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CENSORSHIP OF POLITICAL BROADCASTS*

SECTION 315 of the Communications Act of 1934 requires that radio stations grant equal speaking opportunity to all qualified political candidates, and prohibits censorship of the material which is broadcast.¹ Yet the tort laws of some states make radio stations liable for defamatory publications.² Once the broadcaster grants time to a single campaign speaker,³ defamatory matter in any subsequent speech is deleted at the risk of violating federal law; on the other hand, it is broadcast at the peril of transgressing state law.

* *In re* Application of Port Huron Broadcasting Company for Renewal of License, F.C.C. 48-1116, Dkt. No. 6987, 4 PIKE & FISCHER RADIO REG. (FCC Opinions) 1 (1948).

1. 48 STAT. 1088 (1934), 47 U.S.C. § 315 (1946):

"If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station, and the Commission shall make rules and regulations to carry this provision into effect: *Provided*, That such licensee shall have no power of censorship over the material broadcast under the provisions of this section. No obligation is hereby imposed upon any licensee to allow the use of its station by any such candidate."

2. Almost all states have enacted general libel and slander laws imposing both civil and criminal liability. Only a few states refer specifically to radio. CAL. PEN. CODE §§ 258-60 (Deering 1941), N.D. REV. CODE § 12-2815 (1943), and ORE. COMP. LAWS § 23-437 (1940), which make a speaker criminally liable for defamatory utterances, may be broad enough to include radio stations. FLA. STAT. ANN. § 770.03 (1944), IOWA CODE § 659.5 (1946), MONT. REV. CODE § 5694.1 (Supp. 1939), and WASH. REV. STAT. § 998-1 (Remington Supp. 1943) make radio stations liable only if negligent. IND. STAT. ANN. § 2-518 (Burns 1946) excuses liability if the publication is made in good faith and a retraction is issued. ILL. STAT. ANN. c. 38, § 404.1-2 (Smith-Hurd Supp. 1948) and 1942 VA. CODE § 5796b (Supp. 1948) render radio faultless for defamation by a political candidate.

By case law Nebraska and Missouri hold radio stations liable without fault. *Sorensen v. Wood*, 123 Neb. 348, 243 N.W. 82 (1932); *Coffey v. Midland Broadcasting Co.*, 8 F. Supp. 889 (Mo. 1934).

Not only may a radio station be liable under state law for publication of defamatory statements, but also such publications may invoke FCC sanctions. *Trinity Methodist Church, South v. Federal Radio Commission*, 62 F.2d 850 (App. D.C. 1932), *cert. denied*, 284 U.S. 685 (1931), 288 U.S. 599 (1932) (affirmed refusal to renew license); *Bellingham Publishing Co.*, 6 F.C.C. 31 (1938) (license application denied, one consideration in the decision being that the applicant owned a newspaper, which had followed a course of libeling citizens of the community). See MOSER & LAVINE, RADIO AND THE LAW 82-3 (1947).

3. *Weiss v. Los Angeles Broadcasting Co.*, 163 F.2d 313, 315 (9th Cir. 1947) held that the section is only applicable when there are two or more such candidates, one of whom has used the facilities of the station. For criticism of the *Weiss* case, see Notes, 61 HARV. L. REV. 552 (1948) and 21 So. CALIF. L. REV. 292 (1948).

The rule of the *Weiss* case allows unlimited censorship as to the first speaker. The FCC has adopted a view, however, which would allow § 315 to operate in certain cases even before one candidate has spoken. See note 5 *infra*.

A solution of the broadcaster's dilemma has been attempted by the Federal Communications Commission in a recent decision on the application of the Port Huron Broadcasting Company for license renewal.⁴ In this proceeding, renewal was challenged on the ground that Port Huron had violated Section 315 by censoring certain political speeches.⁵ The Commission declared that the section prohibits the deletion of, or refusal to broadcast, defamatory material, but unwilling to penalize the licensee for a non-willful violation, it renewed his license.⁶ The Commission further concluded that since enforcement of state defamation laws as a practical matter would compel violation of this absolute prohibition, the state laws must be suspended as to all speeches coming within Section 315.⁷

The *Port Huron* decision marks a departure from the only significant

4. Port Huron Broadcasting Company, F.C.C. 48-1116, Dkt. No. 6987, 4 *PIKE & FISCHER RADIO REG.* (FCC Opinions) 1 (1948).

