

cable to personal attack situations, and in the Commission's decision applying the fairness doctrine to the cigarette advertising.

You will find in those documents a legal analysis of the constitutional question, the legal authority of the Commission. And you will also find the Commission's study of the legislative history of the 1959 amendments, and, in fact, the legislative history of the statutes under consideration. I would recommend those documents for the attention of the committee.

The CHAIRMAN. They will be printed in the record at the proper place.

(The material referred to appears on p. 219.)

Dean BARROW. Mr. Robinson, would you have comments at this time on the comments made by Professor Siepmann?

Mr. ROBINSON. Yes, I would like to comment, if I may, on Professor Siepmann's analysis.

Let me state first of all that since Mr. Siepmann does not believe that I have been candid about my ultimate motivation here, I will say in all candor that I don't think the Commission has any business in programing, and if there was anything surreptitious in my paper, it was not intended to be surreptitious, it was only intended to be directed at this particular application of program regulation with which I understood the committee was primarily concerned.

But I would not draw back from applying these principles across the board. I would not be adverse to saying to the Commission "You may not dictate the content of programs or you may not dictate specifically the conditions under which they will be broadcast."

I am not suggesting that the Commission is to be shorn of all its powers to regulate broadcasting. I would certainly suppose that there are no grave first amendment implications with respect to most of what the FCC does.

I would think that most of its general regulatory oversight on economic matters or technical supervision, and generally the public responsibility of the broadcaster, can still be accomplished consistent with the first amendment.

But let me suggest that in this particular application of the FCC's regulatory powers, I think there is grist for any critic's mill. More specifically, on Mr. Siepmann's main points:

He says that he does not believe that the NBC rationale controls here, but that the true rationale for the Fairness Doctrine, as for other incidents of general program oversight by the FCC, is the fact that broadcasters have temporary conditional and privileged access to the public domain.

That is a statement that is replete with a great many concepts, but let me repeat what I said this morning, that I don't see how it resolves the problem simply by talking about public domain. The issue remains, what can the FCC do, assuming that stations licensed to use "public property" in any sense of the word. The fact of licensing, or the fact of an obligation of public service, is not questioned here. But this does not end the problem; it merely poses it.

We still have to inquire, it seems to me, what follows from these facts. I think Prof. Harry Kalven put it very succinctly when he said in a recent article: