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Women on Television: Fairness and the "Fair Sex"

by Marvin Wexler and Gilbert Levy

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The mass media, and TV in particular, have significant effects on many crucial aspects of our national life. As Commissioner Nicholas Johnson of the Federal Communication Commission has pointed out:

Race: When the Kerner Commission examined race relations in the United States, it ended up having to devote an entire chapter of its report to the implications of the mass media.

Violence: After the Eisenhower Commission conducted its inquiry into violence in our country, it published a booklength staff study on the relationship between violence in television programming and violence in our society.

Education: The most dramatic recent success in educational reform is a television program: "Sesame Street".

Politics: When Senator Fulbright searched for the Key to the military-industrial-complex he ended up writing an entire book entitled *The Pentagon Propaganda Machine*.

Whenever attention is focused on campaign spending, it ultimately comes back to the rising and disproportionate cost of television time, and the need for free time or other solutions.¹

New statistical information regarding the viewing habits of Americans confirms the suspicion that television plays a dominant role in our lives. Dr. Gerald Looney states:

"Television has become an integral part of the ecology of childhood, and deserves the same concern and careful examination we give to other aspects of childhood. Lest anyone doubt its importance, perhaps a few statistics will convince all skeptics: According to the Nielsen Television Index, pre-school children, ages 3-5, who are at home, watch television an average of 54 hours a week - nearly 64% of their waking time . . . by the time [a person] graduates from high school, he or she will have spent roughly 11,000 hours in the classroom and more than 22,000 hours in front of the television set, with perhaps 5,000 of these hours consumed by 350,000 commercial messages. The implications of such figures are staggering. Within two short decades, the historical primacy of parents and teachers in the ecology of childhood has been silently but solidly usurped by an electronic intruder called television."²

Paul Baran suggests that "as a society we face a loss of innocence when it dawns upon us that individuals are programmed to behave with a set of values acquired primarily in very early youth, and that . . . today the greatest input component to the formation of these values is by electrical communication."³ If this analysis is even partially correct, then the television industry shoulders a heavy responsibility for the personal development of the nation's youth. Although there are conflicting theories concerning the particular effects of television broadcasting on the personal and collective behavior of adults,⁴ there can be no doubt that television is "an integral part of the daily life of virtually every American."⁵ One need not fully subscribe to Marshall McLuhan's idea that television causes viewers to conform to the pattern of experience presented⁶ in order to recognize that its affects are substantial.

Recently women's groups have argued that television broadcasters have not lived up to their responsibility with regard to their portrayal of women in their programs and in commercial advertising. The National Organization for Women (NOW) indicated:

"Women find themselves portrayed exclusively as wives, mothers, and sex symbols, receiving the same biased treatment in news broadcasts as in commercial and entertainment programming. Broadcasters systematically ignore the real problems and needs of women - particularly those of working women - who, after all, make up a substantial 51 per cent of the viewing audience in the average community."⁷

Preliminary analysis of the content of TV broadcasting reveals that this contention is quite well-founded.

Programming

Stop reading. Turn on the TV (chances are there is one nearby). How many women come into view as you switch from channel to channel? What are they doing?

Chances are that they are cast as housewives, mothers or girlfriends (all roles that emphasize their relation to men); that they are not portrayed as intelligent or self-reliant, but as irrational and dependent; that where they are depicted as working, the jobs are sub-professional and secondary.

In the most extensive television content analysis of its kind to date, television viewers in the Washington,

D.C. area watched approximately 660 hours of commercial television during the week of October 11-17, 1970. Robin Dorr reports:⁸

- (1) Women were seen as leads in 53 of those hours, men as leads in 508 hours. Women as leads were seen on 77 programs, men as leads were seen on 655 programs.
- (2) No women were seen as leads in religious, educational, straight news, soap operas, sports events, or cooking programs. Two women were seen in news interview programs. One woman introduced the guest speaker, and one woman shared in a documentary.
- (3) Women were the leads in 12 continuing dramas, compared to men in 48 continuing dramas. Concern here is not merely for the lesser number of programs starring women, but also for the kinds of roles women leads play as compared to men. Women were seen as maids, nurses, housewives, dizzy teenagers, secretaries, witches, and scatter-brained starlettes. The only exceptions were a spy, a TV writer, and a hotel manager. The last two characters were treated as humorous figures. These images can be compared to the male leads who were seen as rugged hunters, ranch owners, doctors, lawyers, space captains, Navy and Army officers, engineers, sheriffs, police captains, college professors, and so on.
- (4) Forty-two movies were viewed during that week, five of which listed female leads. They were: an evil love goddess, an evil Amazon, a psychopathic child, a gangsters moll, a pregnant young girl. The male leads in the 37 other movies were flying aces, journalists, steel tycoons, western heroes, police, detectives, airline pilots, jungle heroes, and heroic gangster types.
- (5) Thirteen of the 14 continuing dramas with women leads are comedy situations, while only 14 of the 48 continuing dramas starring men are comedies. Male heroes are to be taken seriously — women are, at best, humorous.
- (6) No woman was seen as m.c. on a game or quiz show, though women are used as panelists and contestants.
- (7) Even children's programs were dominated by men, although the teaching profession, particularly on the elementary level, is predominately female. One woman on TV entertains youngsters for a total of five hours a week, but for eight hours the tots are kept happy by two men.
- (8) No weather report or sports events were announced by women.