5. T. N. Tobias, H. C. Davis and the incumbent C. E. Muir were candidates for election to the office of City Commissioner of Port Huron, Michigan. During the time Muir was an avowed candidate for re-election, he made a "non-political" speech over the Port Huron Broadcasting Company station concerning one of the leading issues in the election campaign. One MacTaggart claimed that he had been libelled by the broadcast but stated that he would take no legal action unless there were a recurrence.

Subsequently the three candidates contracted with the station for time to make campaign speeches. Muir's script contained further attacks on MacTaggart, who stated on viewing the remarks that he could prove the charges to be false. The station thereupon cancelled the contracts for the three speeches and refused to sell or give time to any candidate for City Commissioner. Although the FCC found that no speech advancing a political candidacy had been made, the cancelling of all three speeches under these circumstances was held to violate § 315. *But cf.* Weiss v. Los Angeles Broadcasting Co., note 3 *supra*.

6. The FCC recognized that it would be unfair to penalize the station in view of the fact that the Commission had not previously expressed its interpretation of § 315. Furthermore, the language of § 315 might have led the licensee to believe that the section was not applicable on the facts of the *Port Huron* case. *Cf.* Weiss v. Los Angeles Broadcasting Co., note 3 *supra*.

7. The most obvious conflict between state and federal law occurs when both sovereigns seek to regulate or control the same phase of a given subject in which case the federal law must govern. *Gibbons v. Ogden*, 9 Wheat. 1 (U.S. 1824). But the broad test of invalidity of a state law, relied upon by the Commission in the *Port Huron* case, is whether it stands as an obstacle to the accomplishment of the valid objectives of Congress. *Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173, 176 (1942); *Hines v. Davidowitz*, 312 U.S. 52, 70 (1941); *Minnesota Rate Cases*, 230 U.S. 352 (1913). Thus, federal control has superseded state control of defamation carried by telegraph despite the absence of a specific provision as to defamation in the federal statute. *O'Brien v. Western Union*, 113 F.2d 539 (1st Cir. 1940). See Donnelly, *Defamation By Radio: A Reconsideration*, 34 *IOWA L. REV.* 12, 33-7 (1948).

On the other hand, the Supreme Court has said that an unexpressed purpose to nullify a state's statute is not lightly to be attributed to Congress. *Johnson v. Radio Station WOW*, 326 U.S. 120 (1945) (power of the state to regulate fraudulent conveyances of radio station property not suspended). See generally as to the interplay of federal and local power, 1 *SOCLOW, THE LAW OF RADIO BROADCASTING* 186-8 (1939).

interpretation of the Section previously made by a court.⁸ In *Sorensen v. Wood*,⁹ the Nebraska court imposed strict liability under state law for the broadcast of libelous statements.¹⁰ The court there construed the federal statute as precluding the licensee from censoring words as to their political or partisan trend, but not as preventing the deletion of defamatory matter.

In rejecting the Nebraska court's interpretation of Section 315, the FCC relied, in part, on legislative history. Section 315 was originally enacted as Section 18 of the Radio Act of 1927,¹¹ which as proposed created a specific immunity from liability under state law.¹² This proviso, however, was deleted in committee with no reason given. The committee holding hearings to amend the Radio Act indicated that Section 18 was misconstrued by *Sorensen v. Wood*,¹³ but in the adoption of Section 315 no change was made. Since 1934 several attempts have been made to amend Section 315 to absolve the licensee from state liability or to permit him to delete defamatory material, but none has been successful.¹⁴ On a balance, it would seem that the

8. Only two judicial decisions have interpreted § 315 as to its effect on censorship and liability for defamation. In *Sorensen v. Wood*, 123 Neb. 348, 243 N.W. 82 (1932), the court viewed the section as permitting censorship of defamatory material. In *Josephson v. Knickerbocker Broadcasting Co.*, 179 Misc. 787, 38 N.Y.S.2d 985 (Sup. Ct. 1942), however, a New York lower court stated that the statute was absolute in its prohibitions and read a qualified privilege to broadcast defamatory statements into the statute. This latter case has never been authoritatively cited.

