

The traditions of the First Amendment do not evaporate because there is licensing. We have been beginning, so-to-speak, in the wrong corner. The question is not what does the need for licensing permit the Commission to do in the public interest. Rather, it is what does the mandate of the First Amendment inhibit the Commission from doing even though it is to license.

It seems to me that in that succinct statement, Professor Kalven has pointed the way to a more fruitful discussion than engaging in abstract inquiries as to the nature of the "public domain," or the "ownership of the airwaves," whatever those terms may mean, or the nature of broadcasting as a "public service." (And, by the way, I don't understand any broadcaster to claim that it is not a public service. But by the same token, I think you would find precious few newspaper editors who would confess to having only the profit motive: That is not the most profit-making business to be in these days. Most newspapermen are just as dedicated to the public interest as any of the broadcasters.)

Mr. Siepmann goes on to outline a series of points as to how this issue can be more profitably discussed, and I think he has put the issues very well indeed.

He states, first of all, on religious broadcasting, a principle or conclusion which to me is quite interesting. He says that a religious group which is granted a license may choose to exclude all religious programs, but if it includes any one, like provision must be made for other religious groups in the community on an equitable basis. That may be Mr. Siepmann's reading of the Fairness Doctrine, but it apparently is not that of the Commission. How else could we explain its decision in the *Madalyn Murray* case? I may be misinterpreting that decision, but it seems to me it squarely holds that the mere programming of religious broadcasting does *not* invoke the Fairness Doctrine.

Second, Mr. Siepmann argues provocatively for a return to the *Mayflower* decision, which was a complete ban on all editorializing. By this I suppose he does not mean—I think he makes clear that he does not mean—that broadcasters should not discuss controversial public issues, only that they should not editorialize.

But just what is an editorial? If a broadcaster inserts a statement of opinion in course of a public discussion, is that an editorial? What difference is it whether it is labeled "editorial" or not? The critical question is, Can you really adequately, meaningfully, discuss controversial issues in the vacuum of having or expressing no opinion?

I think that a return to the *Mayflower* concept of fairness would return us 28 years, to an age which, God help us, I hope has passed. It was an age in which blandness was the rule (many would say it still prevails—encouraged by the Fairness Doctrine) and which I frankly would hate to see broadcasting return to.

Mr. Siepmann closes with a remark that we ought to restore to the airwaves the good manners of communications of a civilized society. This would seem difficult to take issue with, except for the fact that it seems to be holding up broadcasters to something more than mortal standards of conduct. It seems to me Mr. Siepmann's remark harks back to some golden era when all argument was genteel and courtly but also never really came frankly to grips with the critical issues of the times.

If there ever was such an age when all criticism was so refined and genteel I think we are well rid of it. In this vein, I would like to close