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TELEVISION/RADIO ENTERTAINMENT

'Fairness' Rule Upheld

By Lawrence Laurent

Bolder broadcasters have been insisting in recent years that every radio or television station operator has exactly the same rights as a newspaper publisher. With a unanimous opinion this week the Supreme Court said—flatly—that broadcasters do not have such rights.

The opinion delivered by Associate Justice Byron R. (Whizzer) White echoed, in effort, the judgment of former Federal Communications Commission Chairman Frederick Ford. Ford once said: "Newspapers have the right to be unfair. Broadcasters do not."

At issue before the highest court in the land were the "personal attack" rules written by the FCC for broadcasters. In effect, the rules tell broadcasters that when a man is attacked—on radio or on TV—the man has a right to respond or to answer.

The Radio-Television News Directors Association (RTNDA) attacked these rules as unconstitutional and argued, further, that the regulations are so vague that their duties are impossible to discern.

Justice White didn't agree. He found that a long history of cases, dating back to 1949, "give added precision to the regulations."

He added: "... we do hold that the Congress and

the Commission do not violate the First Amendment when they require a radio or television station to give reply time to answer personal attacks and political editorials."

The jubilation that some broadcasters had felt last fall when a Federal Appeals Court held the "Fairness Doctrine" unconstitutional disappeared quickly in face of the Supreme Court's last word.

This will not still the oratory from the National Association of Broadcasters (NAB) but it does settle the legal issues for a long time. The importance of the decision cannot be overemphasized.

In Justice White's view of the free speech issue, a broadcaster is a giant, given powers by the Federal Government that enable the broadcaster to drown out lesser voices. A man on a street corner, shouting his convictions at the top of his lungs, is plainly no match for a broadcaster with a transmitter and an antenna.

"These advantages (of broadcasters)," wrote Justice White, "are the fruit of a preferred position conferred by the Government."

And because society controls its giants, the "Fairness Doctrine" is needed to give the private citizen a chance at equality.

Broadcasters, through attorneys, have claimed for

the past decade that the FCC's "Fairness" rules force censorship." In turn, broadcast station managers into "self-censors claimed, coverage of controversial public issues is restricted "or at least rendered wholly ineffective."

The Supreme Court didn't agree. White decided that the FCC "is not powerless to insist that they (broadcasters) give adequate and fair attention to public issues."

He added: "It does not violate the First Amendment to treat licensees given the privilege of using scarce radio frequencies as proxies to the entire community, obligated to give suitable time and attentions to matters of great public concern."

Network presidents and their speechwriters are certain to stammer over a term such as "obligated" and to turn crimson at the phrase "proxies to the entire community."

In public pronouncements, broadcasters have insisted that "Fairness" was out of time; that it hadn't been meaningful since the creation of 6000 radio and 800 television stations.

In White's view, however, "Scarcity is not entirely a thing of the past." He decided that individuals need rules to protect them from attack over the air.

The two cases that came before the Court were quite dissimilar. One was the

RTNDA case. In the other, a writer had been attacked in a broadcast by a minister. The writer, Fred Cook, complained and the station offered to sell him time for his response. The FCC, however, ruled that the person attacked need not buy the time for his own defense.

The Supreme Court agreed with the FCC.

The long term effect of the decision will strike most deeply at the hundreds of radio stations that regularly broadcast sponsored programs from hate merchants from both ends of the political spectrum. The research and the monitoring of the United Church of Christ indicate that the programs gain greatest exposure and greatest impact in small isolated communities where citizens have little opportunity to read or to hear other sources of information.

The Supreme Court has said that the programs can be broadcast but that a person who is attacked must be given an opportunity to respond.

The effect of the decision, then, is to make the "hate" campaigns a little more expensive for a station to broadcast. The greater expense comes from having to provide free time for the person who has been attacked.

As a result, the "hate" market isn't going to be as lucrative as it used to be.