

'Fairness' Rule May Affect Auto Ads

A federal appeals court has told the Federal Communications Commission to get on with a "re-thinking" of its position on whether or not the controversial "Fairness Doctrine" should be extended to radio and television commercials that involve public health issues other than cigarette smoking. A broadened interpretation of the doctrine could have far reaching implications in the field of auto safety.

The "Fairness Doctrine" requires that free radio and television broadcast time be given "for the discussion of conflicting views on issues of public importance." The concept was first applied to product advertising when the FCC decided that the public should be reminded, through free public service announcements on television and radio, of the health hazards of smoking. That decision was prompted by a petition submitted by Attorney John F. Banzhaf, III, and the surgeon general's report documenting the health hazards of cigarette smoking.

The Center for Auto Safety has already sought to expand application of the "Fairness Doctrine" by petitioning the FCC for public service broadcast time to present opposing views to advertisements, sponsored by Ford Motor Company, which question the worth of air bags.

Other highway loss-related issues that might be susceptible to "Fairness Doctrine" demands for free radio-television commercial time could relate to:

- Truck-promoting commercials that fail to identify hazards associated with such vehicles, including their routine lack of "override" protection for car occupants striking them from the rear and their common inability to stop at the same rate as cars ahead of them.

- "Muscle car" commercials that fail to point out the association of such

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overpowered cars with higher-than-average crash losses and also fail to inform potential buyers of the role of high speeds in substantially aggravating injuries in car crashes.

- Motorcycle commercials that fail to explain the hazards that cycle riders, unprotected by passenger compartment packaging now required in new cars, assume with use of such vehicles.

- Commercials for small cars that fail to point out the differences between big cars and small cars in terms of occupant damage vulnerability.

In a recent ruling the U. S. Court of Appeals for the District of Columbia made it sharply clear that the FCC must come to grips with the wide ranging implications of the "Fairness Doctrine."

The court ordered that the FCC take another look at a petition filed by Friends of the Earth seeking public service broadcasting time to present views that take issue with automobile and gasoline company advertisements which, it said, "bombarded" the public "with pitches for large-engine and high-test gasolines." The FCC had initially denied the organization's request.

Friends of the Earth had based its request for so-called "equal time" on the 1967 FCC ruling that required broadcasters to provide "a significant amount of time" for public service anti-smoking commercials. The FCC has been reluctant to apply the "Fairness Doctrine" to other areas of product advertising.

The court found that issues in the Friends of the Earth case were "indistinguishable" from those that prompted the FCC to order that free broadcasting time be given for anti-smoking messages and ordered that the Commission review its earlier denial of the petition.

Similarities between the two cases were held to include:

- Recognized public health hazards that "offer significant dangers to human health and survival;"
- Controversial issues of public concern on which only one view is presented by company sponsored advertisements;
- A tendency of the advertisements to depict product use as somehow beneficial and to omit any indication that a potential hazard exists when the product is used.

In sending the matter back to the FCC for reconsideration the court said, "Commercials which continue to insinuate that the human personality finds greater fulfillment in the large car with 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, the parallel with cigarette advertising is exact and the relevance . . . inescapable."

Should the FCC expand its interpretation of the "Fairness Doctrine" to encompass product advertising other than cigarettes, public health issues in motor vehicle safety may receive considerable attention. An FCC attorney told Status Report that the "Fairness Doctrine" would "enter in" if an advertisement makes an "all out" argument on one side of a controversial issue.

The FCC is currently accepting comments on the application of the "Fairness Doctrine" to product advertising. Comments should be sent to Docket 19260, Federal Communications Commission, 1919 "M" Street, N. W., Washington, D. C. 20554, prior to Nov. 24, 1971.

Ford Control Arms: NHTSA Planning Tests

The National Highway Traffic Safety Administration has decided to have an independent test facility conduct tests on Ford and other-make lower control arms to determine if the critical front-end suspension members tend to fail as a result of impacts such as those experienced when a car hits a curb.

