

Broadcasters Hit For Resistance to Fairness Doctrine

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Broadcasters are "financially motivated" in opposing Government demands of free air time for opposing views and the victims of personal attack, Solicitor General Erwin N. Griswold said yesterday.

The Government's top courtroom advocate told the Supreme Court that the Federal Communications Commission, which has been accused of violating the First Amendment with its rules, need not "yield to the broadcasters" as defenders of the rights of free speech and press.

By trying to open up the airwaves to conflicting viewpoints, "it is the Government and the FCC which are the at- tual champions of the First Amendment," said Griswold.

Winding up two days of argument in a major test of the FCC's power, lawyers for broadcasters charged that the Commission has assumed the role of "censor" of program content with rules so vague that they will inhibit, rather than stimulate, strong commentary and debate.

Fairness Doctrine

Questioning from the bench, including pointed observations by the Court's erstwhile free speech enthusiast, Justice Hugo L. Black, gave little encouragement to the broadcasters. It appeared probable that the Court's decision later this spring will give the newly activist FCC the leeway it seeks to administer rules relating to its "fairness doctrine" and other curbs on broadcasters' unfettered use of their TV and radio licenses.

Opposing Griswold were former Solicitor General Archibald Cox, arguing for the in-

dustry in a broad attack on the FCC's 1967 policy pronouncements dealing with personal attacks and political editorials, and Roger Robb, attorney for a Pennsylvania station that is resisting an FCC order.

The Seventh U.S. Circuit Court of Appeals in Chicago struck down the rules as interfering with broadcasters' and the public's rights to uninhibited news reporting. But the U.S. Court of Appeals in Washington sustained the FCC in applying the rules to radio station WGCB in Red Lion, near York, Pa.

Attack on Author

The station broadcast an attack by the Rev. Billy James Hargis on a "Christian Crusade" program on author Fred Cook. When Cook complained, the station said it would give him time to reply at commercial rates and free time only if he would say he couldn't afford to pay. The FCC rule that free time must be provided.

Cox and Robb argued that the free right-of-reply requirement would make broadcasters steer clear of anything controversial rather than go through the red tape and expense of negotiating free air time with all possible targets of broadcast criticism. The rules exempt bona fide news programs but the lawyers said even this exemption was vague and unworkable.

Robb, a leading candidate for a vacancy on the Court of Appeals here, went out of his way to stress that neither the right-wing philosophy of Mr. Hargis nor the political position of any broadcaster was involved. "Were it otherwise," he said, "I might not be here."

'Selfish Interests'

Griswold's attack on the broadcasters' motives was only slightly less strong than his opening argument on Wednesday, when he charged that "narrow and I may say selfish interests" were arrayed against the FCC.

Their argument, he said, ignored the obligations of broadcasters licensed by the FCC and was based on "the assumption that every minute of time for the licensee is his to use for his personal financial profit."

Griswold said TV and radio broadcasters operated as a "privilege" and that major Supreme Court rulings broadening the right to publish did not apply. Cox said it was no answer to say the Government could revoke a license outright, since the Government still has to obey the Constitution.

To Griswold's argument that the challenge was premature, Cox, for many years Griswold's colleague at the Harvard Law School, replied tartly that "regulation of free speech is to be judged on its face" under court doctrines that were so well settled that I won't stop to develop them."