

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re

Personal Attack 8330-Z  
Complaint of 91100517

Bree Walker Lampley, *et al.*

Against

KFI, Inc., Licensee of  
Radio Station KFI(AM)

Los Angeles, California

**STAFF RULING**

**Adopted: February 10, 1992; Released: February 14, 1992**

By the Chief, Fairness/Political Programming Branch:

1. The Commission has before it a complaint, filed by Bree Walker Lampley and a number of disability rights organizations and individuals, alleging that radio station KFI(AM), Los Angeles, California, which is licensed to KFI, Inc., violated the Commission's personal attack rule, 47 C.F.R. § 73.1920, during a broadcast of a two-hour talk show hosted by Jane Norris in which Norris and call-in listeners discussed the issue of "whether it was fair [for the Lampleys] to knowingly pass along a deformity to a child." Specifically, complainants allege that the July 22, 1991, broadcast, "personally attacked Los Angeles news anchorperson Bree Walker Lampley's integrity and character solely because she, and her husband, Jim Lampley, decided to conceive a child knowing there was a 50% chance that their child would inherit her genetic condition of ectrodactylism." According to the complaint, the station did not allow either the Lampleys or other representatives of the disability community to air their views. Complainants also allege that the broadcast was biased against persons with disabilities, presented significant medical inaccuracies about Lampley and those who share her disability, and failed to operate in the public interest by harassing and discriminating against callers who attempted to express views contrary to those expressed by the station. Complainants assert that KFI presented a subsequent broadcast on the same issue in an August 28, 1991, two-hour program hosted by Tom Leykis, during which he and his guest, Jane Norris, discussed the "morality" of Lampley's pregnancy. During the Leykis broadcast, complainants state, both Norris and Leykis attacked the Lampleys and persons with disabilities. According to complainants, the station did not inform, nor allow, the Lampleys or any representative of the disability community to respond to either program.

2. By way of background, Bree Walker Lampley is an anchorperson with television station KCBS-TV, Los Angeles, California. Her condition, ectrodactylism, is a genetic condition in which the bones of the hands and

feet are fused. At the time of the broadcast, Lampley was seven months pregnant with her second child. As the tape and transcript of the program reveal, the topic revolved around the wisdom of Lampley's decision to have a child, knowing that the child could inherit ectrodactylism. According to the complainants, talk show host Norris presented a "eugenics orientation" to Lampley's pregnancy and to the reproductive rights of persons with disabilities.

3. Complainants ask the Commission to initiate an investigation, and request relief in the form of license revocation, a forfeiture, and an admonition, on the following bases:

- a) KFI failed to operate in the public interest by ignoring its obligation to present conflicting views on issues of public importance;
- b) The KFI broadcast contained factual inaccuracies and medical misinformation;
- c) The KFI broadcast contained personal attacks upon complainants in violation of Section 73.1920 of the Commission's rules.

**Public Interest**

4. Complainants contend that KFI reneged on its obligation to operate in the public interest and afford a reasonable opportunity for the discussion of conflicting views on issues of public importance, under Section 315 of the Communications Act of 1934, as amended. Citing *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367 (1969), among other cases, Lampley argues that broadcasters have a public interest obligation to give adequate coverage of public issues without bias. Although complainants acknowledge that the Commission has made some "administrative changes to the Fairness Doctrine," they argue that the U.S. Supreme Court has not found the doctrine unconstitutional, nor has Congress changed the language of Section 315 since 1987. In this case, complainants argue, Norris presented only a "eugenics orientation" to Lampley's pregnancy and to the reproductive rights of disabled persons, and cut off callers who disagreed with the eugenics viewpoint. Complainants also contend that, during the Leykis broadcast, Leykis and Norris ridiculed callers who disagreed with the hosts.

5. This aspect of the complaint invokes the fairness doctrine, which the Commission eliminated in 1987. *In re Complaint of Syracuse Peace Council*, 2 FCC Rcd 5043 (1987), *aff'd*, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir. 1989), *cert. denied*, 110 S.Ct. 717 (1990). Pursuant to a remand from the United States Court of Appeals for the D.C. Circuit in *Meredith Corp. v. FCC*, 809 F.2d 863 (D.C. Cir. 1987), the Commission determined in *Syracuse* that the fairness doctrine contravenes the First Amendment and thereby disservices the public interest. In affirming the Commission's decision, the Court of Appeals upheld the Commission's finding that enforcement of the fairness doctrine is not in the public interest, without reaching the issue of the doctrine's constitutionality. *Syracuse Peace Council v. FCC*, 867 F.2d 654, 669 (D.C. Cir. 1989).<sup>2</sup> Accordingly, because the Commission no longer enforces the fairness doctrine, this aspect of the complaint is denied.

### Factual Inaccuracies and Medical Misinformation

6. Complainants also ask the Commission to take action against KFI for disseminating factual inaccuracies and medical misinformation during the Norris broadcast. Specifically, the complainants allege that 1) the broadcast identified Lampley's condition as "syndactylism" instead of ectrodactylism;<sup>3</sup> 2) the broadcast described Lampley's condition not as a physical condition, but as a "disease," connoting contagion; and 3) the broadcast's medical expert, Dr. Steven York, whose presence gave the discussion an aura of credibility, failed to correct the medical misinformation.

7. Section 326 of the Communications Act generally prohibits the Commission from censoring program content or from interfering with the right of free speech.<sup>4</sup> Consistent with these First Amendment values embodied in the Act, the Commission long ago established that it cannot authenticate the news or act as the arbiter of the truth or falsity of matter that is broadcast. *Hunger in America*, 20 FCC 2d 143, 150-51 (1969). The Commission thus will investigate alleged inaccuracies only if it receives extrinsic evidence of intentional slanting of news broadcasts. *Id.* Complainants have furnished no such evidence here. The Commission, therefore, will take no further action regarding this portion of the complaint.