Allegedly failure-prone arms were standard equipment on some 4 million Ford-made vehicles spanning model years 1965 through 1969. Reports of Ford control arm failures first appeared in June 1970, as a result of an investigation conducted by the Insurance Institute for Highway Safety. In October 1970, at the urging of the Department of Transportation, Ford Motor Company recalled some 85,000 police "pursuit" cars to replace the control arms because of their tendency to fail under "severe impact loading encountered by police pursuit vehicles." Later the safety administration issued a "consumer protection bulletin" warning the general public that the arms might be defective under conditions of "extreme abuse," but it stopped short of inducing Ford to recall the arms. (See Status Reports, Vol. 5, No. 15, Sept. 1, 1970, and No. 18, Oct. 15, 1970.)

The safety administration now is evaluating responses to its recent request for bids by private testing organizations to conduct the lower control arm evaluation.

According to the test procedure prescribed in the request, a Ford, Chevrolet and Plymouth will each be driven at an unknown angle into a curb about eight inches high at speeds between 30 and 70 miles per hour. The Chevrolet and Plymouth are apparently included only for performance comparison.

The agency's "detailed test procedure" calls for the cars to be equipped with control arms and other suspension members obtained by the contractor "through manufacturer authorized outlets."

Earlier in its Ford lower control arm investigation the safety administration found that Ford Motor Company made a mid-production year design change on 1970 models which measurably thickened the control arm and added to its strength. Although the safety administration's defect investigation chief, Joseph Clark, told Status Report that "the clear intent" of the contract is to test pre-1970 arms, it is

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The following is reprinted, with permission, from the Oct. 3, 1971, issue of Parade magazine.

How Good Is the "Balloon Test" for Drunk Drivers?

by Herbert Kupferberg & Sid Ross

Investigators have concluded that the "balloon test" for drunk drivers, used widely by police departments throughout the nation, is inaccurate and unreliable. They charge that it can often lead to the unjustified arrest of a suspected motorist, and, equally important, can let a really intoxicated driver get off scot-free.

These conclusions were reached by researchers from the Insurance Institute for Highway Safety of Washington, D.C., and the North Dakota State University Toxicology Laboratory, after extensive experiments in which volunteers consumed measured amounts of alcohol and then underwent the balloon breath test.

The findings, published by the Institute under the title "An Evaluation of Some Qualitative Breath Screening Tests for Alcohol," were immediately challenged by spokesmen for manufacturers of the alcohol-testing balloons. Manley J. Luckey of Luckey Laboratories, Inc., of San Bernardino, Calif., which sells about 500,000 such disposable screening devices a year, denounced the report as "reeking with inadequacies" and "not too scientifically done." Other manufacturers expressed varying degrees of opposition.

Nevertheless, the researchers are sticking to their guns. Says North Dakota U.'s Richard Prouty: "The screening devices presently in use are glaringly unsatisfactory and unreliable. A

partially effective method or device is not better than none."

Adds Dr. William Haddon Jr., president of the Insurance Institute for Highway Safety: "The identification of drunken drivers is too important, and the charge of vehicular homicide too serious, to be based on devices that can readily give the wrong answer."

They drink for research

PARADE sat in on a testing session typical of those Prouty and the Institute conducted for their report. Six volunteer "drinkers" were enlisted—two deputy sheriffs, three students and one training center counselor. For 90 minutes, they sat around a table drinking anywhere from 10 to 16 ounces of rye whiskey. Some took it with water, others with a soft drink, and all munched on peanuts and potato chips. As they went along, their conversation grew increasingly animated and convivial.

Afterward they were led one by one to an adjoining laboratory where they were put through a series of drunkenness tests. First they blew into a sophisticated machine called the Breathalyzer which many experts regard as highly accurate. Then they blew into balloons, after which blood samples were taken for laboratory analysis. This was followed by more balloon and Breathalyzer checks. The tests were repeated at hourly intervals throughout the afternoon.

When the results were compared, according to the research team, they showed that 36 percent of the time the balloons gave a clean bill of health to drinkers who had an actual alcohol blood concentration of at least .10 percent, or above the legal limit in most states. And 38 percent of the time the balloons gave a drunken rating to people whose actual blood alcohol content was well below the legal limit.

Conclude the investigators: "This study indicates poor results for most of these disposable screening devices." Under actual road conditions, with poor lighting and other pressures, they add, "results may be expected to be even worse."