The soap opera is an illustration of what television imagines women to be. Designed to appeal to women, these programs dominate the hours during which time the television audience is mostly female.⁹ In their study of radio daytime serials, W. Lloyd Warner and William R. Henry examined the role of the radio soap opera; their analysis is also applicable to the television counterpart:

"It ... functions by dramatizing family crises and the ideals and values involved, as they are understood and felt by the women who listen and by making the good wife the center of action and power."¹⁰

The "good wife" knows her place. The often-repeated, major theme of these little dramas is that relationships with one's husband and children are a woman's only really significant activities.

Aside from the program content, there are other indications that the programmers perceive women as something less than fully functioning people. A classic example is CBS's refusal to broadcast the 1967 Senate hearings on Vietnam in favor of a re-run of *I Love Lucy*. Mr. Fred Friendly, who was working with the News Division at CBS at that time, reports in his book *Due to Circumstances Beyond Our Control*, that one of the unpublicized reasons for the CBS decision was that housewives, not "opinion leaders," were tuned in at that hour of the morning. CBS assumed that housewives were not interested in the hearing.¹¹

Is there a movement toward more reasonable programming? Are *Green Acres*, in which Eva Gabor runs around on a farm in luscious furs and flimsy lingerie and does strictly nothing all day except plague her husband, *Bewitched*, where the omniscient sorceress-housewife cooks, cleans and waxes the floor with a switch of her cute little nose, and *The Governor and J.J.*, where a young girl devotes her life to the furtherance of dear old dad's career, now being counter-balanced by such now-generation newcomers as *The Storefront Lawyers*, *The Young Rebels*, and *The Interns*?

In a recent commentary in the *Baltimore Sun*, Judith Bachrach explodes this suggestion. Shiela Larkin, the female attorney in *The Storefront Lawyers*, and Sandra Smith, of *The Interns*, turn out to be mere sexual sidekicks to the real protagonists:

"Shiela Larkin never gets a chance to litigate ... [whereas male leads] are treated as purposeful men, not as part-time legal bunnies who are there solely to raise interest (or something) in a wilting plot ... Similarly, Sandra Smith has yet to perform an appendectomy in *The Interns*. As far as we have seen, she is there solely to play mother confessor to her colleagues. When one of their number has a problem patient, Sandy is always there to console and comfort. When one of their patients has an operation, she is always off-camera."¹²

This contention is reinforced by a recent programming change: *The Storefront Lawyers* has been renamed *Men at Law*.

Advertisements

Betty Friedan correctly indicated the importance of the role of commercial advertising in the perpetuation of the idea of woman as an inferior being. In *The Feminine Mystique*, she alludes to marketing studies and personal interviews with advertising industry magnates which demonstrate the express intent of Madison Avenue in the post World War II period.

During those years, advertisements programmed women to remain in the home and consume household appliances in order to take up the then existing economic slack.¹³ She refers in Chapter 9 of her book to a study which concludes that such advertisements can salve the housewife's frustration at the lack of opportunity for meaningful work by providing a variety of household products, allowing the housewife to imagine herself a domestic engineer whose task is diversified, skilled, and essentially creative.

Friedan also refers to ad campaigns which were designed to make the teenage bride of the nineteen-fifties feel more secure in her newly acquired status merely by purchasing all of the important accoutrements of matrimony such as silverware and china. Friedan notes that numerous ad campaigns intentionally base themselves upon women's sexual anxieties. She concludes that advertisers have created a female stereotype, the "Feminine Mystique," which is internalized by the woman buyer:

"If they are not solely responsible for sending women home, they are surely responsible for keeping them there ... they have seared the feminine mystique deep into every woman's mind, and into the mind of her husband, her children, her neighbors."¹⁴

A recent survey of advertisements in leading American magazines in a given week found that:

- (1) women were rarely depicted in working roles (only about 12 per cent of the time) although women constitute approximately 33 per cent of the labor force;
- (2) no women were shown in high status professional roles;
- (3) male and female roles were divided by product category with women shown only acting independently with household products;
- (4) women are more likely than men to be shown operating in the company of the opposite sex;
- (5) in all of the ads examined, women were most often depicted in non-functional decorative roles.¹⁵

A recent study of WRC-NBC by NOW found that the portrayal of women by the ads on that television station was worse than the magazine survey indicated with respect to the first finding; less than 1 per cent of the commercials alluded to the fact that women work.¹⁶

Although quantitative analysis of commercial advertising on TV is in its formative stage, more qualitative description is quite revealing. Nancy Stanley has observed:¹⁷

- (1) The "voice-over" or "authority voice" (i.e., the salesperson giving the pitch for the product) in an ad is invariably that of a male; the male voice is usually giving the pitch to a befuddled female consumer — that is, telling her what to use and how to use it; and when there is a female voice-over, she is generally selling the product to a female consumer, not to a man.
- (2) Products pitched to women are predominantly beauty products or products for the care and maintenance of the home and family (e.g., detergents, cereals) whereas the products pitched to men (e.g., insurance) often

stress the man's role as wage-earner, provider and busy executive.

