

We have stressed that our holdings have sought to promote the fullest possible robust debate on public issues. We recognize that it may be urged that our action here is inconsistent with the above objectives, that it will inhibit Storer and other licensees from presenting robust points of view as the editorial in question.

We do not believe that it will do so. If a licensee determines that the series of a public interest to broadcast or permit to be broadcast a personal attack on some group or person, including public officials, we believe that he will do so, and will not be deterred by the consideration that there will be a right of reply.

The premise of the contrary position is that the licensee is willing to alert his audience concerning an important issue only if he can be sure of doing so in the one-sided manner, that he does not trust the public to hear both sides and then make up its mind.

But as the Courts have noted in First Amendment cases, this Nation has staked its all on the proposition that the public should be given the opportunity to hear the fullest, most wide-open debate on public issues. Responsible broadcasters recognize this and when they have covered such issue take steps to present the other side.

It is our experience over the years of operation in this area that there has been no indication of inhibition of robust debate by our fairness policies. Indeed, such debate has been increasing, not declining, during the last seven years that the personal attack principle was being developed and brought specifically to the notice of all licensees.

Finally, we cannot properly obtain a contribution to public debate by adopting the concept that the public airways may be restricted by the licensee solely to the presentation of views which he espouses or with which he agrees. Such a course is inconsistent with the Act and its underlying concept that the broadcaster for the duration of his license has the preferred position of determining the material to be presented over his frequency and thus must act as a public trustee.

We believe, therefore, that even assuming some minor inhibiting factor, the fairness principles, including our action here, affirmatively promote rather than hinder the above quality policy objective in KTYM and are essential to insure the maintenance in radio and television as a medium of free speech and freedom of expression for the people of the Nation as a whole.

I think basically that is what the problem is about. As Mr. Jaffe suggested, there is a possibility that we have not determined factually whether or not it is inhibiting or not inhibiting and to what extent.

Mr. JAFFE. I didn't say that. That isn't what I am talking about. I raised the question how necessary it was. I said there isn't much evidence that people can't in a great variety of ways defend themselves rather than have to have a specific right to reply over that very station on which the statement was made against them.

Mr. ROBINSON. I think the point should be made here that, if there is uncertainty involved as to what the effect of this doctrine is, or whether it promotes or hinders free speech, at least we are entitled to put the burden upon the Government to show that its actions are not a hindrance.

I submit that the notion that somehow what the FCC does here is not truly a hindrance on free speech runs counter to the assumptions that underlie the Supreme Court decision in the recent libel cases.

I would suppose for example that a damage action, the award of damages against the New York Times, did not threaten the existence or further publication of the New York Times, nor did a similar damage award against the Curtis Publishing Co. threaten the existence or further publication of the Post.

The point here is, to what extent can we place any burdens upon the free and open robust debate? I can't quite accept the idea that we are promoting free speech and not hindering it. At least, I think, the burden ought to be on the Government to prove that there is absolutely