The doubts raised by the Institute's report can be highly significant to thousands of U.S. motorists because the balloon test in the last few years has become a basic weapon in the war against drunk drivers. Officials were unable to say exactly how many states and local jurisdictions sanction the balloon devices, which are inexpensive to buy (ranging from 50 cents to \$2) and simple to operate, but they are known to be in use in Alabama, Arizona, Colorado, Delaware, Georgia, Idaho, Iowa, Nevada, New York, North Carolina, Pennsylvania, Oregon, Tennessee, Virginia and several other states.

While the balloon test is not accepted as legal evidence in these states, it is often used by officers to determine whether an arrest should be made of a suspected drunk driver. Here's how it works: The suspect is asked to blow into the balloon or plastic bag, to which is attached a small glass tube containing an alcohol-sensitive chemical. If the suspect's blood alcohol content is above the legal limit, the chemical is supposed to turn green past a certain point. If it does, he is usually placed under arrest, brought to the station house, and there subjected to more sensitive and accurate examination, such as the Breathalyzer or blood or urine test. But it is the roadside balloon test which often determines whether an arrest is made or the suspect goes free in the first place.

While the alcohol balloons have been on the market since 1950, their use has increased sharply since 1967, when Great Britain legalized their use as preliminary screening devices and British

highway fatalities underwent an almost immediate drop of between 20 and 30 percent.

However, the British also have begun to have doubts about them lately, with a laboratory study published in the prestigious scientific journal, *Nature*, finding a wide degree of inaccuracy in the most widely used German-manufactured balloon device.

Cutback starts

Many local law enforcement agencies in the U.S., both as a result of the North Dakota tests and their own doubts, have begun to eliminate or cut back the use of the balloons as on-the-spot testing devices. The St. Louis Police Department, which was all set to introduce a balloon-screening program, is now backing off. A spokesman for the New York State Police, which has been using a balloon screener on an experimental basis for a year or more, now says that as a result of the Institute-North Dakota study "we're probably not going to use it any further."

However, other departments plan to keep employing the balloons. Col. W. L. Albott, superintendent of the Kansas Highway Patrol, says he objects to the Institute's report because it implies that policemen rely solely on the balloons to decide whether to make an arrest. "We've never done it that way," Albott told *PARADE*. "We consider the total picture, the suspect's behavior, speech, walk, smell of liquor, etc. The instant breath test is only another piece of evidence. If you were to rely on the screening device alone, you'd run into problems."

'Just one report'

In Montgomery County, Pa., where use of the devices is permitted by state law, First Assistant District Attorney William T. Nicholas plans no changes. "This is just one report," he says. "Perhaps the devices aren't as accurate as they were claimed to be. But if you're living by the sword you've got to die by the sword. We'll continue to use the devices until the state decides otherwise."

The Federal agency most closely concerned, the Department of Transportation's Office of Alcohol Countermeasures, appears to be in a quandary over the Institute report. "We'll have to further evaluate the utility of these devices in terms of the use to which they're put," says AC's deputy director

Robert V. Voas. Nevertheless, he maintains that on-the-spot screening devices could be of "great assistance—if we had more accurate systems." Asked why the Department of Transportation had not checked out the accuracy of the systems already in use, Voas said there was no nationwide system of standards for blood alcohol screening devices.

