

The House of Representatives in February 1964, voted by an overwhelming 317 to 43 to preclude the FCC from adopting such advertising standards.

Irrespective of pending litigation, we strongly urge this committee and the Congress to consider enactment of legislation specifically overruling this order of the commission applying the Fairness Doctrine to product advertising.

Dean BARROW. Thank you, Mr. Bell.

Mr. Jaffe, do you have any matters to reply to immediately in respect to Mr. Bell's comments?

Mr. JAFFE. I would make a very short statement.

I agree with some of the things that Mr. Bell says and disagree with others. I agree with him that the ruling about cigarettes is logically applicable to any other product, the advertisement of which asserts that it is a good thing to have and do, where there is some kind of controversy as to whether it is.

I would not like to have to write the FCC opinion distinguishing liquor from cigarettes. I mean if an opinion does distinguish it, I think it will bring another question, it will raise the kind of queries that have been raised about the Fairness Doctrine here.

I do not agree at all with Mr. Bell that it is inappropriate for an advertiser to have to indicate risks of a product. He says the purpose of advertising is to inform the buyer of the qualities of the product.

Well, one of the qualities of its product is that it may give you cancer. It does seem to me that it is perfectly appropriate, indeed I agree with him absolutely it may cut down business and it may cut down mass markets and it may cut down lots of other things, and if your only interest is in maximizing products and maximizing the purchase and sale of goods, I think the advertising doctrine of the FCC is all wrong but I can't conceive that that is the only interest.

Dean BARROW. Professor Robinson.

Mr. ROBINSON. I have one comment on the tobacco ruling. That is, apart from the particular cigarette controversy the notion, the underlying assumption, of this ruling seems to be inconsistent with what the Commission has already ruled in another context of nonproduct advertising, that is the well known *Madalyn Murray* case.

The Commission has ruled squarely that merely carrying religious broadcast does not sell religion, does not present the religious viewpoint but somehow that has been shoved to one side in the cigarette ruling because it has now distinguished that case and has said specifically that we are only here concerned with health issues. Now, maybe health issues are arguably distinct but it seems to me that the distinction is irrelevant to the underlying assumption that they make, that the mere carrying of advertising is sufficient presentation of a "view" with respect to cigarettes—and presumably other products.

I would agree with Professor Jaffe that one would be hard pressed to distinguish beer from cigarettes or any other product about which there is some controversy. But if this is so, why don't we take it all away? We walk up to the situation in some cases where we don't like the product, cigarettes, but we all like religion and we don't like atheists or something like that. That is what was in effect said in *Madalyn Murray* when the Commission said, "No, you may not have the opportunity to reply to the mere carrying of religious broadcasts."