9. 123 Neb. 348, 243 N.W. 82 (1932), *appeal dismissed sub nom.* KFAB Broadcasting Co. v. Sorensen, 290 U.S. 599 (1933) (judgment based on an adequate non-federal ground).

10. The *Sorensen* case, note 9 *supra*, is the leading case espousing the rule of strict liability for radio stations. It was followed in *Miles v. Louis Wasmer, Inc.*, 172 Wash. 466, 20 P.2d 847 (1933) and *Coffey v. Midland Broadcasting Co.*, 8 F.Supp. 859 (Mo. 1934) and cited with approval in *Irwin v. Ashurst*, 158 Ore. 61, 61 P.2d 1127, 1130 (1938).

11. 44 STAT. 1170 (1927), repealed, 48 STAT. 1102 (1934).

12. Section 18, as originally proposed, explicitly made the radio station a common carrier. But in the Senate, Senator Dill offered a substitute provision exculpating stations from both civil and criminal liability for defamation. 67 CONG. REC. 12501 (1926). This provision, however, was not incorporated in the Act as finally passed.

13. *Hearings before Senate Committee on Interstate Commerce on H.R. 7716*, 72nd Cong., 2d Sess. Part 2, 9-11 (1932).

14. *H.R. 9230*, 74th Cong., 1st Sess. (1935) (no liability); *S. 1520*, Sect. 15, 76th Cong., 1st Sess. (1939) (express authority to delete defamatory material); *S. 814*, § 11, 78th Cong., 1st Sess. (1943) (express authority to delete defamatory material); The White Bill, *S. 1333 (as amended)*, § 14(d), 80th Cong., 1st Sess. (1948) (no liability).

The FCC periodically has made proposals to Congress for amendment of § 315 to clarify the responsibilities, privileges, and immunities of radio stations. See statements of Chairman Fly urging institution of a provision immunizing radio stations from state liability, *Hearings before Senate Committee on Interstate Commerce on S. 814*, 78th Cong., 1st Sess. 63-4, 68 (1943), and Chairman Denny, *Hearings before Senate Subcommittee on Interstate and Foreign Commerce on S. 1333*, 80th Cong., 1st Sess. 14-73 (1947).

Congressional inaction may have been caused by doubt as to the power of the Federal

inconsistency between deletion of the immunity clause and apparent committee disapproval of the *Sorensen* case renders the legislative history inconclusive as to the proper construction of Section 315.

The Commission's position gains strong support, however, from the analogy of radio stations to telegraph companies. In *O'Brien v. Western Union*,¹⁵ the Court of Appeals for the First Circuit held telegraph companies exempt from state defamation laws despite the absence of a specific immunity in the Communications Act. The principal basis of the decision was that the Act establishes a comprehensive system of federal regulation and, as such, supersedes state defamation law inconsistent with the purposes of the Act.¹⁶ It can be argued that the analogy fails because these companies are common carriers, which must accept all traffic proffered.¹⁷ But although radio stations are not technically common carriers,¹⁸ Section 315 implicitly makes them so, once a single candidate is granted the use of the station's facilities.¹⁹ An analogy to newspapers,²⁰ used by the court in the *Sorensen* case, seems

Government to provide immunity against state defamation law. *Hearings Before Senate Committee on Interstate Commerce on S. 814*, 78th Cong., 1st Sess. 63-4 (1943). Another possible explanation is that amendments to §315 were proposed in bills, some of the other provisions of which were objectionable, and the bills were rejected in full.

15. 113 F.2d 539 (1st Cir. 1940).

16. Section 202(a) of the Communications Act of 1934 forbids unreasonable discrimination by telegraph companies in the matters of charges, practices, services, etc. Sections 206 and 207 make the companies liable in damages where private injury results from an unlawful act or omission. In view of this comprehensive scheme of regulation the court concluded that Congress had occupied the field; therefore questions relating to the duties, liabilities, and privileges of telegraph companies must be governed by uniform federal rules.

17. 48 STAT. 1065-6 (1934), 47 U.S.C. § 153 (h) (1946).

Another distinction is that defamatory matter transmitted by telegram reaches fewer recipients than defamatory material which is broadcast. It would seem, however, that the number of recipients should be taken into account only in determining the extent of damages. See generally Vold, *The Basis for Liability for Defamation*, 19 MINN. L. REV. 611, 652-5 (1935); Comment, *Libel and Slander—Clarification of Radio Defamation—Liability of Broadcaster*, 39 MICH. L. REV. 1002, 1006 (1941); Keller, *Federal Control of Defamation by Radio*, 12 NOTRE DAME LAW. 134, 160, 171 (1937).

Telegraph companies traditionally have been held liable for defamation only when obviously negligent. *E.g.*, *Nye v. Western Union Telegraph Co.*, 104 Fed. 628 (C.C.D. Minn. 1900); *Western Union Telegraph Co. v. Brown*, 294 Fed. 167 (8th Cir. 1923); *Flynn v. Western Union Telegraph Co.*, 199 Wis. 124, 225 N.W. 742 (1929). 3 RESTATEMENT, TORTS § 612 (1938).

18. 48 STAT. 1065 (1934), 47 U.S.C. § 153 (h) (1946); *Sta-Shine Products Co. v. Station WGBB*, 188 I.C.C. 271 (1932).

19. Section 18 of the Radio Act as originally proposed contained a provision making radio stations common carriers with respect to political broadcasts. See note 12 *supra*. Although this proviso was deleted, the view was expressed that the bill as passed made stations common carriers with regard to political candidates, once one candidate had been offered the opportunity to speak. 67 CONG. REC. 12501-3 (1926).

20. As a general rule, newspapers are strictly accountable for everything they publish. *Peck v. Tribune Co.*, 214 U.S. 185 (1909); *Donnelly*, *supra* note 7, at 19. Professor

far more vulnerable. Even assuming the Nebraska court's view that Section 315 is not absolute in its prohibition, it seems relevant that the licensee must face problems which do not plague the newspaper: a radio station cannot guard completely against impromptu remarks,²¹ and local outlets carrying programs of a national chain have little control over the material which is broadcast.²²

The prospect that this conflict will be resolved by a Supreme Court decision is not immediate, since judicial review of the *Port Huron* opinion was precluded by the fact that the station's license was renewed. And in the absence of a Supreme Court decision approving the Commission's interpretation of Section 315, stations may be liable in the courts for the broadcast of defamatory material.²³ Indeed, the Attorney General of Texas has

Vold, who submitted an *amicus curiae* brief in the *Sorensen* case, has been one of the staunchest advocates of holding radio stations to the same standard of liability. Vold, *supra* note 17, at 637-9, 644-8; see also Keller, *supra* note 17, at 153-62.

Radio stations have also been analogized to telephones, telegraphs, news vendors, and public address systems in a hall. And the arguments for and against these analogies are marshalled, but no conclusion is drawn in Comment, *Libel and Slander, supra* note 17, at 1006-1010.

21. Vold, *supra* note 17, and Keller, *supra* note 17, contend that stations have sufficient control over impromptu remarks with the automatic turn-off switch. Usually, however, the damage is done before the switch can be thrown.

