

If the communication is a particularly startling one, it may have a greater effect, but by the same token—that is, its exceptionable character—it is unlikely that it will go unchallenged if not on a subsequent broadcast then by means of one or another formal or informal avenue of communication.

Furthermore, in these same terms, I think that the case for the value of the broadcast reply is much weaker than it is assumed to be. Most attacks as I have said are received casually and without advance preparation by the listener. After he has heard it, will he be conditioned to expect, wait for, be alerted to a reply?

How will the mandated reply or defense reach him? The advance programs do not give notice of specific replies though it would be possible for the regulation to require such notice.

It may seem something of a paradox but I would hazard the hypothesis that a reply in a newspaper—that is, as a news item—is more likely to reach a listener than the later program.

The newspaper both in time and space has greater extension and great permanency. In short, I would conclude that the autonomy of TV and radio have been much overstated.

It is my purpose primarily to question the positive premises on which the opportunity for reply rests. They are in my opinion not nearly so persuasive as is usually assumed.

There is still, of course, a case for such regulation. There are some people who will hear the attack and will not in one way or another receive a reply and some of these will be reached because of the regulation.

Arguably this is enough to justify it.

I think the way you will resolve it will depend somewhat on the determination as to how important you think the right of reply is from the point of view of public information.

Chairman Hyde was very frank, by the way, in saying, in contradiction to some of the suggestions from the committee, that the right of reply is not conceived as something which the person attacked has a right to.

It is conceived as something that the public has a right to.

For example, if the attack as it has been made is not in a matter of general public interest, he has no right to reply at all.

It is in those terms that the question, that the right is framed, namely in terms of the public interest in getting the information and if the public is apt to get the information in other ways and the effect of this doctrine is to cut down on free discussion, then you have an argument against it.

But, I wouldn't personally say how that argument should be referred.

The "Fairness Doctrine": What I have already said as to uniqueness and autonomy of TV is basic to the justification of the Fairness Doctrine. It is to my mind the weakest of the four doctrines under discussion.

I would as an analytic matter make distinctions within the area in which it operates. The pronouncement on TV as to a proposed initiative or referendum the day before an election might have very considerable impact.