, concluding that NBC had acted reasonably and in good faith (516 F.2d at 1125–32).

CURRENT FCC RULES IMPLEMENTING THE DOCTRINE

Several Commission regulations give detailed outline to the fairness doctrine. They include:

The personal attack rule, section 73.123 (a) and (b), which read as follows:

> (a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the person or group attacked (1) notification of the date, time and identification of the broadcast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer of a reasonable opportuntiy to respond over the licensee's facilities
>
> (b) The provisions of paragraph (a) of this section shall not be applicable (i) to attacks on foreign groups or foreign public figures; (ii) to personal attacks which are made by legally qualified candidates, their authorized spokesmen, or those associated with them in the campaign, or other such candidates, their authorized spokesmen, or persons associated with the candidates in the campaign; and (iii) to bona fide newscasts, bona fide news interviews and on-the-spot coverage of a bona fide news event (including commentary or analysis contained in the foregoing programs, but the provisions of paragraph (a) shall be applicable to editorials of the licensee).

This section applies to AM radio.

Sections 73.300, 73.598, 73.679, and 76.209 apply identical personal attack rules to commercial FM, noncommercial FM, television, and origination cablecasting, respectively. All track the language of the AM provision cited above.

The fairness doctrine has not been further delineated in FCC rules. Commission practice since 1962 has been to review alleged violations on a case-by-case basis, without waiting until the station comes up for a license renewal. It has not attempted to impose any requirements governing the precise amount of time accorded to different sides of controversial issues under the fairness doctrine.

The equal time provision, which applies to political candidates, is separate and distinct from the fairness doctrine. The fairness doctrine has not been interpreted as requiring equal time for opposing viewpoints.

As I say, back in 1929, Mr. President, the Federal Radio Commission held:

> The public interest requires ample play for the free and fair competition of opposing views.

I repeat that. This is back in 1929, this is not the fairness doctrine. This is what was the thinking back in President Hoover's day, when he was Secretary of Commerce just before he became President:

> The public interest requires ample play for the free and fair competition of opposing views, and the Commission believes that the principle applies. . . . to all discussions of importance to the public.

There you are. Adding up the first amendment rights going back to Jefferson, let us remember it was Jefferson who said:

> As between a free newspaper and a free government, I would select a free newspaper.

He knew which could control the most.

He knew, as we all do now, that it was not "We, the press" or "We, the Congress," or "We, the Supreme Court," but, as stated in the preamble to the Constitution, "We the people of the United States, in order to form a more perfect union," and so on.

Let us look and find out whose first amendment rights, under that Constitution, are to be protected.

The people's rights. Because the distinguished presiding officer, myself, the Senator from Wisconsin, and everyone else in here, presumably has no radio station rights or franchise. But we certainly have airwaves that belong to us. Those airwaves belong to the people of the United States, and, admittedly are to be used for the public benefit. For that reason we instituted a franchise system of licensing after hearing, and the licenses are given that exclusive franchise, with certain duties, under a public trust.

Oh, I have been to some of the broadcasters' conventions, and I have heard talk about the fairness doctrine, and they really begin to think they own the public's airwaves, that they have got a right. You know, everyone has a right to everything: A right to trial, a right to a lawyer—we cannot finance it all. It seems they have a right, not to equality of opportunity, but to equality of results; "I have a first amendment freedom of speech right."

If we were to assume that to be the case, heavens above, you would assume no one could have access to the airwaves. You would assume as our friend Henry Geller did, that they could come on the air, as just like the case of a public park.

I think he was alluding to a particular case at the time, that you would have a public park in a town, and you would say no one else in that town could use that public park to demonstrate or parade except the Ku Klux Klan. How long would that last? I think they tried that once here.

Notwithstanding what we are doing with respect to 8,000 or 9,000, a little less than 10,000 broadcast and TV station owners, what about the two hundred twenty million nine hundred ninety some thousand other Americans? Are not we the group? Are not we the people, the ones who are really guaranteed, with the fairness doctrine, the first amendment right?

That is the freedom of speech. Where have we placed ourselves as a people? Let me refer, if you please, to Justice Burger under the Columbia Radio Broadcasting System case in 1973. The Chief Justice emphasized that the Commission was entitled to take into account the reality that in a very real sense listeners and viewers—that is, we the people—constitute a captive audience.

The captive nature of the broadcast audience was recognized as early as 1924, to quote Justice Burger, "When Commerce Secretary Hoover remarked at the Fourth National Radio Conference that, 'The radio listener does not have the same option that the reader of publications has, to ignore advertising in which he is not interested, and he may resent its invasion of his set.' " He is in the captive audience.

