

With respect to what Mr. Robinson has said, I think the record should be clear that every time the court has addressed itself to the question of the rights of the Commission in dealing with the programing of the industry, it has almost uniformly upheld the Commission's right. This has been done in various circuit courts and in the Supreme Court.

It suggests to me that the courts have recognized that without undermining the first amendment right of the broadcasters, that there is a degree, if you will, of restraint that is compatible with the first amendment which inures not in the public ownership of the frequency—and I think you misunderstand that—but is in the fact that the broadcaster is licensed to serve the public interest. This is fundamentally different from the newspaper.

Dean BARROW. The major case on the authority of the FCC relative to regulation of programing to which Dr. Goldin referred, was the *NBC* case. In that case the Supreme Court held that regulations which relate to the program matter of broadcasts do not contravene freedom of speech or press.

Of course, we are getting into an area in which the Supreme Court may give us fresher opinion in the relatively future.

Mr. ROBINSON. I would like to make a comment on the *NBC* case just so that it is not misunderstood. The *NBC* case did not deal with program regulation at all. The Court's remarks, insofar as they were taken to apply a broad regulatory authority, over programing are pure *obiter*. They had no bearing on the regulations which were in issue before the Court at that time. These regulations were, of course, the chain broadcasting regulations, which involved the much different question of the scope of the Commission's authority to regulate the economic dealings of the industry, and which did not at all go to the question of the FCC's authority to enter directly into program regulation via the fairness doctrine or equal-time opportunities doctrine, or any other theory of direct or indirect programing regulation.

Mr. SPRINGER. Are you talking now with reference to the *Red Lion Broadcasting* case?

Dean BARROW. This is the *National Broadcasting Company* case, an early U.S. Supreme Court case which held that the chain broadcasting rules did not violate the first amendment either as to freedom of speech or press.

Mr. SPRINGER. What case was that? I am trying to get it clarified.

Dean BARROW. *National Broadcasting Company v. the F.C.C.*

Mr. ROBINSON. I have the citation. It is 319 U.S. 190, 1943.

Dean BARROW. On the point that is under discussion about the case, it is pertinent to note that one of the major chain broadcasting rules involved had to do with the extent to which the networks would preempt the time of stations for exhibition of network programs.

Anyone who is considering the legality of a rule of that kind must look at it, it seems to me, not solely in terms of economics, but in terms of programing.

The point was whether networks could control stations to such an extent that they were not free to select that programing which fulfilled the needs of their community as they saw them, and they were the licensed broadcasters and had the trustee's duty to perform that function.