BROADCAST REGULATION

Selected Cases and Decisions, Second Edition

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PREFACE

With rapid technological changes in national and global communications; entertainment and communications have become very specialized fields. Within copyright, contracts, tax, labor law, antitrust and tort law are considerable issues which will affect the electronic media. These issues are of increasing import to decision-making management, media practitioners, and students for they will impact upon custom and practice in the electronic media industry.

Managers and their staffs must rely upon each other knowing, understanding and applying the myriad legal principles that are imposed upon daily operations. That such reliance may be misplaced at times is illustrated by cases which indicate at best a lack of understanding or, at worst; human nature. This book is designed to develop recognition of these problems so they may be prevented.

When Congress passed the Radio Act of 1927, the Department of Commerce had already regulated the infant broadcast industry for six years. Most of the regulatory activity was devoted to preventing interference among stations. However, the Commerce Department began to regulate content when it determined in 1923 that stations which used live, local programming would get preferential treatment in power and frequency. Yet, most congressman understood the Radio Act of 1927 gave the Federal Radio Commission power to regulate to prevent radio interference only.

From 1930 on, however, both the Federal Radio Commission and the Federal Communications Commission gave increasing attention to program content and to factors affecting the availability of programming.

This attention may have occurred in part because questionable practices become more frequent, but often it was a result of the personality of the agency. While the issues which dominate have constantly evolved the FCC has pursued these issues with varying degrees of attention. At times one particular issue

will dominate and then attention will be diverted into another area. The FCC is also much like the IRS, in that it can more easily deal with a few at a time, so uses these few as examples for the many who may be pursuing the same policy.

Another reason for changing regulation is changing conditions. For example, recorded music was frowned upon by the Department of Commerce, the FRC and later the FCC. However, when TV came along and most radio stations switched to recordings to survive the FCC had to recognize that changing environment. The current regulatory changes, or reregulation, are a result of the rapidly expanding technological development in the electronic media and are an effort to accommodate those changes.

The Communications Act of 1934, §326, specifically prohibits censorship of programs by the FCC. Presumably this prevents the agency from taking any action relating to programs or the content of broadcast materials. However, §307 requires the FCC to grant licenses only if such a grant will serve the "public's interest, convenience or necessity". Therefore varying degrees of attention are given to the type of programs provided. The FCC, backed by the courts, makes a nice distinction between a station's collective program offerings and specific programs. It has been interpreted that censorship only refers to "previous restraint". So general programming may be considered after it has been offered and even individual programs may be considered when passing upon license renewal. This results in a "Sword of Damocles" situation where the licensee does not know if he or she is making the "right" decision until hearing about it. That is why understanding the precedents, or previous actions which have been taken by the FCC is necessary for survival.

Broadcasting falls under the 1st Amendment to the Constitution. But this is interpreted to mean that the average individual does not automatically have the right to use broadcast facilities for the transmission of his or her ideas. Congress cannot give the right to censor to a governmental agency and so that right is given to the private individual or company which controls the license of the broadcast outlet. The only requirement is that if an issue is raised it must be dealt with fairly. Which means, that if the

issue is not raised no side need be heard. What could be fairer However, the licensee must be reasonable in determining if an issue should be broadcast. The FCC can then determine whether it was reasonable after the decision is made. This is not censorship. An exception is that no licensee may censor the politician who has written the law under which the licensee operates.

The biggest problem facing electronic media managers is learning what is currently permissible. A station manager recently remarked that his family wanted him to be an attorney. He said the closest was becoming a broadcast manager. Facing this broadcast operator are pressure groups, advertising pressures, the unorganized and sometimes organized audience, ownership policies, community mores, and legal and financial responsibilities.

The recent elimination of many policies dating back decades does not seem to have given our manager any greater ease of mind. In eliminating various policies and regulations the FCC has clearly noted that it was not abandoning its traditional concerns. Some of those concerns are mandated by the Communications Act of 1934; such as the character qualifications of its licensees. Also, the FCC has been delegated the authority of Congress. In turn, the FCC has delegated some of that authority as more appropriately the concern of other agencies set up by Congress. Therefore, our manager must now not only keep watch over the FCC but must be sensitive to the Federal Trade Commission, the Equal Employment Opportunity Commission, the Copyright Office, the National Labor Relations Board, etc., etc.

