

Maybe it is a good thing to keep them from making such charges. The question whether it is inhibitory is a question of fact. I don't know that we know the answer. If, for example, to say that somebody is a bad man or is an evil man is going to cost you \$100,000, you may not say it. That is inhibitory. I would suppose, in the absence of any evidence about it, which is rather difficult to come by, I would think, human nature being what it is, the regulation will keep a certain number of charges from being made that otherwise would be made.

There will be that much less freedom.

You may say maybe on the whole that is a good thing. Maybe there are too many idle charges being made.

I don't think it would cut off attacks completely. It might change the character of the attack. Instead of attacking an individual in terms of his character you would put it in terms of his policy and then perhaps it would not bring into operation the personal attack doctrine.

Whether the doctrine is bad depends on whether you think this is too great a cost. Maybe it is a good doctrine. You might decide that something is inhibitory but that a certain amount of inhibition is worthwhile because of other considerations of justice.

In my own paper I want to address myself in somewhat slightly different terms to the question here than have been used so far. I am not going to address myself to the constitutional argument which I think has been well considered pro and con.

I would like to make what might be called a functional analysis and I make this analysis somewhat in terms of speculation. I don't know that my notions about communication and how public opinion is formed are correct but it seems to me that if one should raise the question as to the usefulness of these doctrines.

The questions are worth asking not only in reviewing the situation as it stands but in determining to what extent these doctrines should be pushed further.

You have already heard that the climate opinion at the FCC is to push these things further. So that it seems to me that it is appropriate in determining the direction in which you want these things to proceed to ask a few questions as to certain assumptions that are made as to how broadcasting works in the area of forming opinion.

What I want to do first is to point out that there are really four doctrines that are in question here.

My own feeling is that two of these doctrines are quite important, that is positively valuable. My own feeling is, in terms again of usefulness, that the two others are not particularly useful though they may not do any great harm.

Oh, I know another thing I was going to say, if you will permit me to interrupt again.

It is apropos of the bearing of *New York Times v. Sullivan* on the questions that have been raised here on inhibitions and constitutionality. I don't think the Sullivan case points all one way. It cuts both ways, I think, with respect to the constitutional issue. Insofar as the case is based on the notion that inhibitions on speaking that regulations which inhibit speaking are contrary to the first amendment, it seems to me that it cuts against constitutionality of some of these doctrines because at least presumptively it may do some inhibiting.