

I think it could be said that the FCC has always assumed, without much demonstration, that it would be a good thing without any investigation as to whether it is necessary in order to protect people.

I don't think there has been, really, any record, either pro or con, as to the necessity either for the Fairness Doctrine or the right to reply.

Maybe this is one of the situations where we have to go through with it and find out whether we need it, to find out whether it will be so difficult for the broadcasting people to function under it.

One of the recent cases is the *Red Lion* case, which is before the Supreme Court. It involved Fred J. Cook, who has been before the public for years.

People have been fighting him pro and con, and raising the question of whether he did or did not lie about something and whether he is a leftwinger, just what his affiliations are. There has been a vast amount of public discussion about him.

Does it serve any purpose when some broadcaster in Pennsylvania attacks him once more, to require that Fred Cook be able to come down to Pennsylvania and to reply to this particular audience, a rather specialized audience, judging by the kind of station this is.

The question whether this right of reply has a practical meaning and a value to set over against such risks as it might entail has not been very realistically faced and there really hasn't been very much material of this sort brought to bear on the doctrine.

Dean BARROW. Dr. Goldin.

Dr. GOLDIN. I think Professor Jaffe is coming to the nub of the problem, which is essentially this: I think both the Commission and the proponents of fairness, and the broadcaster and the opponents of fairness, are concerned with the issue of free speech. Which policy will promote free speech? I think the Commission is convinced that the policy of fairness, with the opportunity to hear all sides, is a preferable policy. It has less dangers. Conversely, the broadcasters feel the contrary. I think basically this is the case that the Congress and the courts ultimately must face.

In respect to the *DuBois* case specifically, I think it would be interesting at least to read the philosophy which the Commission used in describing its reasons for taking the position it did on the *DuBois* case.

With your permission, I would like to read parts of the Commission's decision on that point, because I think it does raise the fundamental philosophical issues here.

I am reading now from the Commission's decision. The case involved the Storer Broadcasting Co.

In effect the Commission said—

Storer's argument is thus, that if a mayor were indicted for embezzlement, it could editorially condemn the mayor on this ground and need not afford time for response since the allegations in the indictment suffice to take the matter out of the controversial area.

As we have stressed in other similar areas, the truth or falsity of the attack is not a matter for determination by this Commission. The short answer is that in these circumstances the licensee cannot aver that the attack is true and, therefore, there is no need to let the public hear the other side.

But, rather, the other side must be given an opportunity to reach the public which will thus be in a position to make its judgment on this issue which the licensee chose to present as one of importance to its audience. At the risk of going over well-plowed ground we think the latter point should be emphasized.