To best utilize this work it might be useful to pose a series of questions which deal with an issue in a problem area. The answer can then be sought by reading the various cases which have dealt with that problem. A sample series of questions is available from the author for any instructor who adopts this book for his course. The organization of this work lends itself to both an historical overview of the development of legal principles as well as to supplying the quick answer and reference. Basic public policy issues underlying the areas treated can be covered in lecture or supplemental material.

Citations are from court decisions, FCC Reports, various looseleaf services such as Pike and Fischer Radio Regulations (RR) and trade and copyright reporting services. It is hoped that enough references are cited from a wide-range of sources so that even modest libraries can provide research facilities if further in-depth study is desired. However, this book is designed to stand alone as far as the basics. Up-to-date information is provided, but this book is not a rendering of legal services.

It is possible that the FCC is affecting a better balance between broadcasters and the public with their rationale that other agencies can more properly handle some issues rather than the FCC. Remember, the concerns are still present and the FCC has stated that it will take notice of any actions by other agencies as reflecting upon the character of the licensee.

BROADCAST-CABLE REGULATION
SELECTED CASES, OPINIONS, MEMORANDA

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5. **WCOT's License Renewal Denied for Editorial Practices,** FRC., 2nd Annual Report, p. 152-3 (1928; Arno Press re-print)

6. **WCRW License Renewal Is Denied Based on Over - commercialization,** (see Blue Book), Fed. Communications Commission, Public Service Responsibility of Broadcast Licensees., p. 41, (1946)

7. **Great Lakes Application Opinion, 'Need for Balanced Program Structure,** 'Service to Entire Public,' Great Lakes v. FRC (D. 4900, 1928), see P&F, Digest (2), 53:253, 254

8. **FRC Asserts Right to Consider Program Service,** FRC 2nd Annual Report (1928)

9. **Schaeffer Case,** 'Licensee responsibility for the content of sponsored p'g'ms, profanity utterance punishable under Act of 1927,' Duncan v. US, 48 F. 2d 128 (Cir. Ct. App. 9th, 1931)

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14. **KMBC Defamation on Network Program,** 'An affiliated station is liable for defamation carried in network program,' Coffey v. Midland, 8 F. Supp., 889 (West D-Mo., 1934)

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20. **WOCL Baseball Recreation,** 'Recreating an event is not rebroadcasting,' Newton, 2 FCC 281 (1936)

21. **WGBZ "Texas Crystal Salts" and Speculative Stock Ads.,** 'License revocation based in part on fraudulent advertising,' WGBZ, 2 FCC 599 (1936)

22. **KFRC Marmola Diet Ads.,** 'It's station's responsibility to investigate accuracy of ad claims,' Don Lee Broadcasting Co., 2 FCC 642 (1936)

23. **WRBL Information Concerning Lottery,** 'Broadcasting information concerning lottery violation of Act, (changed, see 294),' WRBL, 2 FCC 687 (1936)

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27. **Louis-Farr Rights to Fight B'cast,** 'Unauthorized use of information and exclusive rights were sold to others,' 20th Cent. Sporting Club v. Transradio, 300 NYS 159 (1937)

28. **Mae West Objectionable Language,** 'It's Network and Station's responsibility for objectionable language,' News stories: Broadcasting, 20 Dec. (1937), 25 Jan. (1938)

29. **KVOS Licensee Control over News Programs,** 'Possible transfer of control over contents of news programming,' KVOS, 6 FCC 22 (1938)

30. **WMBQ Merchants Association Lottery Drawing,** 'License renewal denied, in part, due to carrying information concerning lottery,' Metro, 5 FCC 501 (1938)

31. **Beyond the Horizon Profane Language,** 'Decries use of profane language in network broadcast,' News Story: Broadcasting, 15 Oct. p. 22 (1938)

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33. **KMPC 'Basic Science' Institute,** 'It's station's responsibility to check accuracy of advertising claims,' KMPC, 6 FCC 729; 7 FCC 449 (1939)

34. **FCC 1939 Memo,** 'Decried Undesireable Program Materials,' Variety, 8 March p. 40 (1939), for alcoholic beverage advertising, (see 600); see Letter to Senator Edwin C. Johnson, released, 43 FCC 446 (Aug. 5, 1949)

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38. **Sander's Bros. Economic Injury,** 'FCC right to consider economic injury to station when considering granting another license in same community,' Sanders v. FCC, 103 F. 2d 395 (1939); 309 US 470 (1940)

39. **Misrepresentations in License Application,** 'Deletion', WSAL, 8 FCC 34 (1940)

40. **KIEV Compares Promise v. Performance,** 'FCC calls for programming in line with application promises,' Cannon System Ltd., 8 FCC 207 (1940)