We the people have the first amendment. The Constitution is for we the people of the United States, not we the 10,000 licensees. Do not try to slough this off and compare it to newspapers. Physically speaking, there is not any more spectrum in certain areas to allocate. All you need for a new newspaper is money. And in some cases there are eleemosynary publications which are mailed without charge. I can get a press and grind out anything and get it around. I can always get a newspaper. Do not worry about that. Of course, the great dangers are the big mergers and buy-ups, according to the program the Senator from Wisconsin was quoting.

The truth is that in the large cities the spectrum is overallocated. You cannot get any more spectrum for broadcast without major changes in present allocation policy. You can go to the rural areas, technically, but you cannot take from those areas and increase in saturated areas.

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[1] 516 F.2d 1101, *reversal vacated & rehearing en banc granted*, 516 F.2d 1155, *rehearing en banc vacated*, 516 F.2d 1156, *second reversal vacated as moot & remanded with direction to vacate initial order and dismiss complaint*, 516 F.2d 1180 (D.C. Cir. 1974).

Incidentally, under the conference report that we agreed to just last week with respect to the Federal Communications Commission appropriations, increased the appropriations to try to technically redesign sets and improve the UHF spectrum channels so as to increase that portion of the spectrum. That is fine, but that is the difference.

In the newspaper you can print what you want to and others will buy or not buy it. They are not captives.

Recognizably, once you turn on a set, and we all have them, radio being what we are talking about, then we are as Chief Justice Berger has said, "a captive audience."

The fairness doctrine goes to just exactly what the Senator is concerned about, first amendment rights, only he speaks for first amendment rights for some 10,000 at most. Actually, if you want to get technical there, there are only 933 in public radio broadcasting. He is talking, if you please, in his amendment, which was proposed and withdrawn, for 933 Americans as composed to the almost 220 million that I speak for, people in general.

Mr. PROXMIRE. Will the Senator yield?

Mr. HOLLINGS. I yield.

Mr. PROXMIRE. I am delighted the distinguished Senator from South Carolina has chosen to respond to this. I was afraid he would not. I am very impressed. He always is a very brilliant speaker, very logical, and very persuasive. I do hope with his quick mind and his great ability he does not take as long as I did to change my mind.

As he knows, I was one of the principal authors of the fairness doctrine back in 1958. How wrong I was. It took me a while to learn, but the Senator from South Carolina is a quicker learner.

Mr. HOLLINGS. With that remark, Mr. President, the Senator from South Carolina now is ready to move for third reading.

Mr. PROXMIRE. May I tell the distinguished Senator that, of course, what he has done is he has said he does not want to talk about just the rights of a few thousand radio station owners or a few hundred television station owners, but it is the right of the people which counts.

How right he is. That is exactly what the Founding Fathers had in mind when they wrote freedom of the press as the first amendment to the Constitution. They were not thinking of the owners of the newspapers. They were thinking about the people who get the newspapers, who read the newspapers, who rely on the newspapers for news.

No matter how my friend from South Carolina squirms, no matter how he moves, no matter what magic he weaves with his oratory, he cannot escape from the fact that the newspapers of this country have been free of censorship; they have not had an FCC guiding them. They have not had to be licensed. They have been free.

What have we gotten out of that? Greatly improved newspapers, a greatly improved press. We have had freedom of Government domination or censor. I have cited specific instance after specific instance of Democratic and Republican Presidents who, to some extent, have tried, and succeeded to some extent, in dominating newspapers.

Furthermore, I think the Senator from South Carolina should recognize this is not 1929 which he quotes, but this is 1978, a time when the technology has transformed electronic media. We now have far more, as I pointed out—and I would like him to meet this argument—far more radio stations available, far more easily and cheaply available, than newspapers. We have a situation in which the people get their news primarily not from newspapers but from radio and television.

So if the Senator really believes in freedom of the press, if he believes in the competition of ideas, if he believes what our Founding Fathers found was necessary, that you have to protect the people from the Government itself by prohibiting the Government from interference or interfering with the freedom of the newspapers and protect the people in doing so, then I say you should apply that to radio and television and do as the House subcommittee itself is doing, or the direction in which they are moving, exempt radio from the fairness doctrine and the equal time rule. Then you have real freedom, real competition, and a far more vigorous electronic media.

