

So while there are people who hold Professor Robinson's view, and I respect his opinion and that of others, I do think we should realize that what we were dealing with was a rule which prevented an outside component of the industry from controlling the licensed broadcaster in the kind of programing which he could select.

This has a very strong effect upon the type of programing which is presented. The Court realized that program regulation was quite heavily involved in the case. Judge Hand stated in his opinion for the lower court that the regulation indirectly controlled programing. 47 Fed. Sup. 940, 946.

Dr. GOLDIN. I think Congressman Springer's remark is very appropriate because the circuit court has spoken very directly and very immediately on the question that Mr. Robinson was addressing himself to and said that the broadcasting service can be treated differently, in effect, from the printed media. So there is a very recent decision on this.

There are other decisions by the court, the circuit court and the Supreme Court, in which the rules of the FCC or policies of the FCC have been upheld, although they have been in the programing area, and they have resulted in restraints on broadcasting, if you will, which are significantly different from those of the printed media.

Dean BARROW. Mr. Alexander.

Mr. ALEXANDER. I am not a lawyer, but I would like to ask Mr. Stanton the basis on which his legal staff decided that CBS could not present a program on Governor Wallace's candidacy for nomination of the American Independent Party.

As I read section 315, it says that if a candidate for one office is given time, other candidates for that same office must be given equal time. I don't know of any others who were vying for the position of nominee of the American Independent Party.

Dr. STANTON. Mr. Alexander, I have learned long ago not to try to make like a lawyer, so I won't try to give you the answer that the law department prepared for the head of our news department on this point. If the moderator or the chairman would care to, we will be glad to submit a memorandum on that particular item.

(The following memorandum was received by the committee:)

CBS MEMORANDUM

From: Richard W. Jencks (LAW).

To: Dr. Stanton.

Date: March 13, 1968.

You have asked for an account of the advice given by the Law Department to CBS News in connection with a proposed documentary concerning the candidacy and campaign of George Wallace. CBS News asked the CBS Law Department at the end of February for an opinion concerning the "equal opportunities" obligations, if any, CBS would face as a result of a proposed half-hour broadcast on former Governor George Wallace for carriage over the CBS Television Network in June of 1968. CBS News sought in this proposed broadcast to utilize the documentary format for a close-up study of former Governor Wallace, including his views on the major political issues of the day. Based on the Law Department's review of Section 315 of the Communications Act and the applicable FCC Rules and interpretive decisions, as well as the information we had regarding the status of Mr. Wallace's candidacy, we advised CBS News that in our opinion it was likely that the broadcast as proposed would give rise to valid "equal time" requests from at least three and perhaps several additional Presidential candidates. In these circumstances, CBS News dropped its plans to produce the broadcast in question.