41. **'Painted Dreams' Rights to Soap Opera,** 'In the absence of any definite contractual provision to the contrary, literary materials developed by Irna Phillips, employee, on company. time are considered property of employer,' Phillips v. WGN, 307 Ill. App. 1, 29 NE 2d 849 (1940)

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43. **Mr. District Attorney Program Rights,** 'Rights to program developed by employee prior to employment belong to employee,' Cole v. Phillips H. Lord, 28 NYS 2d 404 (1941)

44. **Muzak 'World Series' Feed,** 'Unfair competition violates property rights using play-by-play materials already broadcast,' Mutual v. Muzak, 30 NYS 2d 419 (1941)

45. **Written Word is Libel for Its' Permanence;** 'Extraneous defamatory remarks in radio script are slander, not libel,' (changed, see 40l)' Locke v. Gibbons, 164 NY Misc. 877 (1937)

46. **Qualified Privileged Broadcast,** 'District Attorney's remarks in broadcast of actual murder trial are privileged and not actionable slander,' Irwin v. Ashurst, 158 Ore. 61 (1938)

47. **WMCA Qualified Privilege Claim is Disallowed as,** 'Just because sponsored is insufficient for station to claim qualified privilege,' 15 NY Supp. 2d 193 (1939)

48. **WELL 'Share Profits' Management Contract,** 'Transfer of control aspects of management contract,' Federated Publications, 9 FCC 150 (1942)

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51. **NBC Blue Network Sale,** 'Duopoly Rule forced NBC to sell 'Blue'; Sale conditions: No Policy barring sale of time for controversy required,' RCA and ABS, 10 FCC 212 (1943)

52. **WHKC Labor Union Sponsorship of Controversy OK,** 'There should be no policy barring sale of time to unions for discussions of controversial issues as, absent a compelling state interest a corporation cannot be barred from influencing a public issue. However, neither may compel members or employees to contribute money,' (see 121), United Broadcasting, 10 FCC 515 (1945); First National Bank of Boston v. Belloti, 435 US 765 (1978)

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58. **Scott Atheist Time Demand,** 'Station has an obligation to air unpopular views,' 'later modification,' Scott, 11 FCC 377, 3 RR 259; 5 RR 59 (1946)

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67. **Port Huron Ruling,** 'Station does not have right to censor talk by political candidate even if defamatory and so not liable for such remarks,' Port Huron Broadcasting, 12 FCC 1069, 4 RR 1 (1948)

68. **Non-newspaper Preference over Newspaper,** 'Daily News-NY loses license in comparative hearing because of newspaper ownership, FCC goal is diversity, also residents of community preferred, etc.' News Syndicate, 12 FCC 805, 4 RR 205 (1948)

69. **WWDC Racetrack Broadcasts,** 'Racetrack broadcasts not desireable programming if promotes gambling,' Capitol, 4 RR 21, 12 FCC 648 (1948)

70. **WSAY Network Service Right,** 'Station cannot compel network to provide service,' Federal Broadcasting Co. v. ABC, 167 F. 2d 349, 4 RR 2019, 335 US 821 (1948)

71. **KRLD Primary and Regular Elections Separable,** 'Equal opportunities applies only to same office and same election,' Sam Morris, 4 RR 885 (1948)

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77. **WAAT Rights to Program Title,** 'Rival station restrained from using title of program identified with WAAT,' Bremer Broadcasting v. NJ Broadcasting (NJ Sup. Ct), Docket C-793-49 (1949)

78. **Birmingham Program Plans Decision,** 'FCC not engaged in censorship when comparing plans of rival applicants,' Johnston Broadcasting, 3 RR 1784 (1947); 175 F. 2d 351, 4 RR 2138 (1949)

79. **Peterson Privacy Case,** 'No violation of employed entertainer property rights by broadcast of film of act if broadcast rights not retained by entertainer,' (see 324), Peterson v. KMTR, LA Sup. Ct. 557555 (1949)

80. **Mayflower Opinion Reversed,** 'Broadcasters may editorialize on condition facilities available to spokesman of opposing viewpoints,' 13 FCC 1246, 1 RR 91, 201 (1949)

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82. **Mansfield Unfair Practices of Newspaper,** 'FCC has right to consider monopolistic and unfair ad practices of newspaper applicant,' Fostoria, 3 RR 2014a (1948); Mansfield v. FCC, 180 F. 2d 28, 5 RR 2074e, 13 FCC 23 (1950)

