

To reach this ruling, the Commission had to find that the comment was in fact a "personal attack," which it had previously defined as "an attack—upon the honesty, character, integrity, or like personal qualities of an identified person or group." It had to disregard the truth of the statement. It had to find that the licensee was acting unreasonably and in bad faith when the station judged that the statement did not involve a genuinely "controversial issue of public importance." And if there was really a controversial issue, it had to disregard the possibility that the station may have previously presented the opposing sides of that issue.

Having done all this, the Commission required the station to present a broadcast by the DuBois Clubs.

I do not mention these factors to dwell on the merits of a particular regulatory decision. But I offer it as a striking and current example of how deeply Federal intervention into news programming can go, once it starts down the road of regulation, no matter how benevolent its purpose seems.

If we consider how this ruling embraced a series of involved interpretations—on any one of which reasonable men could certainly differ—we can recognize the increasing strain the Fairness Doctrine can place on a vigorous news operation.

And if we multiply this instance by the hundreds of occasions in which a direct or implied criticism of a person or organization can develop, in an interview program or an investigative report or a documentary, we can see the enormous difficulties which could arise from a strict application of the "personal attack" rules.

It seems to me that this kind of regulatory constraint must inevitably have a progressive flattening effect on news presentation, particularly in their most vital and sensitive and socially useful areas—the treatment of controversy.

The worst thing that can happen in news is for some editor, some producer, or some reporter to shy away from any subject because it isn't worth the trouble. Not the trouble his professional activity will put him to, but the trouble which might result.

Such trouble could range in magnitude from a flood of angry letters which need answering to appearing in court to respond to a nuisance suit. There are enough inhibiting factors now without adding to the list the specter of detailed day-to-day second guessing by the FCC. Such prospects cause self-censorship, and if the situation gets bad enough it can restrict broadcast journalism to a mixture of the dull and the frivolous.

In fairness, I do not have a catalog of horrible examples showing how the Fairness Doctrine has prevented NBC News from exercising its responsibilities.

For one thing, many of the Commission's earlier rulings on fairness related to broadcast editorials; and we do not editorialize, believing that we can do a more enlightening job through news reporting, analysis, and interpretation than through brief statements of advocacy. Furthermore, until recently, the Fairness Doctrine was also a statement of general principle with latitude to the broadcaster in its application, rather than a detailed code of behavior.