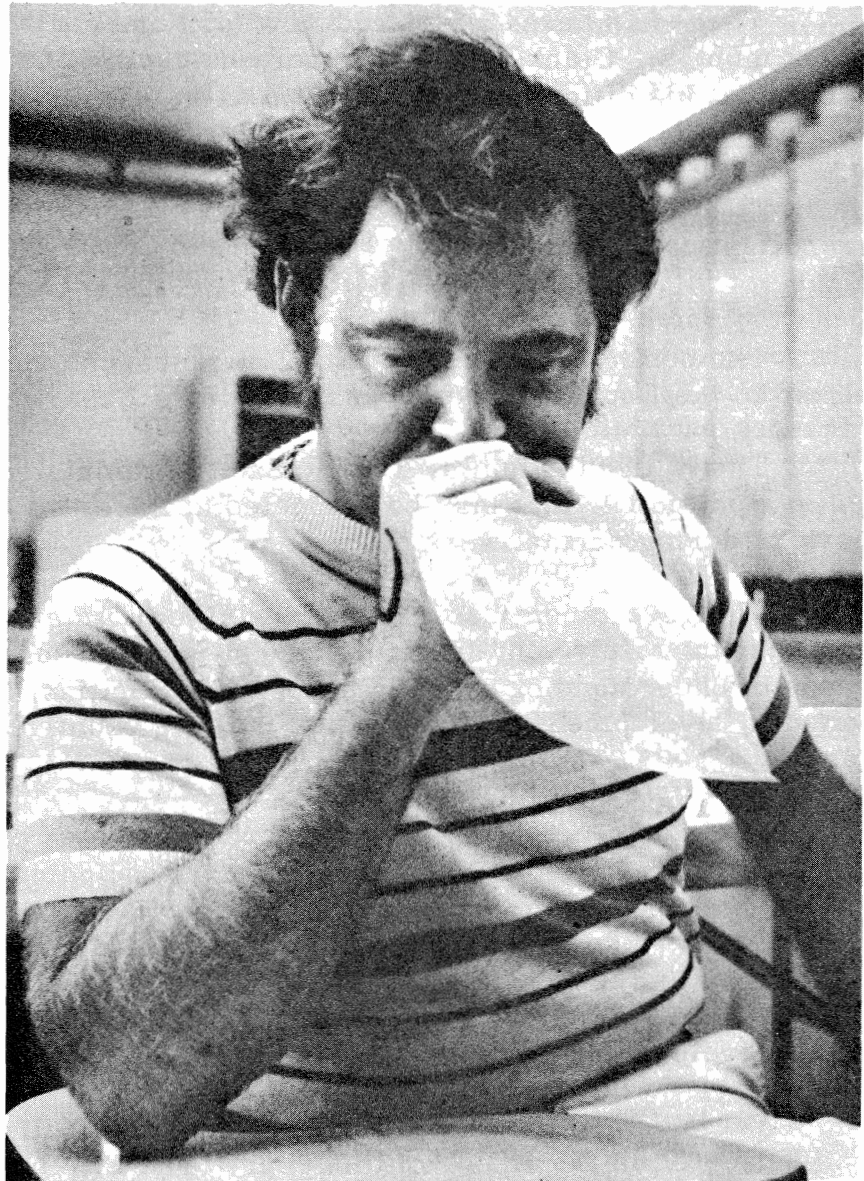
Authority lacking

"We don't have an authority in law," he explains. "We can issue safety standards for states but not standards for devices that aren't on cars. We have no legal authority to stop the sale of such devices."

Yet the findings of the Institute's researchers indicate that with the pres-

ent devices, thousands of drivers who should be arrested for drunk driving are being let off to drive again, while many other motorists are being falsely—if temporarily—accused of being under the influence of alcohol. In other words, the balloons as now used provide neither protection for the innocent nor prosecution for the guilty.

Sums up the Insurance Institute's Dr. Haddon: "There is a crying need for competent Federal standards for all such biological testing devices. If one of the appropriate medical agencies does not have the authority and resources to establish and enforce such standards, I believe Congress and the Administration should take immediate steps to correct the deficiency."



Is he sober enough to drive? Volunteer blows into plastic balloon in lab after consuming quantities of liquor. Researchers now say widely used test is unreliable

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not known whether the out-of-production arms are still stocked by, or available through, parts distributors. Should no arms of the lightweight type be available, it is questionable, whether the testing project would serve any useful purpose.

Overlooked by the safety administration's proposed contract seems to be the type of fracture that has been found to commonly occur in real world situations. Failures in new arms resulting from severe impacts such as those being required by the safety administration would be expected to show bending, stretching and tearing in the vicinity of the break. However, as a result of its own field investigation and a DOT-sponsored report from an independent testing laboratory, the safety administration concluded in a report dated Aug. 12, 1970, that the Ford arms break in a brittle fashion that is characteristic of metal fatigue. Brittle fatigue-type fractures rather than torn metal were also found to characterize failed control arms inspected by a private testing laboratory for the Institute.

