

COMMENT ON PAPER NO. 7, BY PAUL PORTER

Mr. PORTER. Thank you.

I am glad to undertake to comment on the paper of a fellow Kentuckian. I remembered the comment some years ago of a really great Kentuckian by the name of Alban Barkley, when on one occasion I asked him in a very hot primary in the State, "Senator, where do you stand?" He said, "Well, I am for everybody some." I suspect that that is the dilemma that we all find ourselves in in considering this very vexatious problem of where protected speech begins and where it ends.

The only thing I can think of to say in criticism of this paper is to attack the techniques of broadcast journalism. I was reminded of a comment of a British comedian I heard in London a few months ago, when he was mimicking an American newscaster. He said, "Good evening, ladies and gentlemen. This is the news. The Soviet Union and the United States are engaged in nuclear warfare. Washington is in flames. More about this and other news in just a moment; but first, a word from Ex-Lax."

I don't think that is typical, however, of the general quality of our newscasts. But what bothers me about the Fairness Doctrine, and always has, is the impreciseness of the standard of what is fair.

I have had some limited experience in attempting to administer a statute that had a similar standard, and I refer to the late and unlamented OPA. I was the last Price Administrator of OPA. The standard in the Emergency Price Control Act was that there should be no price schedule that was not "generally fair and equitable."

You could measure that. You could take raw material costs, manufacturing costs, historic profit margins, and by a process of arithmetic you could come out to where you thought you were reasonably being generally fair and equitable. My recollection is it took a staff of 70,000 people in the agency to assure that we were being generally fair and equitable as Congress had demanded.

The problems we are here considering today are not new. I go back in this a very long way. I was reminiscing with my old friend and colleague, Chairman Hyde, about the time in 1939 when the Commission spelled out criteria for the licensees of short-wave international broadcasting.

The standard they developed as a condition for licensing was that these facilities had to promote international good will, cooperation, and understanding, and reflect the culture of this country.

When that standard was promulgated, there was a hue and cry that came up from the American Civil Liberties Union, from the academicians, and from the broadcasters. I took the position as counsel for one of the licensees—CBS at that time—that it was impossible to determine, in the first place, how to reflect the culture of this country, and that to reflect that culture might negate the earlier mandate in the statute—to promote international good will, cooperation, and understanding.

Then, too, I urged that the Founding Fathers when they wrote our first amendment and our Bill of Rights did not have the vagaries of broadcast transmission in mind. I also noted that broadcast signals could cross national boundaries and that what might promote good will and understanding in one country might do the opposite in