(3) Ads frequently show women being subservient to or in some way serving a man (e.g., wife serving Sanka to husband; man uses Tahitian Lime after-shave lotion, then snaps his fingers in a lordly fashion and woman comes running); they show men serving women infrequently.

(4) Women appear in ads most often as housewives, mothers, girl friends, sex symbols; ads rarely picture a woman working outside the home; when they do show a working woman they show her most often in secondary occupations (e.g., as nurses rather than as doctors), in subprofessional jobs (secretaries rather than lawyers) or in the jobs traditionally reserved for women (stewardesses, teachers).

(5) Ads frequently characterize women as sex symbols; however, men are presented as sex symbols much less often, and much less blatantly.

(6) Women are frequently portrayed in ads as unable to perform simple tasks without male guidance or help (e.g., helpless woman trying to change tire; "so easy even a woman can do it;" inability to get wash clean without new blue Cheer).

(7) Men, on the other hand, are frequently shown unable to perform tasks which are *domestic* in nature ("Honey, how do you get my shirts so white?")

(8) Whatever their role, women in ads are portrayed generally as scatter-brained, irrational, easily flustered — men are less often shown this way and more often pictured as dependable, resourceful, calm and forever coming to the rescue of a woman in distress, (e.g., the Marlboro men — strong, independent, self-reliant).

(9) Ads which make reference to "women's liberation" do so in a way which equates that movement with just another new fashion or style of consumption for the passive and un-thinking woman, (e.g., the Virginia Slims "You've come a long way, baby!" campaign, which won a Cleo award from the advertising industry).

Some ads are less subtle in their sexist orientation. For example, a recent television campaign advertising Silva Thins cigarettes was designed to appeal to a woman's supposed instinct to be dominated by men. These ads portrayed a calloused, nonchallante man in dark glasses who "gets" women by ignoring them and who spurns them if they dare to touch his cigarettes. Concerning this campaign, *Advertising Age* relates:

"... women (an important market for this cigarette) especially dig the scene of the 'Impossible Cigarette.' Psychologically, they seem to feel right at home with these situations. They quite willingly put themselves in the place of the suffering heroine. The makers of this campaign demonstrate a shrewd insight into the emotional makeup of today's women. Using what appears to be a masculine approach in their advertising, they are reaching the very core of their feminine audience. The hero in the Silva Thins commercials appears to be just what the doctor ordered. His strength lies in aloofness. Ignoring practically every rule of etiquette, he summarily puts his girlfriend in her place, exactly where so many women unconsciously like to be."¹⁸

In another campaign described in *Advertising Age*, the Rice Council of America was selling a particular view of women's place. The magazine layout consisted

of a series of closeups of attractive young women with captions underneath. The captions read, respectively –

“The first time it scared me. Now rice is the thing I do best.”
“It’s the one thing a man never turns down. A second helping of rice.”
“No man wants the same thing every night. Be creative with rice.”
“Whatever you’re giving him tonight he’ll enjoy it more with rice.”

The theory behind this campaign was explained in *Advertising Age* as follows:

“Although the ads were designed to appeal to the youngish menu planner, the provocative nature of each should draw high interest from her husband as well.”¹⁹

Television has never been hailed as a purveyor of truth and beauty. “Wasteland” is the more popular and accurate label. Yet TV has been particularly retrogressive in its portrayal of women.

“What it does to everyone, it does to women even more. The traditional societal role for women is already a passive one, already one of consumer, already one of an emotional non-intellectual who isn’t supposed to think or act beyond the confines of her home. The mass media reinforces all these traits.”²⁰

As Robin Dorr has stated, the core of the unreasonableness consists of the fact that TV presents only one image of women:

“It is to be hoped that women will one day see themselves as the doctor, not the nurse (Julia), the principal, not the counselor (Room 222), the professor, not the nursemaid (Nanny), the successful band leader, not the addleheaded wife (Lucy), the successful journalist, not the flippy starlet (That Girl), the advertising executive, not the witch (Bewitched), and the professional account exec, not the amusing, ungrammatical maid (Hazel). These shows have merit and a place in the healthy humor of TV fare, but they are [presently] the *total* image of women with no other more serious and respectable image shown.”²¹

The portrayal of women on television is by and for men.²² As it relates to women, McLuhan, deBeauvoir and many developmental psychologists might say that it rises to the level of a self-fulfilling prophesy.