There has been "a reduced flow (of Ford control arm failure complaints) in recent months," Clark said. However, he declined to disclose the number of complaints that his office has processed to date. He did say that the safety administration "needs to go out with an update on the entire situation," but would not speculate on when that might happen.

Public To See ESV Data

The public can now take a look at research data and general information related to the Department of Transportation's Experimental Safety Vehicle program.

The National Highway Traffic Safety Administration has placed the information in a public file that may be inspected at the agency's Washington, D. C. headquarters during normal work hours.

The government has contracts with four American companies to develop experimental safety vehicles in the 4,000-pound sedan category. It also has "memoranda of understanding" with France, Great Britain, Italy, Japan and West Germany for development, by companies in those countries, of ESVs in lighter weight classes.

The newly-created public file contains copies of ESV contracts and agreements and DOT sponsored research reports, including studies on crash injury reduction, accident avoidance and braking performance. Information on specific designs that are being developed by individual contractors will be added to the file "in about a month," a safety administration official told Status Report. The information will remain proprietary until then "because of competitive aspects" involved in ESV development, he said.

Vehicles being built by AMF and Fairchild Hiller Industries are scheduled to be delivered in December of this year. The ESV being developed by Ford Motor Company is expected to be delivered by October 1972. The General Motors safety car is expected in early 1973.

Restrictions To Remain on Driver Register

Strict limitations on the use of information in the National Driver Register would be only slightly eased under legislation, introduced in Congress on request of the Department of Transportation, to make the service more "efficient."

The register is a compilation of state records on more than 2 million drivers whose licenses to drive have been denied, terminated or withdrawn -- in most cases because of convictions on charges of driving while intoxicated. It is used as a screening tool by state licensing agencies wishing to check applicants for previous revocations in other states.

The pending legislation (H. R. 9352) would expand slightly the use of the register by allowing the information to be given to employers who wish to check records of drivers-for-hire and by allowing judges to obtain the information in cases involving traffic violations. The bill would also require that a copy of any information supplied by the register be sent to the subject of the inquiry.

However, the DOT-drafted legislation would continue to restrict use of the information in the register to matters strictly pertaining to drivers' licenses. For example, the Federal Aviation Administration could not use the register to determine if an individual seeking a commercial pilot's license has a history of DWI convictions.

Access to the register would also be denied to states wishing to identify persons with a history of alcohol related offenses in such instances as when the information is sought as part of DOT-sponsored Alcohol Safety Action Projects (ASAP).

In testimony earlier this year before the Senate Judiciary Committee's Subcommittee on Constitutional Rights, Transportation Secretary John Volpe noted two cases of what he called "misapplication" of information in the register since its creation in 1960.

These involved a 1965 request from the FAA for information to make a "correlation between individuals holding FAA pilot's licenses and entries in the register" and, in 1968, use of information from the register to "determine the correlation between individuals whose licenses were suspended for drunken driving and individuals who sought help for alcoholism." That study was conducted by the National Institute of Mental Health, the state of Maryland and the National Highway Traffic Safety Administration.

Volpe assured the Subcommittee that such a "misapplication" of register information would not occur again.

DOT has been urged to seek authority to use the register in screening license applicants in modes other than highway transportation. (See Status Report, Vol. 6, No. 2, Feb. 1, 1971.)

Federal Bumper Standard Revised

As Status Report was going to press, it was learned that the National Highway Traffic Safety Administration had revised its bumper standard (FMVSS 215).

The revisions, which largely adhere to a proposal issued by the agency in June, will affect 1974 model cars by increasing test impact speeds to five miles per hour front and rear, rather than five miles per hour front and 2½ miles per hour rear.

The revised standard also includes a provision to exempt for one year some "smaller classes (of cars), particularly small convertibles, hardtops and sports-type cars" from the pendulum tests that were to become effective Sept. 1, 1973.

For a detailed description of the June proposals on which the revised standard is based, see Status Report, Vol. 6, No. 12, June 21, 1971. The revised standard will be reported in detail in the next issue of Status Report.

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