Mr. HOLLINGS. If the Senator is going to quote the Founding Fathers, let us agree they never heard of a radio spectrum. But where a speaker can enlarge upon his own speech, transmitting it in a controlled fashion, namely on radio waves, air waves—to broadcast it—then your licensing becomes necessary to protect the spectrum. For the few, for the benefit of the many we have that licensing scheme, and invest licensees with the public trust. It sometimes seems that they do not want that public trust once they have it, but you ought to hear them when they apply for a initial license. We do not want to go into all of that. The fact is they do have a public trust; they do have certain responsibilities arising out of that trust.

If the Senator is right about his analogy, there is nothing due the minorities nothing due the handicapped, nothing due with respect to sex discrimination. I am sure the Senator, as a leader in civil rights, would not want to say, since the Founding Fathers did not have any blacks in radio stations when they passed the Constitution, they would never get any. I am confident of that.

What he is trying to say now is once a broadcaster has received that license he then does not owe any more duties to the people who gave him that privilege to broadcast. I am saying that he does. I am saying one of his duties is to provide balanced treatment to the American people on controversial and important issues. That has been a finding substantiated by this Congress and the courts under the Constitution. I think it is sound,

Mr. PROXMIRE. I say to my good friend, take a chance on freedom. It has worked for the American newspapers brilliantly. Our newspapers have vastly improved. Our people are more informed because the newspapers have done a better job. The job they did on Watergate was probably the finest job newspapers ever did in this country. I think we all would have to agree they are more competitive, more comprehensive, than ever before. If you give that kind of freedom to radio and television there is no reason they should not develop along the same lines with exactly the same kind of free competition we believe in in the economic marketplace. I say apply it to the area of good ideas.

Mr. HOLLINGS. Very well. Mr. President, are there any further amendments?

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendments to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar Order No. 903, H.R. 12605.

I am replacing the Senate bill with the House bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 12605) to amend the Communications Act of 1934 to extend and improve the provisions of such Act relating to long-term financing for the Corporation for Public Broadcasting and relating to certain grant programs for public telecommunications, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the bill.

Mr. HOLLINGS. Mr. President, I move to strike all after the enacting clause of H.R. 12605 and that the text of S. 2883, as amended, be substituted for the text of H.R. 12605 as reported and as amended.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from South Carolina.

The motion was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (H.R. 12605) was passed.

Mr. HOLLINGS. I move to reconsider the vote by which the bill was passed.

Mr. PROXMIRE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. HOLLINGS. I ask unanimous consent that the Secretary of the Senate be authorized to make technical and clerical corrections in the engrossment of H.R. 12605, as it passed the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I ask unanimous consent that consideration of S. 2883 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HOLLINGS. Mr. President, I move that the Senate insist on its amendments to H.R. 12605, as passed by the Senate, and request a conference thereon with the House of Representatives and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to and the Presiding Officer (Mr. PAUL G. HATFIELD) appointed Mr. CANNON, Mr. HOLLINGS, Mr. MAGNUSON, Mr. GRIFFIN, and Mr. SCHMITT conferees on the part of the Senate.

Mr. HOLLINGS. Mr. President, I thank my distinguished colleague from Wisconsin for his interest, his indulgence, and his courtesy in this matter, and for his consideration. I think particularly the Presiding Officer and the Senator from Alaska, who has been leading the way.

NATURAL GAS POLICY ACT OF 1978—CONFERENCE REPORT

Mr. PROXMIRE. Mr. President, what is the parliamentary situation now?

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of the conference report on H.R. 5289.

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. PROXMIRE. Mr. President, is there any time limitation?

The PRESIDING OFFICER. There is no time limitation.

THE GREAT NAVY SHIPBUILDING BAILOUT

Mr. PROXMIRE. Mr. President, I shall speak as briefly as I can, but I think this is an extremely important matter that I am taking up tonight and I must call it to the attention of the Senate because of the time involved.

When the Senate adjourns tonight, the bell will have tolled on the payment of a $359 million bailout on one defense contractor, and by the end of the Friday session, the bell will have tolled on a $182 million bailout to another Navy contractor. A total of $541 million in bailouts will have been tacitly approved by the Senate.

These bailouts are incorrectly referred to as "settlements" of Navy shipbuilding claims disputes. But they are not settlements at all. The $541 million is being handed over to the shipbuilders as sweeteners above and beyond what the Navy experts found were owing to the contractors for their claims.

The Navy experts found General Dynamics' claim of $544 million is worth $125 million. In other words, they found that it is worth less than one-fourth of what they claimed.

I might point out that this Navy Board that made this finding was a competent, expert, professional board, whose findings have not been challenged. They found that Litton's claim of $1.1 billion is worth $312 million or less than a third of what they claimed, about 30 percent. If the Navy had settled the claims on the basis of the Navy experts' findings, a fair and equitable settlement could have been achieved. Instead, the Secretary of the Navy took the findings of his experts and added in lump sum payments totaling $541 million. As a result, the taxpayer is being forced to pay $978 million for claims which the Navy experts found are worth only $437 million.