II

If a book, magazine, or newspaper presented such a one-sided image of women, there would be little grounds for legal action. In theory at least, a competing portrayal might be presented to the public by other writings. Certainly access to these media are restricted by the cost of equipment and the need for professional skill, but the possibility for the presentation of competing views remains. In contrast, access to broadcasting is limited not only because of various expenses, but also because with present technology electromagnetic radiation allows only a limited number of broadcast channels.

This limited access has resulted in the licensing and regulation of broadcasts. The Communication Act of 1934 required that licensees who operate broadcast facilities perform in the public interest, and the job of ensuring that broadcasters act in the public interest was given to the Federal Communication Commission.²³

One tool the FCC uses to achieve this goal is the Fairness Doctrine. The rationale behind this doctrine





is that the Commission must maintain the limited resource of the broadcast media as a medium of free speech for the general public; it was articulated in the basic Commission exposition of the Fairness Doctrine, *In the Matter of Editorializing by Broadcast Licensees*:

"If, as we believe to be the case, the public interest is best served in a democracy through the ability of the people to hear expositions of the various positions taken by responsible groups and individuals on particular topics and to choose between them, it is evident that broadcast licensees have an affirmative duty generally to encourage and implement the broadcast of all sides of controversial public issues over their facilities, over and beyond their obligation to make available on demand opportunities for the expression of opposing views. It is clear that any approximation of fairness in the presentation of any controversy will be difficult if not impossible of achievement unless the licensee plays a conscious and positive role in bringing about balanced presentation of the opposing viewpoints."²⁴

Those who would present the opposite point of view are entitled to free time provided by the licensee. However, the opposing viewpoint is not entitled to an absolutely equal amount of time. The licensee need merely afford a reasonable opportunity for presentation of rebuttal.

The test of the applicability of the Fairness Doctrine consists of two elements. First, is the issue a so-called "controversial issue of public importance?" Second, if so, has the licensee fulfilled its obligation to reasonably inform the public of the various sides of the issue.

Controversial Issue of Public Importance

Two arguments can be made to the effect that the present portrayal of women on television constitutes a controversial issue of public importance. The first concerns defamation of women as a class.

The FCC has generally been content to designate what amounts to a controversial issue of public importance on a case by case basis. The closest the Commission has come to an articulation of general guidelines for ascertaining the standard was in its Summary of Controversial Issue Programming:

"When the licensee permits use of his facilities for the presentation of views regarding an issue of current importance, such as racial segregation, integration or discrimination, or any issue of public importance, he must offer spokesmen for all responsible groups within the community similar opportunities for expression of the viewpoints of their respective group."²⁵

The statement is significant for its emphasis on the issue of racial discrimination as a prime example of a controversial issue of public importance.

Two previous FCC decisions have found a controversial issue to exist where a broadcaster has presented a viewpoint that was discriminatory to a specific class of the population. In *Anti Defamation League of B'nai B'rith*, the licensee was held to be properly required to provide rebuttal time where one of the pro-

gram aired by the licensee presented the viewpoint that Jews are inherently communistic.²⁶ In *Lamar Life Insurance*, the licensee had presented four editorials opposing the enrollment of James Meredith in the University of Mississippi. Additionally, the station had permitted the Jackson Citizens Council to broadcast paid advertisements that the enrollment efforts were communist dominated as was a local black college which was sympathetic to the civil rights movement. Furthermore, an intervenor petitioner, the United Church of Christ, asserted that although close to 35% of the broadcast audience was black, there was not a single black church allowed by the licensee to participate in a religious program which each week featured a broadcast from a different church in the community.²⁷

In *Lamar Life Insurance*, the Commission renewed the station's license only on a probationary basis, which is the closest the Commission has ever come to outright revocation. At the time of this ruling, the station had a long history of discriminatory and pro-segregation broadcasts. The Commission issued an order for the licensee to immediately cease discrimination. With respect to the United Church petition, the Commission held that more broadcast time should be devoted to the needs of the black community.

In both *Anti-Defamation League* and *Lamar Life*, the violation consisted of the unreasonable representation of the class, bordering on class defamation. The language of the policy statement and the history of the FCC's dealings with allegations of this type of class discrimination on television suggest that an argument linking sexual and racial discrimination could establish a sexist portrayal of women as a controversial issue of public importance.

Sexual and racial discrimination are quite analogous. Discrimination in each case is triggered by the high social visibility of the group. The discrimination consists, in part, of the attribution to both groups of characteristics including low intelligence, instinctual orientation and general inferiority. These characteristics are judged to have determined a "place" for the class. Discrimination in education, employment and in politics follows. If this analysis more accurately reflects the position of black people in 1960 than in 1971, this only serves to illustrate that discrimination against women may be more of a controversial issue of public importance today than is racial discrimination.