That the problem of impromptu remarks requires rejection of the newspaper analogy was asserted in *Summit Hotel Co. v. N.B.C.*, 336 Pa. 182, 8 A.2d 302 (1939). *Accord*, *Kelly v. Hoffman*, 61 A.2d 143 (N.J.Ct.Err. & App. 1948). See also McCLELLAN, *CENSORSHIP OF RADIO BROADCASTS* 63-6 (Dissertation Submitted to and Accepted by Georgetown Law School 1938, copy in Yale Law School Library); Kadin, *Administrative Censorship: A Study of the Mails, Motion Pictures, and Radio Broadcasting*, 19 B.U.L. REV. 533, 579 (1939).

It should also be borne in mind that the use of a switch for deleting impromptu remarks raises the same legal problems as are inherent in deletion from a prepared manuscript.

22. Section 315 seems applicable to a local station carrying programs of a national chain. Once the local has transmitted the speech of a single candidate, apparently it will be obliged to carry talks by all other candidates for the same office. However, if the local does not broadcast the first speech over the national hookup, but does broadcast a subsequent address by another candidate, a peculiar question arises as to the ability of the first speaker to force a rebroadcast of his speech.

While the courts have as yet not faced the particular question of a local outlet's liability for defamatory publications originated elsewhere, stations may in some states be held liable without fault. See note 2 *supra*. Absolute liability was imposed in a somewhat analogous situation in *Coffey v. Midland Broadcasting Co.*, 8 F.Supp. 839 (Mo. 1934) (radio station held liable when speaker, broadcasting via telephonic connection, inserted ad lib remark).

23. See Lee, *Legislative and Administrative Regulations*, 29 GEO. L.J. 1, 24-5 (1940); Morgenthau, *Implied Regulatory Powers in Administrative Law*, 28 IOWA L. REV. 575, 582 (1943).

In reviewing *Sorensen v. Wood*, note 9 *supra*, the Supreme Court dismissed the appeal because the decision was supported by an adequate non-federal ground. It is possible that both state and lower federal courts will construe this dismissal as authorizing the

already announced that Texas will not follow the decision,²⁴ and a three-judge federal district court in Texas has stated that the interpretation does not have the effect of law, but is merely an expression of the view that the Commission has consistently advocated to Congress.²⁵

Radio stations originating broadcasts, however, can take a few steps to mitigate their unenviable position.²⁶ Submission of a script in advance can be required²⁷ with the hope that the speaker, reluctant to subject himself to liability, will delete material which the station considers defamatory.²⁸ Furthermore, nothing in the Act or in the *Port Huron* decision prevents a station from requiring that an indemnity bond be posted by each political candidate using its facilities. Local stations receiving and transmitting

imposition of state defamation liability on radio stations until the Supreme Court or Congress authoritatively clarifies § 315.

24. While acknowledging the power of the Federal Government to grant immunity from state libel and slander law, the Attorney General of Texas believes that Congress has not exercised such power. Statement of C. K. Richards, Ass't Attorney General of Texas, *Hearings Before Select Committee of the House of Representatives to Investigate the Federal Communications Commission*, 80th Cong., 2d Sess. 41-2 (1948).

25. See *Houston Post Co. v. United States*, 79 F.Supp. 199, 204 (S.D. Tex. 1948) (dismissed on jurisdictional grounds).

26. The provision of § 315 allowing the broadcaster to refuse time to all candidates is an illusory escape from the dilemma. Such a course of action would appear contrary to the public interest and might cost the station its license. Cf. *Homer P. Rainey*, Dkt. No. 7666, 3 PIKE & FISCHER, RADIO REG., 737 (1947).

27. Cf. *Rose v. Brown*, 186 Misc. 553, 58 N.Y.S.2d 654 (Sup.Ct. 1945); *MOSEK & LEVINE*, *op. cit. supra* note 2.

28. The general policy of radio stations prior to the *Port Huron* decision was to demand submission of all scripts in advance. The scripts were read by counsel and if defamatory material was found, the speaker was so informed. If the speaker did not delete, he would be refused time to speak. See statements of W. T. Pierson, Washington counsel for ten radio stations throughout the country, and Don Petty, general counsel of the N.A.B., in *Hearings Before Select Committee of the House of Representatives to Investigate the Federal Communications Commission*, 80th Cong., 2d Sess., 36-9, 73 (1948). See also the statement of Governor Hobby, president of station KPRC Houston, Texas, Transcript of Evidence pp. 67-8, *The Houston Post Co. v. United States and FCC*, 79 F.Supp. 199 (S.D. Tex. 1948).

