

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

LETTER

Released: December 13, 1994

Ms. Loretta Smith 1800C3-M
120 Sixteenth Street, S.E. 94080115
Washington, D.C. 20003

Dear Ms. Smith:

This is in response to your request for reconsideration of our decision, released July 27, 1994, regarding your personal attack complaint against WOL(AM), Washington, D.C. Your claim was that, during the discussion of alleged government conspiracies involving public figures, Cathy Hughes, of WOL(AM), characterized you as a stalker involved in a government conspiracy against her. In our decision, we found that your complaint did not present evidence sufficient to establish that WOL's broadcast constituted a personal attack, as defined by Section 73.1920 of the Commission's rules (47 C.F.R. Section 73.1920). Specifically, we held that you had apparently failed to contact the station to give it an opportunity to explain. We concluded that your complaint also failed because it did not establish that the conspiracy theories surrounding the shootings of several public figures, primarily Dr. Martin Luther King, Jr., constituted controversial issues of public importance in the Washington, D.C. area.

In your reconsideration request, you state that you did contact the station before filing a complaint, but received no explanation. You also assert that the theories surrounding Dr. King's death are controversial issues of public importance as evidenced by the public's interest in them. You argue that the interest has been maintained by: James Earl Ray's many escapes from prison; his being on the cover of TIME Magazine; and, his appearances on talk shows during which people call in to express their opinions as to whether he acted alone or was part of a conspiracy. You assert that public opinion is divided on the issue. You also note that, as recently as May 25, 1994, the Tennessee Board of Paroles held a hearing regarding Ray, and that this engendered the expression of opposing opinions on the issue of the conspiracy theory. You claim that due to public interest in the issue, this hearing has been aired on Court TV many times, as recently as July 30, 1994.

You further assert that about the time of the broadcast, the *Commercial Appeal* newspaper (Memphis, TN) ran a story about an alleged conspiracy to kill Dr. King and that WOL obtained copies of the *Commercial Appeal* and sold them, apparently prompting the program on which the alleged personal attack occurred. You then assert that the heated debates in Washington D.C. will continue because Mark Lane, who has served as an attorney to James Earl Ray, resides in the area.

DISCUSSION

Under the personal attack rule, a licensee must contact an individual or group whose honesty, character, integrity, or like personal qualities have been attacked during the discussion of a controversial issue of public importance, provide certain specified information about the attack, and allow the individual or group a reasonable opportunity to respond. The Commission neither investigates nor interferes in any way with a licensee's judgment in this sensitive First Amendment area, absent a showing that the licensee has been clearly unreasonable in failing to contact a particular group or individual and allow a response. To initiate an investigation of whether a licensee violated the personal attack rule, therefore, a complainant must pass the threshold test; *i.e.*, make a showing that the alleged attack took place during the discussion of a controversial issue of public importance. Such evidence would include information regarding the degree of attention paid to an issue by government officials, community leaders, and the media, and whether the issue is the subject of vigorous debate with substantial elements of the community in opposition to one another. *See Fairness Doctrine and Public Interest Standards*, 48 FCC 2d 1 (1974), *recon. denied*, 58 FCC 2d 691 (1976).

The Commission's role in reviewing personal attack complaints is not to substitute its judgment for that of the licensee or network but rather to determine whether the station has acted reasonably and in good faith in ascertaining whether a personal attack has occurred. In the absence of a clear and convincing showing that the licensee has been unreasonable or that there has been an abuse of journalistic discretion, Commission action is not justified. *See Lynne Gordon*, 67 FCC 2d 27 (B/c Bur. 1977).

You have not furnished information sufficient to persuade us that the licensee should have notified you and allowed you to respond. Even taking the evidence in a light most favorable to you, *i.e.*, accepting that the alleged attack on you was an integral part of a discussion of the conspiracy theories surrounding public figures, we do not find that the attack occurred during the discussion of a controversial issue of public importance. The evidence presented does not pass the threshold test, which requires a showing -- sufficient to support Commission reversal of the licensee's journalistic discretion -- that the conspiracy theories surrounding Dr. Martin Luther King, Jr., and others are controversial issues of public importance in the Washington, D.C., area. Rather, the evidence submitted reflects only media attention to various events that are newsworthy or of historical import. *See Healy v. FCC*, 460 F.2d 917, 922 (1972); *see also Letter to John W. Dean*, 93010264 (MMB, released June 16, 1993). Moreover, although you assert that some people disagree as to the theories, you have presented no evidence that, at the time of the broadcast, the conspiracy theories were the subject of vigorous debate in the Washington, D.C. area, and that substantial elements of this community were in opposition to one another. Neither one station's distribution of a newspaper leading to the presentation of panel discussion/call-in shows nor the residence in the area of an attorney who has represented James Earl Ray is sufficient to support your claim. Your other examples do not involve Washington, D.C. specifically and appear to reflect the public's interest in an important historical event.

In view of the absence of clear and convincing evidence that the licensee of WOL(AM) has been unreasonable in this matter, it appears that no Commission action is warranted on your complaint. As a result, your request for reconsideration IS DENIED.

Staff action is taken here under delegated authority. Application for review by the Commission may be requested within 30 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 filing with the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the 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).

Sincerely,

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