The National Advisory Commission in Civil Disorders (the Kerner Commission) thought that the portrayal of black people by TV was an issue of public importance. It stated:

"The media report and write from the standpoint of a white man's world. The ills of the ghetto, the difficulties of life there, are seldom conveyed. Slightings and indignities are part of the Negro's daily life, and many of them come from what he now calls 'the white press' - a press that repeatedly, if unconsciously, reflects the biases, the paternalism, the indifference of white America. This may be understandable, but it is not excusable in an institution that has the mission to inform and educate the whole of our society . . . if what the white American reads in the newspapers or sees on television conditions his expectation of what is ordinary and normal in the large society, he will neither understand

nor accept the black American . . . the news media have, we believe contributed to the black-white schism in this country."²⁸

Similar reasoning can be applied to the treatment of women on television. By exclusively portraying women as an inferior class whose place is in the home or in a narrow range of traditionally defined roles, television programming and advertising accomplishes and encourages discrimination against women in the present and assures such discrimination in the future.

One difference between sexual and racial discrimination is the fact that women are a majority, not a minority. Yet that fact should make sexual discrimination an even more vital issue of public importance. A second difference concerns the place which sexual and racial distinctions have in the values of American society today. While it may be true that Americans agree that racial discrimination is an evil, agreement has not been reached about the invidious nature of sexual discrimination, at least in some contexts. Of course, the fact that consensus has not yet been reached does not make the issue any less controversial or important. Moreover, the progress of the Women's Right Amendment is a strong indication that discrimination on the basis of sex is of fundamental importance and is also very controversial.

However, a doctrinal refinement may be necessary before we can conclude that the sexist portrayal of women on television permits invocation of the Fairness Doctrine. Since the portrayal of women is not overtly defamatory, unlike the situation in *Anti-Defamation League* and *Lamar Life*, it may be necessary to argue that explicitness and intent are not necessary elements of a Fairness Doctrine violation. Although it would seem to be obvious that inferential statements about a class can be just as poisonous as explicit ones, the absence of case law on the subject causes us to consider this point in the light of what law does exist.

Historically, the Fairness Doctrine arose in response to the broadcast on television of programs or spots explicitly and intentionally raising issues of public importance. The editorial at the end of the news program is the obvious example, but all types of documentaries also fall into this category. It is only recently, mostly in connection with commercial advertising, that the doctrine has been applied to broadcasts which do not explicitly raise controversial issues, but which rather imply them.

Cigarette Advertising, 9 FCC 2d 921, aff'd, *Banzhaf v FCC*, 405 F2d 1082, (1968), was the first case in which the doctrine was applied to commercial advertising. There petitioner complained that cigarette advertisements of the licensee station were representing that smoking was desirable, that such representations presented one side of a controversial issue of public importance, and that the licensee had refused to allow any time for rebuttal. The Commission, agreeing that the matter was a controversial issue of public importance, noted that recently enacted legislation required the tobacco companies to place precautionary labels on cigarette packages, and established the link between cigarette

smoking and cancer.

The licensee objected that cigarette advertisers had made no affirmative representations to the effect that cigarette smoking was a healthy endeavor. However, the Commission found that the overall tenor of cigarette commercials implied that smoking was a healthy and desirable activity. By way of example, the Commission pointed out that such representations were made whenever smokers were depicted as happy, athletic, attractive people in the company of other athletic, attractive people of the opposite sex. The Commission took notice of other subtle ways in which advertisements represented that smoking was desirable such as by guaranteeing satisfaction, by appeals directed to vanity, by subtle methods of assuaging anxiety and by bonuses.

Thus *Cigarette Advertising* ruled that the Fairness Doctrine encompasses implied representations. However, the Commission expressly limited its holding to situations analogous to the one at issue; that is, where there were governmental and private reports and Congressional action with respect to cigarette smoking and where there was an assertion in common that the "normal use of this product can be a hazard to the health of millions of persons."²⁹

Despite this disclaimer, the federal courts have expanded the notion of implied representation. In *Friends of the Earth v. FCC*, No. 24, 556, (D.C. Cir., August 16, 1971), the Circuit Court, on appeal from the FCC, held that certain automobile and gasoline advertisements which urged viewers to buy large cars and high-pollutant gasolines presented a controversial issue of public importance. The FCC had dismissed the complaint with the observation that "cigarettes are a unique product, permitting the simplistic approach adopted in that field." The court disagreed, stating:

Commercials which continue to insinuate that the human personality finds greater fulfillment in the large car with the quick getaway do, it seems to us, ventilate a point of view which not only has become controversial but involves an issue of public importance. When there is undisputed evidence, as there is here, that the hazards to health implicit in air pollution are enlarged and aggravated by such products, then the parallel with cigarette advertising is exact and the relevance of *Banzhaf* inescapable."³⁰

The court noted that the FCC had scrutinized the implications, and not just the explicit declarations, of advertisements in other cases:

"On June 30 last, the Commission in the so-called *Esso* case (FCC71-704) sustained a fairness doctrine complaint which it thought to come within the range of these examples. Complaint had been made about commercials sponsored by Standard Oil Company of New Jersey which related to the development of oil reserves in Alaska, and which were said 'to discuss one side of controversial issues of public importance, namely (1) the need of developing Alaskan oil reserves quickly and (2) the capability of the oil companies to develop and transport that oil without environmental damage.' The licensee took the position that the commercials in question were institutional advertising which did not involve any controversial issue of public importance. The Commission held that this approach was unreasonable, and that the fairness doctrine was triggered by the commercials in issue."³¹

The inference that an advertisement for an automobile which stressed the value of its size ("you

don't have to be a big spender to be a big rider," said one ad) is also making a controversial comment about ecology issues was sustained in *Friends of the Earth*. Certainly the conclusion that the presentation of women on television implies a statement about the controversial issue of women's character and ability also follows.

The fact that all of the cases which have dealt with this problem of unfair *inference* have arisen in the context of advertisements should not detract from their force here. Biased presentations are not any less objectionable merely because they do not occur within the context of advertisements. Moreover, the biased portrayal of women cannot be divorced from the commercial aspects of television programming. Broadcasters attempt to maximize their Nielsen ratings by presenting sexist programming. They sell their shows by "selling" an image of women. The commercial element is only more obvious in advertising, which itself disseminates a biased view of women. In sum, defamation of women by means of a sexist portrayal of their character and ability constitutes a controversial issue of public importance.

A second argument bringing the present portrayal of women on television within the scope of the Fairness Doctrine is based on Title VII of the Civil Rights Act of 1964, 42 USC 2000e. That Act constitutes Congressional recognition that women should enjoy equal employment opportunity. As Kanowitz points out regarding Title VII:

"...when Congress adopts any legislation, especially a law with such important ramifications, one must infer a congressional intention that such legislation be effective to carry out its underlying policy — which in this case is to eradicate every instance of sex-based employment discrimination that is not founded not upon a bona fide occupational qualification."³²

For Title VII to be effective, sexist notions concerning the character, ability and place of women must be dispelled.

Biased television broadcasting influences men, women and children to assume mind-sets which are contrary to the policy of Title VII. Such programming could be said to be an important source of frustration for the statutory purpose, and Title VII could be read as strong Congressional policy disfavoring such programming. Surely, the use of the airways, themselves public, to subvert public policy is both controversial and of public importance.

Reasonableness

The second element of the Fairness Doctrine test concerns the reasonableness of the presentation. Has the licensee afforded reasonable opportunity for the presentation of opposing points of view? In terms of women and TV, the question can be rephrased so as to focus on the presentation of alternative images of women in society: Has the licensee presented a fair and sufficiently varied view of women?

The material in the first part of this article presents the argument that television stations

generally present a biased view of this issue of public importance. Of course, the case would be argued against one particular licensee, and not the entire industry. This lessens the difficulty of proof.

Remedy

If the FCC or a court on appeal were to hold that a Fairness violation existed with respect to sex discrimination, the Commission would then look to responsible womens' groups to present an opposing viewpoint. Such groups might present rebuttal in any one or more of the following forms:

1. inform the public that women constitute at least 33% of the work force and that they are therefore as entitled to vocational mobility as are men.
2. present spot announcements informing the public of womens' contributions to science, technology and the arts in order to counteract the defamatory effect of sex object caricatures as well as the implied assertion that the only proper place of women is in the home.
3. present broadcasts informing women of available opportunities for professional and vocational training.
4. present advertisements or programs portraying men in domestic work-roles and women in professional work-roles which assert the various benefits of a more equitable allocation of domestic work such as less overall pressure on the male to be the provider and more ultimate likelihood of a successful relationship due to the woman's greater sense of fulfillment.

III

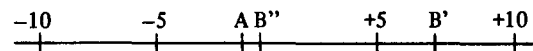
The point has often been made that regulatory agencies are never ideal protectors of the public interest. They work closely with the industries they are supposed to regulate, and the industry's point of view often infuses the agency's atmosphere. Especially in the case of the FCC, whose mandate is to protect the public interest and whose domain is the critical area of speech, it is ironic perhaps that the Commissioners should not be politically accountable. Furthermore, if regulatory functions depend on quasi-judicial proceedings, as in the FCC, there is a built-in bias against members of the general public because they lack time and money to present a credible case.³³ These biases perpetuate a one-sided portrayal of women on television.

Although we strongly feel that the Fairness Doctrine should be invoked to change the presentation of women on television, this issue goes far beyond that. If the stereotyped image of women on television is in fact a biased statement about an important con-

troversial issue, then it must be recognized that many such prejudicial statements are constantly made over television, contrary to the public interest. Consumerism often conflicts with environmental concerns, but there is hardly ever a rebuttal to consumerism made on television. Alternative life-styles are often distorted and maligned over television, but a balanced presentation is never even attempted. The FCC and the Courts may well be afraid that extending the Fairness Doctrine to women's rights will open a Pandora's box. Nearly everything which is shown on television is controversial in somebody's view. "The term 'controversial' is extraordinarily vague." *Business Executives' Move for Vietnam Peace v. FCC*, No. 24, 537 (D.C. Cir., Aug. 3, 1971, p. 36). Even if only those issues about which Congress has made some policy statement were considered sufficiently controversial to invoke the Fairness Doctrine, a very significant portion of television programming would be considered controversial. Ensuring that every side of every controversy on television is allowed rebuttal time would be very difficult, even if the structural biases identified above did not exist.

