

My doubt is whether the constituency of such stations can be much persuaded by the occasional, somewhat forced appearance of a left-winger or a pro-Semite. Indeed such broadcasters deal in communication for which it is difficult to find answers which will dissuade those who find the communications persuasive.

I am told that this overdefines the listeners and that there will be a significant number who are more open to argument.

The *Red Lion* case is interesting. It had to do with Fred Cook, a person much discussed over the years. He came into public view by himself writing a book. He subsequently expressed his views off and on in the *New Republic*.

He was attacked on the *Red Lion*, a Lancaster broadcaster, first for having been a disreputable character, for having falsified in certain respects, which apparently he had done, and also for generally being Red and leftwing.

He asked for a right to reply without payment and free. What purpose you might ask is served in this whole network communication about this man—the pros and cons have already been gone over and over—what purpose will be served particularly by this man getting up on the *Red Lion* and saying—I don't know what he would say—"I am not a leftwinger" or "I am not a rightwinger"—"They have done me wrong."

When you isolate the case and say it is terrifically important that Fred J. Cook be permitted to appear, at least significant from the point of view of public illumination, that it is important he appear on *Red Lion* to reply to these charges that have been made 6 months back, at some unspecified moment of time, you don't know who will be listening, it seems to me it is highly unrealistic to see the right to reply as very significant.

But even granting the weakness of the foundation for the Fairness Doctrine we can believe that it has some beneficial effects on programming and that it has fewer disutilities than either the equal time for political campaigning or the opportunity to respond.

The reason is that it is primarily a guide to the exercise of the broadcaster's exercise of operation. The broadcaster is admonished to be fair. This means he has discretion in determining whether a question is a "controversial issue of public importance."

Thus, he may decide that the broadcasting of religious services does not rise to the level of an important controversy concerning the existence of the Deity, therefore, does not require the application of the Fairness Doctrine.

Second, he had discretion in deciding in what form, and in what measure, the various positions involved shall be presented.

For me the upshot is that the Fairness Doctrine does have a marginal utility, compounded of its modest positive values and its very slight disutilities.

It is a major premise of the FCC's regulation of broadcasting that the licensee must program for local needs. The most important example, to date, of this policy—and most nearly related to the Fairness Doctrine—is *Lamar Life Broadcasting Corp.* (5 R.R. 2d 205 (1965)) reversed and remanded sub nomine *United Church of Christ versus FCC* (359 F. 2d 994 (D.C. 1966)).