

opinion in that case—a great judge who was always very much concerned with matters involving rights of people.

The issue in that case involved the chain broadcasting rules which limited the broadcaster's choice to limit his source of programing to the networks. The broadcasting industry alleged that this violated the first amendment, freedom of speech.

Judge Hand's opinion says this, and I wish to quote it because it is quite brief. It is the best statement in the judicial records on the point:

The Commission does, therefore, coerce their choice and their freedom—

Meaning the choice of broadcasters—

and perhaps, if the public interest in whose name this was done were other than the interest in free speech itself, we should have a problem under the First Amendment; we might have to say whether the interest protected, however vital, could stand against the constitutional right. But that is not the case. The interests which the regulations seek to protect are the very interests which the First Amendment itself protects, i.e., the interests, first, of the listeners," next, of any licensees who may prefer to be freer of the "networks" than they are, and last, of any future competing "networks." Whether or not the conflict between these interests and those of the "networks" and their affiliates" has been properly composed, no question of free speech can arise. 47 Fed. Supp. 940, 946.

I wanted to put this into the record because I believe it to be the best statement of the proper accommodation of the free speech via broadcasting of the public itself as well as the free speech of the broadcaster.

Mr. ROBINSON. On that particular point, Dean Barrow, it does seem to me that the characterization here is that somehow the only interest that is being served is that of the broadcaster, and somehow the broadcasters are invoking the first amendment as their sort of private right. But the point, I think, is that to the extent that broadcasting free speech, if you want to use that phrase, is inhibited, it is ultimately the public that is losing, not just the broadcaster. It is the public who is going to lose the benefit of sharp debate, or robust discussion of public issues, if the broadcaster is inhibited.

There has been some suggestion that really the Fairness Doctrine isn't much of an inhibition because, after all, in spite of all the many complaints, nobody ever lost their license. We are told that in very few cases is the broadcaster's judgment overturned. There has even been the suggestion that the broadcaster is, under Commission practice, presumed to be correct. But the Commission has never stated such a presumption. It has never come out and said, "We presume that the broadcaster's judgment is, in fact, right, unless proven otherwise," and its actions on several occasions, I think, belie this.

One recent particular case that comes to mind, speaking of broadcaster discretion, was a case decided last week, the *King Broadcasting Co.* case. This involved an application of the political editorial regulations. The Commission, second-guessing the broadcaster in this case, actually counted the number of seconds that were devoted to the opposing viewpoint and finally overturned the judgment—which it deemed to be unsatisfactory in this regard—of the broadcaster. It doesn't seem to me that this is much deference to the discretion and judgment of the broadcaster.

If the *King* case is not to be taken as a statement of the FCC's policy, I think it behooves the FCC to say something like, "We presume the broadcaster is right and we will not overturn his judgment unless it is