Recognizing the inherent difficulties of the standard and perhaps under pressure from its constituent broadcasting executives,³⁴ the FCC is presently undertaking a re-examination of the Fairness Doctrine.³⁵ However, the real problem which must be confronted is that the broadcasting industry is organized in a way which tends to present a uniform view of issues, while the public interest seems to require diversity. The tendency of the competitive broadcast industry toward uniformity is an instance of the economic principle of minimum differentiation of output. The economist Richard Lipsey explains the principle as follows:

"Let us consider first the simple case of a product with only one independent characteristic which we can measure on a scale from -10 to +10 . . .



This might, for example, be a soap powder in which harshness was associated with cleansing power and mildness with the lack of it; +10 might indicate a soap which had great cleansing power but removed the skin from the unfortunate housewife's hands, and -10 a soap which was positively beneficial to the hands but which would not remove the merest speck of grease. Let us assume that firm A has settled his product on the scale at -2. If firm B now wishes to produce a competing product, what will be its optimal policy? It might go to an extreme, producing a soap which had strong cleansing power but was also rather harsh on the hands, going as far out as, say, +8 on the scale (indicated by B'). Now consumers whose tastes lead them to prefer something between the two products would have to decide between the two; and, presumably, they would choose the product which came closest to satisfying their tastes. Firm A would get all the customers who preferred a product ranging from -10 to +3, while B would get all those who preferred a product ranging from +3 to +10. Now let us assume that, having decided to make a product with more cleansing power and more harshness than the competitor's product, the producers of B go only a little way in this direction, just enough to make the difference noticeable but not enough to cause a great gulf between the two products. Let us say they go to zero on our scale (see B''). Now product B should get all the customers who would like a product rating between -1 and +10. Clearly the optimal policy for the

producers of B is to place their product to the right of A on the scale, but only just enough for the difference to be perceptible. This fact, that the optimal policy is often to make your product different enough from that of your competitor's product for the difference to be noticeable but no more so, is sometimes referred to as the principle of minimum differentiation."³⁶

Lipsey further indicates that the addition of more firms and more characteristics does not alter the results.

P. O. Steiner has applied this analysis in a comparative study of the BBC and American television.

"Consider a situation in which there are three channels operating concurrently for a single period (say 30 minutes), broadcasting to a population of potential listeners whose tastes vary in the following very simple way: out of every 100 potential listeners 80 want a programme of type A (e.g. 'western'), 18 want a programme of type B (e.g. dramatic show), and the remaining 2 want a programme of type C (e.g. discussion of current events). Further assume to start with that a listener will turn on his set only if a programme of the type he wants is broadcast. A monopoly interested in maximizing the number of listeners (which in this case is the same as satisfying the largest number of people) will clearly produce one programme of each type, one on each channel, and both capture and satisfy the whole audience. Three competing firms, each trying to get as many listeners for itself as it can, will probably all produce a programme of type A for the simple reason that each one's share of the mass audience will be larger than the whole of the potential audience for programmes of types B or C. If we assume that two or more stations producing the same programme type will share the audience equally, it is easily seen that a fourth channel will also produce type A (20 per cent of the audience) rather than type B (18 per cent). Indeed, one would need 5 stations before one could expect type B to be produced, and at least 48 channels before type C would appear attractive. Duplication is a consequence of competition for listeners, and if choices are varied and the number of channels limited, duplication will leave some listeners unnecessarily dissatisfied. While each of the duplicating programme producers can claim that 'we give people what they want,' this is not so in the aggregate."³⁷

The larger the number of minority groups in terms of viewing desires in the viewing population, the more tyrannous the majority becomes. Since our population is so diverse, in terms of race, religion, national origin, life-styles and attitudes, that tyranny is fierce:

"Empirically, duplication of programme types by channels at the same time, and also over time, are perhaps the most clearly visible features of the American system. The near-saturation of prime evening hours on all networks with westerns, 'private eye' shows, and situation comedies has been noted by many critics. The cost is less coverage of minority tastes than their place in the preference pattern of the population warrants."³⁸

If this analysis is correct, the very structure of the television industry works against programming which is fully in the public interest. In order to uphold the public interest, the FCC should go beyond its re-examination of the Fairness Doctrine and examine the ownership structure of the TV industry. To maximize the opportunity of diverse, minority interests to speak as they wish and view as they wish, thereby reflecting the rich variety of the nation, either a government take-over, centralized (a la BBC) or decentralized (a la PBS) or technological change (cable TV) must occur. Needless to say, there are many problems which might result from either unified national control or decentralized public control of the television industry. We would want some kind of

assurance that government controlled television would not be as deaf as the present system to the variety of interests involved. A government bureaucracy supervising television programming either in the midst of political pressures or insulated from political pressures might be just as tyrannical as the present system. The alternative of cable television which would make access to television broadcasting facilities more easily available by increasing the number of possible stations would, however, be a significant advance.

