

The other point that I did want to make was that Mr. Wasilewski says that then the broadcaster is punished. I would like to raise the question of what does this punishment consist of?

In those cases where the Commission has held that the broadcaster made an honest mistake in judgment, the punishment consists in asking the broadcaster to either itself put on another point of view or to ask some other group to put on a point of view. That is what the punishment consists of.

I think, taken in that context, the picture is slightly different from the one that Mr. Wasilewski drew.

Mr. WASILEWSKI. My response to that would be that I would agree that there have been very, very few cases wherein there has been punishment, per se, in a true sense. The thrust, however, of my argument is, sir, that what happens in an individual situation to a particular station becomes very minute in relationship to the overall problem we are talking about here.

The overall problem is: Does or does not the Fairness Doctrine as applied and administered by the FCC have an inhibitory effect upon stations engaging in controversy? My point is that it does have such an effect because of the fact that they are subject to hindsight by the FCC. As we all know, hindsight is 20-20. And the consequent retaining of counsel to respond to complaints.

I have seen one case, for example, of some time ago, where there was a student teacher, as I recall, from Berkeley, Calif., who requested of a station the right to respond to spots to join the Peace Corps, a right to respond to the savings bond drive as put on by our Government and carried in spot announcements by the station.

The station was under an obligation because of that to respond to the FCC at considerable length, indicating why they did not feel an obligation to put on this particular teacher from Berkeley.

What I am getting at is the administrative details that one gets involved with can become quite enormous, and I think they are a deterrent to this wide open debate that Mrs. Pilpel was talking about yesterday.

Dean BARROW. Mr. Chairman, the panel has been joined by Mr. Paul Porter, of Arnold & Porter, who, as you know, is a past chairman of the Federal Communications Commission. He is recognized for comment.

Mr. PORTER. I think the statute of limitations, Mr. Chairman, has run against me as far as service with the FCC is concerned. That was back, I think, in the Garfield administration.

I would like to comment on what my friend Mr. Wasilewski had to say about the double theory of regulation. I was defending the Commission some time ago in the court of appeals because of the position of my client, and I was suggesting that the FCC could be trusted.

A member of the panel, Judge McGowan, said, "Mr. Porter, suppose some day we get a bad Commission?" I thought that was a good question.

I said, "Your Honor, I no more like to contemplate that remote contingency than I do that some day we might get a bad court."

I lost the case, incidentally.

But with respect to the administrative burden, and I share the concern, I am sure, of my friend and former colleague, Chairman