In most instances the candidate has been willing to delete. If he refuses and is denied time, he will usually let the matter drop after reporting the station to the FCC, which, to date, has not failed to renew a license because of censorship by the station.

In the files of the FCC are many reports of station censorship. One example of the gross misapplication of the *Sorensen* case involved the owner of the only radio station and newspaper in a small west coast town. As candidate for mayor of the town, he had campaigned by radio. The other candidate for the office was denied the use of the radio station because of alleged defamatory statements aimed at the newspaper.

In *Rose v. Brown*, 186 Misc. 553, 58 N.Y.S.2d 654 (Sup. Ct. 1945), the court held that a broadcasting station cannot be compelled under a broadcasting contract, to transmit a broadcast, any part of the script of which may reasonably be construed as subjecting the station to liability for libel or slander. Radio stations cannot, however, refuse to broadcast after entering into a contract, where the party speaking honestly makes adverse characterizations respecting those in activities tinged with public interest.

broadcasts, however, can do little but trust in the originator and insure against liability.²⁹

Even considering the trend away from strict liability for defamation in recent cases³⁰ and statutes,³¹ and the fact that the FCC rarely fails to renew a license,³² the broadcaster's position is precarious.³³ The most clear-cut

29. The effect of the *Port Huron* decision on the availability and rates of insurance has not as yet been determined. One type of policy in widespread use excluded any risk in violation of state law; another stipulated that scripts of political speeches must be received in advance, and that due care must be exercised in selection to eliminate possibilities of libel and slander. The rates to cover the risk here involved are often very high. See statement of W. T. Pierson, *supra* note 28, at 36-7. See also, Donnelly, *supra* note 7, at 21n.43.

30. Some courts have refused to hold broadcasters liable for impromptu defamatory remarks. *Summit Hotel Co. v. N.B.C.*, 336 Pa. 182, 8 A.2d 302 (1939); *Kelly v. Hoffman*, 61 A.2d 143 (N.J. 1948).

31. Some states statutes have been amended to give radio stations absolute immunity from the consequences of remarks made by political speakers where censorship is not allowed, or to make broadcasters liable only where negligent. ILL. STAT. ANN. c. 38, § 404.1-2 (Smith-Hurd 1948), amending ILL. REV. STAT. c. 126, § 4 (Bar Ass'n 1937); WASH. REV. STAT. § 998-1 (Remington Supp. 1943), amending WASH. REV. STAT. §§ 2424-34 (Remington 1932) so as to overrule *Miles v. Louis Wasmer Inc.*, 172 Wash. 466, 20 P.2d 847 (1933).

32. Comment, *Radio Controls: A Network of Inadequacy*, 57 YALE L.J. 275, 230n.26 (1947). Chairman Coy has stated that if another case came before the Commission with facts similar to those in the *Port Huron* case, the license would again be renewed. *Hearings Before the Select Committee of the House of Representatives to Investigate the Federal Communications Commission*, 80th Cong., 2d Sess. 12 (1948). In fact, although Station WGOV, Valdosta, Georgia, refused speaking time to a candidate because of the defamatory character of his script, its license was renewed subsequent to the *Port Huron* decision, on August 4, 1948, without opinion.

The hesitancy of the FCC to revoke, or fail to renew, a license has been due to the severity of this sanction. The only other sanction available to the Commission is a criminal prosecution. 48 STAT. 1100-1 (1934), 47 U.S.C. §§ 501-2 (1946). Because both sanctions are severe the Commission has usually let a station go unpunished for minor infractions of the Communications Act. It has been proposed that the FCC be given power to issue cease and desist orders, a power which would promote its efficiency. S. 1333 (as amended), § 12 (b), 80th Cong., 1st Sess. (1948).

