

I should add that under this general principle, complaints have been filed against NBC News, but in no case has the Commission found that we violated the principle.

On this basis you may feel that we are protesting before we have been hurt. I believe, however, that we have a cause for concern. Television journalism is only about 20 years old, and is still changing its techniques and revising its forms.

NBC News is seeking more and more to go beyond the television picture of an event to explain its background and implications. We are readying an ambitious new project—a 2-hour prime-time news program to be called “First Tuesday”—which will aim at bringing a greater awareness of issues and events to the audience.

So, we are concerned that just as television news programming seeks more and more to come to grips with vital issues, the Fairness Doctrine will continue its recent trend toward greater and greater restriction and regimentation.

Our concern is, therefore, more with the future than the past. If there is to be a Fairness Doctrine at all,³⁸ we believe that it should not go beyond the broad and flexible standards set forth in the FCC’s 1964 statement.

This statement, as I said earlier, left the initiative to the broadcaster “to make reasonable judgments in good faith on the facts of each situation.” It declared that “the Commission’s role is not to substitute its judgment for that of the licensee—but rather to determine whether the licensee can be said to have acted reasonably and in good faith.”

But that is quite a different standard from the one now being followed by the Commission.

I suggest we would all agree that it would be unthinkable to impose anything like a Fairness Doctrine on newspapers or magazines, or would have agreed to that up to about a half hour ago.

We would consider it unconstitutional for a Federal agency to analyze newspaper interviews, reports, and editorials, and, on complaint, to require the publication of additional material to treat further aspects of controversial issues.

It is usually argued that broadcasting is different because it is licensed, but this is arguing in a circle. A Federal license to use frequencies in the public interest does not suspend the freedom of the press of which broadcasting is a part.

It is also argued that broadcasting facilities are so scarce, and new entry into the field is so limited, that special limitations on broadcast expression are justified, while the diversity of newspapers makes such limitation unnecessary in that field. But any basis for that argument disappeared long ago.

When the Constitution and the first amendment were adopted, there were very severe technological limits on the production of newspapers in this country. It has been estimated that at the end of the Revolutionary War, there were only 43 newspapers in all the States.³⁹

³⁸ NBC opposes in principle the concept that a Federal agency should establish and enforce rules directly applicable to the content of news and discussion programs. It is participating in two cases now in the courts seeking to have the fairness doctrine declared invalid because of a conflict with the first amendment.

³⁹ Chenery, “Freedom of the Press,” p. 142 (1955).