

It seems to me that what we have here is an agency which has traditionally steered clear of advertising regulation. It has an arrangement with the FTC—a "liaison" with the FTC—whereby the FTC is apprised of complaints that go to the content or manner of advertising of products and the FTC handles the matter.

The FTC has been heavily involved in cigarette advertising. I don't say wrongly. It seems to me that we have a situation here in which the FCC has only a peripheral concern and is in a sense, backing into the matter via the Fairness Doctrine.

There is pending, I understand, an investigation of the question of what requirements or limitations should be put on cigarette advertising. If it is decided by Congress and the people that cigarette advertising should be severely limited, or, indeed, banned altogether, I think that would probably be a legitimate exercise of legislative prerogative. But I think it is highly questionable to apply the Fairness Doctrine here to maneuver in and about a problem which ought to be tackled head on.

Let us consider openly to what extent advertising of products such as cigarettes and like products, liquor or beer, or what have you should be permitted. If we are really concerned about the effects of advertising, I think that perhaps we ought to come out and rule on it squarely and not dance around the problem by invoking the Fairness Doctrine simply to require both sides to be heard.

It seems to me this application of the doctrine becomes highly artificial. The Commission has recently ruled that if the station does not carry advertising but it does decide that smoking is bad, and it decides to carry a public health spot announcement, for example, sponsored by the Heart Association or the Cancer Association, then the Fairness Doctrine applies and presumably the cigarette manufacturers can come back and promote cigarette smoking. It seems to me that that is at odds with the real philosophy underlying the ruling which is that this advertising of cigarettes is a bad thing.

Dean BARROW. Mr. Wasilewski has a comment.

Mr. WASILEWSKI. It has occurred to me that we could discuss the application of the Fairness Doctrine to cigarette advertising ad infinitum but this matter is in the courts at the present time.

I think the discussion is useful to show the extent to which the Fairness Doctrine has been extended here. It is in the courts, so is the question of the first amendment application to the Fairness Doctrine as such.

I think I would agree with what Professor Jaffe said a while ago that the real issue is the pragmatic effects of the Fairness Doctrine upon society as a whole during the course of these hearings.

Dean BARROW. Are there questions on these papers by the members of the committee?

Mr. KEITH. We have exercised our prerogative.

Dean BARROW. Then, Mr. Chairman, though we have a half-hour remaining on the schedule, I believe we have come to a convenient point of departure.

May I say on behalf of the members of the panel that we were honored highly in being invited to come and participate in your inquiry.