Uncle Sugar—in this case, Uncle Sap—is handing over to the two defense contractors $541 million in "financial relief."

The distinguished cartoonist for the Washington Post, Herblock, was so outraged that he drew these two cartoons, which I have here in the back of the Chamber. The cartoons point to the marvelous position that defense contractors find themselves in. What they do is say to the Pentagon, "Pay off or we will stop production and you will not get your ships." As Herblock points out in the cartoon on the far side, the Pentagon waves its white flag and caves in—gives in.

I want to point out in detail how outrageous this settlement is. Before I do that, I call attention to the other cartoon by Herblock, "Arrivals and Departures," pointing out how the President of the United States, by vetoing the aircraft carrier, saved hundreds of millions of dollars. However, we turn around and ship out those hundreds of millions of dollars—not to get any hard equipment, not to strengthen our military force, but just as a payoff to incompetent, inefficient contractors above their contracts and above their value in claims.

Navy Secretary Claytor says, in defense of these bailouts, that they will avoid "years of litigation, with a substantial risk of greater cost to the Government as well as disruption of vital Navy shipbuilding programs."

In addition, Claytor says that the large losses which the two shipbuilders are being forced to accept will discourage other contractors from attempting "to obtain the kind of relief that these settlements provide for." Let us take a look at each of these justifications. First, the argument that the two contractors are suffering large losses.

Mr. President, the contracts that are the basis for the claims in question will not be completed for several years. Many of the ships in question are still under construction and will not be delivered for months and years to come. Thus, we are talking about hypothetical losses which the shipbuilders may realize when the contracts are fully performed. There may, in fact, be no such losses, or they may be far below present estimates.

As I point out, if the estimated losses, which only the contractor has estimated—the Navy has not made an estimate, only the contractor has—if they have, which they may very well have, exaggerated these losses, then they can lose money. They can lose over $100 million, for example, and make a nice fat profit on the loss. That is how bad these contracts are.

The hypothetical losses can even be transformed into profits at the taxpayers' expense.

But even if there are losses, the bailouts are unjustified. Where is it written that the taxpayer must spend his money to reduce or eliminate losses incurred by defense contractors?

The two shipbuilders have experienced large cost overruns on their ship contracts. The cost overruns are the cause of the claims. Why did the cost overruns occur and who should be responsible for them?

These are precisely the questions the Navy experts addressed when they examined the claims. They concluded, as I indicated earlier, that most of the responsibility is the shipbuilders'. They rejected most of the shipbuilders' claims. The reason they rejected most of their claims is that the shipbuilders themselves are responsible for most of the cost overruns.

There is ample evidence that the cost overruns occurred because of the incompetence and mismanagement of the two defense contractors.

We had hearings on this before the Joint Economic Committee. We have had hearings over the last 2 years on this. We have documented this incompetence. We have had people from the shipyards come in and testify to it. Management personnel has done so. Labor perso[illegible] has done so. The incompetence is [illegible]rageous and they do not like it.

The bailouts are thus a huge subsidy of waste, incompetence and inefficiency. But worse—much worse—they are a precedent that could invite a Niagara of waste, incompetence and inefficiency.

NATIONAL SECURITY

The concern has been created in the minds of many Senators that without the bailouts the Navy may not get the ships that are vital to the national security. This is a legitimate concern raised by the actions of the Navy. After all, when the Navy quakes in its boots and raises a white flag—as Herblock has depicted in his dramatic cartoon—every time the shipbuilder threatens to shut down unless its demands are met, we are entitled to question whether the ships will be built.

But I asked this question directly to Secretary Claytor in a hearing less [illegible]n 2 weeks ago. On September 8 I [illegible]d Claytor if the Navy was afraid that it would not get the ships unless these payments were made. Claytor said the Navy knew it could get the ships. Secretary Claytor testified that the construction of the ships would not be stopped.

Of course, the Navy can see to it that its ships are built. There is ample recourse through the courts and the law to obtain ships needed for national security.

In the few instances of threatened shutdowns by Navy shipbuilders in recent years, the Navy has obtained injunctions from the courts requiring construction to continue.

I challenged the Secretary of the Navy and the Assistant Secretary to cite me one case where they could not get the injunction. They could not, because there were not any.

Would the contractors go bankrupt if they were not bailed out by the Navy? The answer is no. The Secretary of the Navy has testified and the facts confirm the Navy's conviction that neither of these firms would go bankrupt if they