

Assume the station does not give notice to the person attacked. Sound is perishable—not permanent, as in the newspaper. Moreover, unless the attack is countered promptly, his image is marred permanently. I think the committee might well consider whether a tort remedy and damages, even if it is available—and we are not in this area of the Sullivan case—is an adequate remedy.

Money really is not equal to character and prestige. Shakespeare had some good words to say about that.

Mr. Porter?

Mr. PORTER. I think what Mr. Crouse and the rest of us have been talking about here is really, does the Fairness Doctrine operate as a deterrent to constitutionally protected speech. That is the issue, as I see it.

Mr. ROGERS. Do you feel by simply having another expression of a viewpoint that it is a limitation or is it an expansion?

Mr. PORTER. It could be a deterrent, Mr. Rogers. The reason I say that, and I have been exposed to this in analyzing the briefs that are now pending in litigation, if a broadcaster or commentator, a person like Eric Sevareid, for example, if he knows that his 2-minute commentary is going to generate a number of applications for rights to reply, no matter how it is construed, from a personal attack, that is going to operate psychologically as a deterrent.

He will say: "The front office will have me in trouble if I keep on creating situations that put this pressure on."

Mr. ROGERS. Right at that point, may I interrupt to say, is he really giving the public the proper viewpoints? If it is so distorted, should that be given?

Mr. PORTER. I was coming to that point. Under the Fairness Doctrine, even if the utterance that was made was true, that does not immunize it from the Fairness Doctrine.

Judge Tamm, in the Red Lion case, had this to say:

Any attempt by the Commission to make factual determinations of truth or falsity in controversial issues of public interest would constitute illegal exercise of a nonexistent authority.

Therefore, it is a circle and you meet yourself coming back. It becomes automatic, the right to reply, whether true or false, if you follow the Tamm dictum.

That is pretty hard to rationalize.

Mr. ROGERS. But that then comes under the discretion of the FCC?

Mr. PORTER. No; absolutely not.

Mr. ROGERS. They don't have to require, not in any cases, do they?

Mr. CROUSE. Yes, sir; they do.

Mr. ROGERS. I had understood there were many claims made that were not processed.

Mr. PORTER. If it is a personal attack.

Mr. ROGERS. I thought you were getting to a viewpoint that was true, that may have been true.

Mr. PORTER. I was talking about the personal attack, even if it were true.

Mr. ROGERS. I understand in the Fairness Doctrine, it is not necessarily true that the FCC must require the time for presentation of views. Perhaps the Chairman can straighten me out.