

see that we can proceed to any sensible discussion of the proprieties of the actions of our governors.

So that my view would be that while, with others, Mr. Robinson and Mr. Jaffe excepted, I believe in the regulatory system, my view is we should trust to the FCC to concern itself with particular complaints relating to unfairness in broadcasting, and rely upon their discretionary judgment of the proprieties of the complaint, knowing always that any arbitrary or capricious decision on their part is subject to overruling by the courts of law.

My view is that some applications of the Fairness Doctrine, particularly with reference to the rights of reply, and the notifying of people, and the sending of letters and all the rest of the business, go too far and become too difficult in terms of administration, and that we would do much better to rely in good faith upon the good sense of the Commission. If it acts arbitrarily, appeal to the courts.

It seems to me that this is the remaining issue between us, how far the Fairness Doctrine itself can be applied in particular instances through regulatory procedures. My view is that those regulatory procedures should be broad, general, and discretionary rather than specific, precise, and applicable to every case that one can think of, because fairness applications are manifold and are not subject to such kind of rulings.

That is the picture I get so far of where we stand on the controversy that remains before us.

Dean BARROW. Mr. Porter.

Mr. PORTER. Mr. Chairman, I would like to put the Commission on the spot in connection with the discussion of Dr. Siepmann.

As I gather, he feels there should be a continuing surveillance of broadcast content in the context of the fairness concept. That has been held by Harry Kalven as regulation by dossier. It is not public. It does not have the virtue of rulemaking.

An instance came to Professor Kalven about a broadcast by Walter Lippmann on June 15, 1961. It appears that some critical person complained to the FCC that Lippmann was biased in his foreign policy views, and charged that there was an absence of some counterpoints of view.

Lippmann's broadcast was so impressive, Senator Mansfield read it into the Congressional Record. The Commission, with its automatic dossier procedure, forwarded this complaint to CBS. CBS, of course, had no difficulty replying. But the mailroom there apparently was not working very well. After some brief delay, the following was sent to the network:

The Commission records indicate that as of this date no response to the above-mentioned letter has been received. As you are aware, expeditious handling of Commission requests for information is a minimum requirement which the Commission has a right to expect of its licensees.

Accordingly, it is expected that you will submit the information requested in duplicate within 10 days of the date of this letter.

Professor Kalven comments:

Think of the outcry if a great daily newspaper were so preemptorily requested to furnish a justification of printing the views of Walter Lippmann.

The answer to the letter, of course, was no great burden, but I think that is part of the vice of administering something that is as imprecise and as amorphous. I don't know what fairness really means. I remem-