While women attempt to raise the issue of the patently unreasonable portrayal of their sex on television, they should gain support from a wide range of people whose interests are not served by the television industry. Around this issue could perhaps crystallize a serious re-evaluation of the entire commercial broadcast industry.

1 N. Johnson, *The Careening of America or How to Talk Back to Your Corporate State* 7 Speech Yale Univ. (Mar. 8, 1971).

2 Dr. G. Looney, *Television and the Child: What Can be Done?* Position paper presented to the Section on Child Development, Amer. Academy of Pediatrics 1 (Oct. 17, 1971).

3 P. Baran, *The New Communication and Social Values* 34 Law and Contemporary Problems 244 (1969).

4 For an analysis of the various arguments, see N. Johnson, *How to Talk Back to Your Television* 24-34.

5 The National Commission on the Causes and Prevention of Violence (the Eisenhower Commission), *Commission Statement on Violence in Television Entertainment Programs* 1 (Sept. 23, 1969).

6 Quoted in J. Faust's statement to the New York City Commission on Human Rights, *Image of Women in the Mass Media* (Sept. 25, 1970).

7 The National Organization of Women - *Comment on Notice of Inquiry and Notice of Proposed Rule Making, In Re: Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses* 1 Docket No. 19153.

8 Unpublished memorandum from Robin Dorr, National Correspondent for Teachers Rights and Human Relations, Press, Radio-TV 1-3. (Hereinafter cited as *Dorr Memorandum*).

9 One might ask why, if the programmers desire to appeal to women, they portray them in such a debased way. To the extent that this is a rational decision, it may well be a testament to the success the media has had in conditioning women to think of themselves in these terms. S. deBeauvoir states in *The Second Sex* that women have lost their desire to be equal to men because of such conditioning.

10 I. Glick and S. Levy, *Living with Television* 64.

11 A. Embree, *Media Images I: Madison Avenue Brainwashing - The Facts in Sisterhood is Powerful* (R. Morgan, ed.) 183 (Hereinafter cited as *Media Images I*.)

12 *The Baltimore Sun* (Oct. 20, 1970).

13 B. Friedan, *The Feminine Mystique* 201-19.

14 *Id.*, at 219. Friedan's suggestion that TV is responsible for "sending women home" may be quite inciteful. During WWII, women "manned" the home front, and a revolution in social roles was a possibility. The war acted catalytically in terms of male-female relationships in much the

same way it functioned with respect to black-white relationships. Query whether TV, which first appeared in a large number of American homes in the mid-1940's, had a significant role in ending that movement.

15 A. E. Courtney and S. Lockeretz, *A Woman's Place: An Analysis of the Roles Portrayed by Women in Magazine Advertisements* J. Marketing Res. (Feb. 1971).

16 *The Vocal Majority* 7 (Apr. 1970), A National Organization for Women (NOW) Newsletter.

17 Memorandum by N. Stanley, *Elements of a Feminist Analysis of Television*. This document will be part of a forthcoming article by N. Stanley, *Federal Communications Law and Women's Rights: Women in the Wasteland Fight Back* Hastings Law Journal (Dec. 1971).

18 *Advertising Age* (Apr. 21, 1969).

19 *Id.*, Sept. 25 (1969).

20 *Media Images I* at 181.

21 *Dorr Memorandum* at 4.

22 Television programmers are almost exclusively male. The reader is referred to Connie Royster's paper with regard to the issue of employment discrimination in the television industry.

23 47 U.S.C. S 307 (d), 309 (a); See generally, *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969).

24 13 FCC 1246 (1948).

25 25 R.R.1899 (1963).

26 4 FCC 2nd 190 (1966).

27 38 FCC 1143 (1965).

28 *Report of the National Advisory Commission of Civil Disorders* (Kerner Commission) 366-383.

29 9 FCC 2nd at 942 (1967).

30 *Friends of the Earth v. FCC* No. 24, D.C. Cir. 12 (Aug. 16, 1971). Slip Opinion.

31 *Id.*, at 13.

32 L. Kanowitz, *Women and the Law: The Unfinished Revolution* 105.

33 See A. Kramer's review of *How to Talk Back to Your Television Set* 1 Yale Review of Law and Social Action (No. 2 and 3, 1971).

34 In both, *Friends of the Earth* and *Business Executives' Move*, the two recent cases extending the Fairness Doctrine, the defendant licensees argued that an extension would undermine the commercial footing of network television. The FCC agreed with this position in both cases; see *Friends of the Earth* 9 slip opinion and *Business Executives' Move* 38 and 42 slip opinion. As the conclusion to this article suggests, this may well be a rational position.

35 FCC Docket Number 19260, *Notice of Inquiry* (June, 1971).

36 R. Lipsey, *An Introduction to Positive Economics* 254-55.

37 P. O. Steiner, *Monopoly and Competition in Television* 114 The Manchester School (May, 1961).

38 *Id.*, at 116.