

Dan Rather's Good Deed His critics should thank him for sinking the Fairness Doctrine.

by Thomas W. Hazlett

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WHEN *CBS Evening News* faded out on March 9, marking the end of Dan Rather's career as a network anchor, bubbly conservatives toasted a momentous victory in the struggle against liberal bias. I propose quite another tribute--this one to celebrate the newsman's part in championing the cause of free speech.

Dan Rather provided key expert testimony that figured prominently in the elimination of the Fairness Doctrine in August 1987. Some might suggest that by doing so, he unleashed a tide of real diversity in the opinion and news business, and thus helped seal the fate of his infamous *60 Minutes* report on President Bush's National Guard service. And some would be right--but this irony does nothing to detract from Rather's important contribution to the demise of an egregious obstacle to the freedom of the press.

The Fairness Doctrine, instituted in 1949, mandated that each radio or TV station (a) feature news and (b) offer balanced perspectives. The penalty for noncompliance was, potentially, the loss of a license, thus encouraging broadcasters to offer news and opinion only in their mildest, least controversial form. Yet, the reigning assumption was that speech was being protected by the Fairness Doctrine, not inhibited.

The abolition of the Fairness Doctrine by Federal Communications Commission chairman Dennis Patrick brought a firestorm of protest. A bill to reinstate the doctrine passed the House 302-102 and the Senate 59-31, before being vetoed by President Reagan.

What led the FCC to this bold move was a 1985 report documenting the doctrine's "chilling effect" on speech.

One historical gem it contained was the campaign launched by the Democratic National Committee after the 1963 Nuclear Test Ban Treaty encountered populist opposition. The Kennedy-Johnson administration blamed conservative radio shows, initiating (through the DNC) a system to monitor the airwaves and file extensive "fairness" complaints. As one operative later testified: "Our massive strategy was to use the Fairness Doctrine to challenge and harass right-wing broadcasters" into silence. The FCC concluded that the Fairness Doctrine provided "a pervasive and significant impediment to the broadcasting of controversial issues," and that news broadcasts and diverse viewpoints would flourish in its absence.

The prediction was dead on. Informational formats (news, talk, and public affairs), just 7 percent of all AM stations in 1987, jumped to 28 percent in 1995--dramatic statistical evidence of the doctrine's chilling effect.

Conservatives now worship talk radio, and liberals are scrambling to compete, if not reregulate. In 1993, Democrats rallied to revive the Fairness Doctrine; Democratic congressman Bill Hefner of North Carolina distributed a pro-Fairness Doctrine flyer condemning "TV and Radio Talk Shows that

often . . . make inflammatory and derogatory remarks about our public officials." But grassroots outrage over the "Hush Rush [Limbaugh] Law" was given voice via talk radio, and the effort stalled. In 2000, however, the proposal resurfaced in the Democratic party platform.

While it's easy to ridicule the Fairness Doctrine today, it wasn't easy before 1987. Statistical evidence of a chilling effect was unavailable while the doctrine was in effect. And lack of such proof led FCC critics to dismiss the "self-serving anecdotes of the broadcaster," as a Carter-era FCC official put it. The commission needed support, a backer of some prominence to defend its bold initiative from legal and political challenge.

Dan Rather filled that role. The commission's official analysis featured the testimony of the "Managing Editor and Anchor of CBS News" as Exhibit A:

When I was a young reporter, I worked briefly for wire services, small radio stations, and newspapers, and I finally settled into a job at a large radio station owned by the Houston Chronicle. Almost immediately on starting work in that station's newsroom, I became aware of a concern which I had previously barely known existed--the FCC. The journalists at The Chronicle did not worry about it; those at the radio station did. Not only the station manager but the newspeople as well were very much aware of this government presence looking over their shoulders. I can recall newsroom conversations about what the FCC implications of broadcasting a particular report would be. Once a newsperson has to stop and consider what a government agency will think of something he or she wants to put on the air, an invaluable element of freedom has been lost.

Rather was the only celebrity journalist to speak out. The only other newsperson of any prominence quoted by the FCC in support of free speech was Bill Monroe of NBC's *Meet the Press*. With this scant support, the Reagan FCC ventured forth.

Today, talk radio, cable TV networks, and Internet websites all benefit from the First Amendment's protection of electronic media. No single regulatory action advanced that constitutional shield further than the deregulation of broadcast content in August 1987.

Conservatives have been rejoicing over Rather's departure. A glance at their own ranks, however, reveals a number of prominent organizations--the Eagle Forum, Accuracy in Media, and the National Rifle Association--that supported the Fairness Doctrine and petitioned the government to extend it. These conservatives got perfectly wrong what Rather got exactly right. Americans ought to clink their glasses one extra time, without irony, for an anchor who helped new networks take sail.

Thomas W. Hazlett is a senior fellow at the Manhattan Institute and a visiting professor at the Wharton School.

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