

Free Rebuttal Time On Air Is Upheld

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WASHINGTON, June 13—A federal appeals court upheld today the constitutionality of Government requirements that radio and television stations give free time to those who wish to answer broadcast attacks on themselves or one-sided presentations of public issues.

The so-called "fairness doctrine," contained in the Federal Communications Act and detailed in regulations of the Federal Communications Commission, was upheld by the United States Court of Appeals for the District of Columbia by a 2-to-0 vote, with one judge not participating.

The case was the first in which the constitutionality of the 18-year-old doctrine had been challenged and only the second court test of any kind for the doctrine.

This is the same doctrine un-

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der which the communications commission ruled a week ago that free time would have to be provided to answer cigarette commercials.

Today's test arose out of a broadcast over radio station WGCB AM-FM, in Red Lion, Pa., by the Rev. Billy James Hargis, who is generally considered a member of the political right wing.

In the broadcast, which was paid for by Mr. Hargis's organization, The Christian Crusade, Mr. Hargis made a personal attack on Fred J. Cook, the author and writer for The Nation who is generally considered an extreme liberal politically.

Mr. Hargis charged, among other things, that Mr. Cook had been dismissed from the staff of the now defunct New York World-Telegram after making false charges against officials of the New York City government.

When Mr. Cook asked for

time to reply, the station first informed him that he would have to pay for it, then subsequently said that he could have free time if he could demonstrate that he was unable to pay for it.

Four Amendments Cited

Thereafter, Mr. Cook took his case to the Federal Communications Commission, which ordered the station to give him free time. The station responded by filing suit, challenging the constitutionality of the fairness doctrine.

In his opinion, handed down

today, Judge Edward Allen Tamm struck down the arguments made by the station under the First, Fifth, Ninth and Tenth Amendments.

Judge Tamm whose opinion had the general concurrence of Judge Charles Fahy, said that the fairness doctrine does not abridge the right of free speech, as guaranteed in the First Amendment.

The doctrine does not impose any restrictions on what a radio or television station may broadcast, Judge Tamm said.

Once the station has "independently selected the controversial issue and . . . selected the spokesman for presentation of the issue in accord with [its] unrestricted programing, the doctrine, rather than limiting

the petitioners, right of free speech, recognizes and enforces the free speech right of the victim of any personal attack made during the broadcast."

Judge Tamm also rejected the argument made by the station that the communications commission should determine the truth or falsity of the charges made against an individual before ordering that time be given him to reply.

The commission has no authority to make such a determination, Judge Tamm said. In addition, he said, "the basic concept of free speech is unfettered by any requirement that it be expressed only by those with a 'right' viewpoint."

Procedure Called Fair

Judge Tamm found no violation of the Fifth Amendment, which guarantees due process of law. He said that the fairness doctrine had been clearly explained and was not unconstitutionally vague and that adequate procedures had been set up for its fair administration. Those who feel it has been administered arbitrarily or capriciously retain the right of appeal to the courts, he noted.

The same safeguards surround the procedures under which the communications commission can refuse to renew the license of a station that failed to comply with the fairness doctrine, he said.

The Rev. John M. Norris, president of the Red Lion Broadcasting Company, Inc., which owns stations WCCB AM-FM, said in a telephone interview that he was "quite

positive" the station would appeal the decision to the Supreme Court.

"I don't feel this a fair decision. I won't take it," he said.

Senior Circuit Judge Wilbur K. Miller, the third member of the three-man panel assigned to the case, did not participate in its consideration nor in the decision.