

either by error or otherwise, obviously has his tort remedy in a suit for defamation, if he cares to exercise it.

Mr. ADAMS. Do you agree after the New York Times case and the other recent cases, referring either to the tort remedy or the libel remedy, that it has been limited in the area of news coverage, to agree that this may not be a remedy at all?

Mr. PORTER. I think that *New York Times* versus *Sullivan* brought out quite clearly the area of protected speech to encourage what I believe they said was challenging, robust discussion, and that that was in the area of fair comment where malice could not be established.

Mr. ADAMS. You have to prove malice, do you not?

Mr. PORTER. I think malice could be imputed. I think that case stands on its own facts, where there was substantial injury to a person who was personally attacked, and was denied the opportunity of reply.

Dean BARROW. Dr. Goldin has a comment on this same point.

Dr. GOLDIN. I didn't understand Mr. Porter the same way as you did, Congressman Adams. You seem to conclude that Mr. Porter was in favor of a case-by-case approach to fairness. He was not. He specifically said that he would not do it on a case-by-case basis, but what he would do is to accumulate these complaints and when the licensee came up for renewal at the end of the 3-year period, the Commission would look at these complaints, and if there were presumably only a small number of complaints the Commission would say, in effect, "We only have a few complaints about this station, and otherwise he seems to be operating fine, so we will renew his license."

Is that my understanding of your position?

Mr. PORTER. I would take the licensee's overall performance during the license period as the test.

Mr. ROGERS. Wouldn't this open the door for the person who was refused the license to build up a great case of complaints against you and force a change in your license?

Mr. PORTER. That, Mr. Rogers, would have to be an issue of fact.

Mr. ROGERS. I agree, but I think it would open the door for that.

Mr. PORTER. If these were unsubstantiated, frivolous, contrived complaints, obviously the Commission's hearing process would resolve that. But, if they were of substance, he should take his risk. I know of no better way to get responsible broadcasting than to require that broadcasters give an account of their stewardship periodically.

Broadcasters I know are perfectly willing to do that.

Mr. ROGERS. I think that was the point of the Fairness Doctrine, in making them account for this if there is a complaint. I just wondered if we all agree that Congress does have the right to license.

Mr. Crouse, would you feel that Congress has the power to delegate this power to the FCC? Do you feel there is a constitutional question there?

Mr. CROUSE. Apparently not.

Mr. ROGERS. You say in your statement it is to serve the public interest, convenience, and necessity. But then you say to do this, you should turn over completely the determination of what the public interest is to the broadcasters, and there should be no forum which people who object to the way he presents views can question him at; is that correct?