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94. **Pennsylvania No Censorship of Films on TV,** 'State cannot have right to pass on films shown over TV,' DuMont v. Carroll, 5 RR 2053 (1949); 6 RR 2045 (1950); 86 F. Supp. 813, affirmed 184 F. 2d 153 (1950), 340 US 939, cert. denied (1951)

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107. **Schneider Fringe Candidate,** 'Even fringe candidate with less than 1% of primary vote entitled to equal time,' CBS, 7 RR 1189 (1952)

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119. **Autry-Rogers Television Rights for Theatrical Film,** 'Actor's right to restrict use of film for television depends on contract provisions,' Rogers v. Republic Pictures., US Dist. Ct. (S.D.-Calif.), 7 RR 2072; Autry. (CA 9th), 213 F. (2d) 662, 10 RR 2059 (1954); Autry., 213 F. 2d 667, 10 RR 2063 (1954); Rogers., 348 US 858, cert. denied (1954)

120. **Bernstein Right of Privacy of Former Convict,** 'Widely publicized criminal proceeding does not lose its status as matter of legitimate public interest even after eight years; dramatization permitted,' Bernstein v. NBC, 129 F. Supp. 817, 11 RR 2091 (1954)

121. **WJBK-TV, Appearance of Candidate Sponsored by Union,** 'Union dues cannot be used to influence electorate, but union members may contribute to a fund as state is barred from restraining labor unions and others from expressing

viewpoints,' Fed. Corrupt Practices Act, US v. UAW, 138 F. Supp. 53, reversed 352 U.S. 567; 15 RR 2018 (1957)

122. **Fass Pirating of Baseball Play-by-Play,** 'Broadcast of play-by-play cannot be used or resold as would violate property rights,' National Exhibition v. Fass, 143 NYS 2d 767, 11 RR 2086 (1955)

123. **Mobile Sponsored Religious Programs,** 'Commercial sponsorship of religious programs not inherently objectionable or against public interest,' WKRG, 10 RR 225 (1955)

124. **Jacova Privacy of Spectator Decision,** 'Spectator at newsworthy event loses right of privacy,' Jacova v. Southern, 83 So. 2d 34, 13 RR 2001 (1955)

125. **Ettore Right of Privacy,** 'Public performance does not remove all rights of privacy,' Ettore v. Philco, 229 F. 2d 481, 13 RR 2107, 351 US 926, cert. denied (1956)

126. **McClatchy Newspaper Applicant Discrimination,** 'Apparently, even superior performance as owner insufficient for newspaper applicant in competitive hearing,' McClatchy, 9 RR 1190 (1954); 239 F. 2d 15, 13 RR 2067 (1956); 353 US 918, cert. denied (1957)

127. **Legality of FCC Multiple-Ownership Regulations,** 'FCC has right to limit number of stations owned by one owner,' Storer,'220 F. 2d 204, 11 RR 2053 (1955); US v. Storer, 351 US 192; 13 RR 2161 (1956)

128. **Eisenhower Talk During Political Campaign,** 'State paper- type talk does not entitle opponents to equal time even during campaign,' CBS, 14 RR 720 (1956)

129. **Kansas City Star Anti-trust Violations,** 'Newspaper guilty of unfair practices divested of stations,' Kansas City Star, 240 F. 2d 643 (1957); 354 US 923, cert. denied. (1957)

130. **Blondy Equal Time for News-Film,** 'No right to equal time on basis of appearance by candidate in news if not initiated by candidate,' Letter to Blondy, 6 Feb. (1957)

131. **Play Marco Lottery Decision,** 'Calling at place of business does not constitute consideration,' Caples, 13 RR 1154 (1956); Caples v. US, 15 RR 2005 (1957)

132. **Albany Transfer of Network Affiliation,** 'Change in affiliation not contrary to antitrust Act,' Van Curler v. FCC. (DC App.), 12 RR 2040 (1955); Rosenblum, 22 FCC 1432; 11 RR 825, 12 RR 283; 13 RR 49 (1957)

133. **Wyatt Earp Name Rights,** 'Commercial values in name created by TV series belong to owners of series,' W. Earp Enterprises v. Sachman (SDNY), 16 RR 2034, (1958)

134. **WSAY Blanket Rebroadcasting Right,** 'Station has right to refuse blanket rebroadcasting permission,' 24 FCC 147 (1958); 26 FCC 178 (1959); 225 F. 2d 560 (1955); 14 RR 150 (1959)

