

also accorded free time. Otherwise the candidate must be charged at the same rate as his opponent. In contrast, the obligation to present contrasting views on issues of public importance is independent of sponsorship or lack thereof; if sponsorship is unavailable, they must be presented on a sustaining basis.

### *Editorializing*

This term, as used herein, refers to a statement reflecting the views of the station licensee or network, which is identified as such. Such statements often involve such uncontroversial subject matter as traffic safety or regular church attendance. They may also, of course, involve quite controversial issues or political endorsements. The term "editorializing" itself, however, has a neutral import, and does not necessarily signify an expression on a controversial subject.

### *Personal attack*

According to the FCC, this refers to an attack made upon the "honesty, character, integrity, or like personal qualities of an identified person or group" which occurs "during the presentation of views on a controversial issue of public importance." This language seems designed to exclude purely private or petty feuds and disputes. The definition is thus limited to situations where, either because of the position or reputation of the victim of the attack, the attack itself takes on the weight of a public issue.

## B. DESCRIPTION OF THE FAIRNESS DOCTRINE

### (1) *FCC definition*

The FCC has described the doctrine as follows:

The Commission's "Fairness doctrine," first enunciated in its 1949 "Report on Editorializing by Broadcast Licensees," requires, in short, that when a broadcast station presents one side of a controversial issue of public importance reasonable opportunity must be afforded for the presentation of contrasting views.<sup>3</sup>

While the Fairness Doctrine is susceptible to such short descriptions as the above, its application has raised many problems and legal issues. The recent application of the doctrine to cigarette commercials, which has already been mentioned, is one example.

The term Fairness Doctrine itself has reference to the Commission's 1949 *Editorializing Report*.<sup>4</sup> As a policy of broadcast regulation however, what has now become known as the Fairness Doctrine seems to have been applied, in one form or another, for almost 40 years by both the FCC and its predecessor, the Federal Radio Commission.<sup>5</sup>

This memorandum will not attempt to draw any conclusions from the absence of any congressional action specifically intended to overrule the policy of the FRC and the FCC in this area. This involves the principle of statutory construction that the failure of a legislature to express disapproval can bolster an administrative or judicial

<sup>3</sup> FCC 32nd annual report fiscal year 1966, page 90.

<sup>4</sup> *Editorializing by Broadcast Licensees*, 25 R.R. 1901 (1949).

<sup>5</sup> The 1929 Annual Report of the Federal Radio Commission states: "It would not be fair, indeed, it would not be good service to the public, to allow a one-sided presentation of political issues of a campaign. Insofar as the program consists of discussion of public questions, public interest requires amply play for the fair and free competition of opposing views, and the Commission believes that the principle applies not only to addresses of political candidates but to discussion of issues of importance to the public" (page 33).