

of smoking and urging persons to cease. But the distinction seems paper thin, particularly since nothing in the way the fairness doctrine has been applied in other contexts suggests that the presence or absence of governmental action or the element of public health or welfare is of decisive importance. And even if it is, the ruling still has endless ramifications considering the almost limitless range of issues with which the Government is concerned. For example does the advertising of vitamin supplements require a station to give air time to Dr. Goddard to present the FDA's views on the questionable need for such supplements?

I might add another example. Does the advertising of beer in States where the sale of beer is forbidden to minors—and I take it that it is in all States—constitute a controversial public issue as to which fair rebuttal time must be given, on the theory that the broadcast station has not discriminated between those who can and those who cannot legally buy beer in putting its advertising message on the air?

The cigarette ruling also presents the interesting question whether a station which carries antismoking public service announcements, or other antismoking programming of any kind, does not then have to present the prosmoking side. The Commission has indicated that if the station carries cigarette advertising the prosmoking side of the "issue" is sufficiently presented. However, if the station does not carry such advertising, the Commission has stated that this is "governed by the same principles as are applicable generally under the 'fairness doctrine.'" <sup>25</sup> Which, I interpret to mean that the station could not present antismoking health announcements without also presenting the prosmoking side of the "issue." This has the dubious virtue of logical consistency, but it seems to me only to demonstrate the ultimate artificiality of the fairness doctrine, as it is being currently applied.

Unlike the sweeping scope of the general fairness doctrine as applied to controversial issues, the personal attack rules are somewhat more limited in scope, even if more rigid in their requirements.

But even here there are difficulties in knowing when and how far the concept of personal attack extends. There are probably not a few people who considered that President Johnson's characterization of Senator McCarthy's candidacy as a "Kennedy-McCarthy movement" and his query as to "the effect upon the American people of these maneuverings" as an attack upon the "honesty, character, and integrity" of Senator McCarthy. But the Commission thought not. <sup>26</sup>

Evidently something more strongly critical is required.

We are told, for example, that accusing the John Birch Society of resorting to "physical abuse and violence" and "local terror campaigns against opposition figures" among other things, qualifies as a personal attack. <sup>27</sup> But would it be an attack simply to name someone as a member of the John Birch Society? The Commission has ruled that a charge that a group is Communist is. <sup>28</sup>

But where should we look for standards? We could look to the law of defamation. Many if not most of the attacks on which the Commission has ruled thus far would probably qualify as libelous.

<sup>25</sup> See Tobacco Institute, Inc., 11 P. & F. Radio Regulation 2d 987 (1967).

<sup>26</sup> Blair Clark, 12 P. & F. Radio Regulation 2d 106 (1968).

<sup>27</sup> University of Houston, 12 P. & F. Radio Regulation 2d 179 (1968).

<sup>28</sup> Storer Broadcasting, 12 P. & F. Radio Regulation 2d 179 (1968).