135. **Jack Benny Gaslight Burlesque,** 'TV parody of play, is a copyright infringement,'Loew's v. CBS, 131 F. Supp. 165, 12 RR 2077 (1955); CBS v. Loew's (C.A. 9th,) 239 F. 2d 532, 14 RR 2075 (1956); CBS v. Loew's, 356 US 43, all affirmed (1958)

136. **Anti-Pay TV Editorials,** 'Don't broadcast editorials without offering time to opponents; Don't use own employees to support opponents points when editorializing,' Alabama Broadcasting, Inc., 17 RR 273 (1958)

137. **Carroll Economic Injury,** 'Effect of a new station upon the quality of service provided listeners considered. Sander's (38) Economic Injury was based upon effect of new station upon other stations. Ct. of App. remanded case to FCC, which determined that burden of proof lies with protester and was a heavy one. Both industry and FCC unhappy at widening of considerations into economic comparison of business operations,' Carroll v. FCC, 258 F. 2d 440 (1958), 27 FCC 161 (1959)

138. **Lamb Defamation in Candidate's Talk,** 'Station not liable for talk by candidate,' Lamb v. Sutton, et. al. (MD Tn.), 164 F. Supp. 928, 17 RR 2099 (1958), (see 145)

139. **Patterson-Harris B'cast as News,** 'Right to broadcast fight 'Summaries' from Press Association as news,' WOR, WINS, WOV, News Story: Broadcasting, 25 Aug. p. 60 (1958)

140. **Non-ID of Supplied Kohler Strike Films,** 'Station's should have ID'd source of films of strike,' KSTP, 17 RR 553; Storer, 17 RR 556a; Westinghouse, 17 RR 556d (1958)

141. **Candidate Must Appear in Person,** 'Candidate A newscaster, Candidate B applies for equal time; FCC gives equal time (several weeks) as used by A; B can't use all; FCC says must use personally, no representative,' Grace, 17 RR 697 (1958)

142. **Gaines Revocation,** 'Violation of regulations while manager of 'other' station reflects on character,' 25 FCC 1387, 16 RR 159; 17 RR 163 (1958)

143. **Radio 'Price-fixing' Decision,** 'Association of station's setting rates is price-fixing,' US v. Phil. Radio & TV Broadcaster's Assoc. (ED Pa.), 18 RR 2009 (1958)

144. **Hintz Privacy of Witness in Congressional Hearing,** 'No right of privacy in Congressional Hearings,' US v. Hintz, 193 F. Supp. 325; 21 RR 2021 (1961)

145. **WDAY-TV Libel By Candidate,** 'Supreme Ct. decided station cannot Be liable for broadcast by political candidate,' Farmers' Union v. Townley (ND Dist. Ct.) (1957); 15 RR 2058 (1957) Farmer's v. WDAY (ND Sup. Ct.), 89 NW 2d 102, 17 RR 2001 (1958); Farmer's v. WDAY, 360 US 525, 18 RR 2135 (1959), (see 216)

146. **FCC Political Rules Amendments,** 'Requests for equal time must be submitted within one week of day reply proposed; must prove legally qualified candidate,' Rule 73.120; 1940(e)

147. **Price is Right Property Rights,** 'Royalties on program property used must be paid,' News Story: Variety, 15 July p. 35 (1959)

148. **FCC Ban on Teaser Announcements,** 'FCC Memo: Teaser Ads must carry sponsor ID,' 18 RR 1860 (1959)

149. **NBC Signs Consent Decree on Antitrust**, 'Consent decree signed and NBC gives up Phil. stations to avoid losing all licenses if lost antitrust action,' US v. RCA (ED Pa.), 17 RR 764 (1959)

150. **One-sided Presentation of Labor Controversy,** 'Station expected to 'Seek Out' opposition even when editorial by outsider,' Metro, 19 RR 602 (1959)

151. **FTC Action on Rigged Commercials,** 'Use of visual deception in TV commercials Cease and Desist Order,' News Story: Broadcasting, 22 Feb., p. 34 (1960)

152. **FCC Payola Action,** 'Required ID of free recordings, etc., Sponsor ID of all broadcast materials,' 19 RR 1569, FCC Rept & Order 601-1141, 21 Sept (1960)

153. **KWTX Weather Reports by Candidate,** 'Candidate, also Weatherman, in performance of job as Weatherman comes under §315--News exemption; Opponent not entitled to equal time,' KWTX, 19 RR 1075; Bingham v. FCC, 276 F. 2d 828 (Ct. App); 19 RR 2068 (1960)