The Commission confines its suppression actions almost exclusively to renewal applications, throwing the burden on the licensee of proving himself innocent before he can become entitled to license renewal. For criticism of this procedure, see McCLELLAN, *op. cit. supra* note 21, at 58. Commission policy as to the responsibilities of radio stations has previously been enunciated in dicta in decisions wherein the license was renewed. *Mayflower Broadcasting Corp.*, 8 F.C.C. 333 (1941) (prohibiting editorializing). The FCC has also published a booklet setting forth its desires with respect to program content and chain broadcasting. FCC, PUBLIC SERVICE RESPONSIBILITY OF BROADCAST LICENCEES (referred to as the *Blue Book*) (1946). The *Blue Book* was held not reviewable since it was not agency action. *Hearst Radio, Inc. v. FCC*, 167 F.2d 225 (App.D.C. 1947).

33. Although the dicta in the *Port Huron* decision is denominated as merely statutory interpretation by the FCC, to the licensee it constitutes a rule or regulation. Consequently, the licensee risks his license, if he should censor. Statement of Don Petty, *supra* note 28, at 74. The FCC has the power to grant, deny, revoke, or refuse to renew a

solution to his dilemma would be Congressional amendment explicitly incorporating either the *Sorensen* or *Port Huron* rule into the statute.

If the *Sorensen* rule is adopted, the stations will remain subject to liability, and will carefully inspect all scripts before allowing them to be broadcast. The threat of liability is salutary in that it requires a station to use its own objectivity and expertise to delete defamatory matter, which otherwise, where speakers were reckless or financially irresponsible, might be broadcast. But an unfortunate result of the rule is that stations may, in some jurisdictions, be held liable for impromptu remarks over which they have no real control. And since irresponsible candidates may frequently be found in small towns, where almost anyone can be a candidate, the risk of liability is greatest in the case of the small local stations which have the least expertise and resources. With rates for insurance, where available, dependent on the risk involved, the station least able to afford it must pay disproportionately high premiums. Furthermore, and perhaps more important, the power to delete coupled with the threat of liability will cause more remarks to be eliminated than would be considered defamatory by a court of law.³⁴ Since questions of personal integrity often are the principal areas of contention in political campaigns, much of the most telling criticism, even where true, will presumably be censored by the stations in the name of caution. Under the same stated policy, some stations might discriminate between candidates in deleting supposedly defamatory matter. And unless a sustained policy of over-caution or clear discrimination could be shown, the FCC would hesitate to use its most readily available sanction—the extreme penalty of denial of license renewal.³⁵

If the *Port Huron* rule were adopted, the denial of a defamed party's surest remedy and the removal of the most effective deterrent to defamation would undoubtedly cause some hardship. But the injured party is not, of course, without a remedy, for he may still sue the candidate. While the latter may be financially irresponsible, he cannot as a political candidate

license in accordance with the standard set up by Congress: "public convenience, interest, or necessity." 48 STAT. 1083 (1934), 47 U.S.C. § 307 (a) (1946). Unless administrative interpretations are challenged in the courts, they become the law, and those who are subject to their administration are forced to comply with them. NAT. ASS'N OF BROADCASTERS, BROADCASTING AND THE BILL OF RIGHTS 25-31 (1948). The fact that the Commission has not previously dealt drastically with offenders does not bind it, as a matter of law, to follow that policy of leniency in the future. FCC v. WOKO, Inc., 329 U.S. 223 (1946).

34. Even where censorship is performed impartially, the cautious tendencies of licensees cause them to delete more statements than those actually defamatory at law. See Statement of W.T. Pierson, *supra* note 28, at 39.

35. See note 32 *supra*. If the FCC desires to revoke a license, it would have the burden of proof, a burden which it seeks to avoid. The only other sanction available is a criminal prosecution promulgated by the Attorney General. This alternative involves at least an equal burden of proof. The Commission would more adequately be able to control the unrestricted censorship under the *Sorensen* rule, if it were provided with some mean process, such as the power to issue cease and desist orders.