### Personal Attack

8. Finally, complainants assert that the discussion on both broadcasts constituted a personal attack against the Lampleys and disability rights groups in general. The personal attack rule provides that if a station broadcasts an attack upon the honesty, character, integrity, or like personal qualities of an identified person or group during the presentation of views on a controversial issue of public importance, the station must notify the person or group attacked, send a transcript or an accurate summary of the broadcast, and afford an opportunity for response. 47 C.F.R. § 73.1920. Complainants frame the issue as "whether it was fair [for the Lampleys] to knowingly pass along a deformity ... [to a child]." We are unable to conclude, however, that complainants have established a *prima facie* case of a personal attack rule violation.

9. First, complainants have failed to address the controversiality of the issue discussed in the broadcast. See *Mark Brown v. Radio Stations WBZ and WRKO*, 64 RR 2d 908 (1988)(denial of personal attack complaint for failure to show controversiality of issue). A "controversial issue" is one that is the subject of vigorous debate, with substantial elements of the community in opposition to one another. See, e.g., *Fairness Report*, 48 FCC 2d 1, 12 (1974). Although Lampley's decision to bear a child generated much discussion on both Norris' and Leykis' shows, we have no indication that substantial numbers in the community were "vigorously debating" the issue. See e.g., *United Church of Christ*, 97 FCC 2d 433, 437 (1984)(licensee not unreasonable in determining that issue relating to nature of church expenditures not "controversial" for purposes of personal attack rule). In addition, complainants have failed to establish that the issue is one of public importance. Three factors are relevant to whether an issue is "of public importance": (1) the amount of broadcast or newspaper coverage the issue has received; (2) the amount of attention the issue has received from government and other community leaders; and, most important, (3) the impact the issue is likely to have on the community at large. *Fairness Report*, 48 FCC 2d 1, 12. Lampley has

apparently received much publicity in the national press as a result of the broadcasts, but the Commission has emphasized that an issue is not necessarily a matter of public importance merely because it has received broadcast or newspaper coverage. *Id.* at 11, citing *Healey v. FCC*, 460 F.2d 917, 922 (D.C. Cir. 1972). Here, the issue may have caught the attention of the media, but we have no indication that government and community leaders paid heed or that the issue has a significant impact on the community at large.

10. Moreover, even assuming that the issue met the "controversiality" and "public importance" requirements, complainants have failed to show that the nature of the discussion on either the Norris or Leykis broadcasts attacked the Lampleys' honesty, character, integrity, or like personal qualities. Mere criticism of or disagreement with one's actions or decisions does not rise to the level of a personal attack. *Hon. Les Au Coin*, 53 RR 2d 1024 (MMB 1983). Neither does every disparaging or unfavorable remark concerning an individual. *Id.* In any event, complainants do not specify, nor does the transcript show, any specific comments which could be deemed an attack on Lampley's integrity or character. At most, the comments of Norris and Leykis, and those of some of the call-in listeners, appear to express a disagreement with or disapproval of Lampley's (or more generally, a disabled person's) decision to bear a child. The program's alleged "bias" with respect to one viewpoint does not elevate the discussion to the level of a personal attack.

11. Finally, the discussion did not constitute a personal attack against any of the particular organizations named as complainants. An actionable personal attack complaint must specifically identify a particular individual or group. *Diocese of Rockville Center*, 50 FCC 2d 330 (1974). Contrary to complainants' allegation, neither broadcast leveled any particular allegation at any specific disability rights organization. *Robert L. Miller*, 47 RR 2d 1206 (B/c Bur. 1980)(critical reference to "right to lifers" did not constitute personal attack against any particular organization).<sup>5</sup>

### CONCLUSION

12. Complainants have failed to establish a *prima facie* complaint that KFI has violated either the personal attack rule or any other Commission policies that would warrant the relief requested. Accordingly, their complaint against radio station KFI(AM), Los Angeles, California, IS DENIED.

13. Staff action is taken pursuant to delegated authority. Application for Review by the Commission may be requested within thirty days of the date of public notice of this ruling (see Commission Rule 1.4(b)) (47 C.F.R. Section 1.4(b)) by writing the Secretary, Federal Communications Commission, Washington, D.C., 20554, stating factors warranting consideration and, if mailed, should be sent by certified mail. Copies must be sent to parties to the complaint. See Commission Rule 1.115 (47 C.F.R. Section 1.115).

## FEDERAL COMMUNICATIONS COMMISSION

Milton O. Gross, Chief  
Fairness/Political Programming Branch  
Enforcement Division  
Mass Media Bureau

## FOOTNOTES

<sup>1</sup> According to Webster's dictionary, eugenics is the study of hereditary improvement by genetic control.

<sup>2</sup> Further, the Communications Act does not mandate the fairness doctrine. *Telecommunications Research & Action Center v. FCC*, 801 F.2d 501, *reh'g en banc denied*, 806 F.2d 1115 (D.C. Cir. 1986), *cert. denied*, 482 U.S. 919 (1987).

<sup>3</sup> Syndactylism is a genetic condition resulting in the webbing of the skin on the hands, whereas ectrodactylism is a genetic condition in which the bones of the hands and feet are fused.

<sup>4</sup> Section 326 of the Communications Act states:

Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.

<sup>5</sup> In view of our disposition, we find it unnecessary to consider the subsequent pleading that has been filed in this matter by KFI, Inc. The informal objection filed by the Institute for Justice will not be resolved in this staff ruling either, as the Commission has not yet decided the precedential applicability of the *Meredith* decision to the personal attack rule. See *Notice of Proposed Rulemaking, Gen. Docket 83-484*, 48 Fed. Reg. 28295 (1983).