154. **WCLG Sheriff's Reports by Candidate,** 'Report by Sheriff-Candidate for re-election not news program; Opponent entitled to equal time,' Freed, 19 RR 1391 (1960)

155. **WREC Advertising as Part of Program Balance,** 'FCC has right to consider advertising as part of programming in public interest,' WREC, 10 RR 1323; 14 RR 1262; 22 FCC 1572 (1960)

156. **KIMN DJ Smut,** 'Broadcasts of indecent language in DJ program caused hearing order,' Mile High Stations, 28 FCC 795; 20 RR 345 (1960)

157. **Political Sale of Time,** 'Station not required to sell time to one candidate if hasn't sold time to other candidates for same office, (see 245),' Grommelin, 19 RR 1392 (1960)

158. **Miami Ex Parte License Revocation,** 'FCC Commissioner involved in Ex Parte Contacts causes extensive hearings and revocation after remand,' WKAT, 22 FCC 117 (1957); WKAT v. FCC (Ct. App. DC) 258 F. 2d 418 (1958); 17 RR 997 (1960); 296 F. 2d 375 (1961); 368 US 841, cert. denied (1961)

159. **Eisenhower Talk and Fairness,** 'Equal time not applicable to noncandidate but station has obligation to afford reasonable presentation of opposing viewpoints under Fairness Doctrine,' Calif. Demo. State Central Comm., 20 RR 867 (1960)

160. **Short Term License,** 'Licensee failure to give enough supervision,' Eaton, 20 RR 1074 (1960)

161. **First FCC Fine,** 'Fine of $2,500 marks FCC's first use of that power; failure to reduce power at night,' Crowell-Collier, 21 RR 921 (1961)

162. **Ascertainment of Community Needs is Public Service Responsiblity,** 'License grant refused on basis of failure to ascertain or survey community needs and Ct. ruled FCC has statutory authority to require survey,' Suburban, 112 US App DC 247, 302 F. 2d 191, 371 US 821, 83 S. Ct 37, cert. denied; 20 RR 951 (1961-62)

163. **CATV Use of TV Programs,** 'TV stations have no property rights in programs they broadcast other than those covered in Copyright Act,' Intermountain, 196 F. Supp. 315, 21 RR 2084 (1961)

164. **KORD Promise v. Performance,** 'Stations put on notice that FCC to give renewal would look at Promises made versus

Performance made,' (see 183) KORD, 21 RR 781; 31 FCC 85 (1961)

165. **WHAS-TV Economic Injury to UHF Stations,** 'FCC refusal to grant tower height increase based almost entirely upon probable economic injury to existing UHF stations in proposed coverage area,' WHAS, 31 FCC 273; 21 RR 929 (1961)

166. **Indianapolis TV CP Revocation,** 'Revocation based on concentration in media of mass communications,' Indianapolis Broadcasting, 22 FCC 421 (1957); WIBC, 104 US App. DC 126, 259 F.2d 941, cert. denied. 359 U.S. 920, 22 RR 425 (1961)

167. **WESY Overcommercialization,** 'Excessive Commercials (av. 15 per hour); lack of program balance gets short-term license renewal,' Miss-Ark Broadcasting, 22 RR 305 (1961)

168. **No Need Application Denial,** 'Contrary to precedent, FCC denied application in non-competitive hearing for interference and for failure to establish need for a third station in market of 18,000,' Dixie Radio, 22 RR 345 (1961)

169. **WOGA Secondary Boycott by Union Ruling,** 'Precedent shattering ruling by NLRB permitted secondary boycott to take place on grounds that the radio station, by adding its labor, capitol and service to a product manufactured by someone else, becomes one of the producers of that product rather than merely an agency carrying the advertising for the producer. With a station a joint producer with every manufacturer whose products or services it advertises, boycotting the station's advertisers and the station was held primary boycott permitted under Landrum-Griffith Act. Strikers were engineers of station,' (changed, see 182), Local 662-IBEW,133 NLRB 165 (1961)

170. **KRLA License Revocation,** 'Licensee negligent, guilty of fraud in conduct of promo contests and logs altered with intent to deceive FCC,' Eleven Ten B'c'g, 32 FCC 706, 33 FCC 92

(1962); 11-10 v. FCC, 25 RR 2128a, 320 F. 2d 795 (DC Cir.), cert. denied, 375 US 904 (1963)

171. **State Advertising Statute Applies Across State Lines,** 'New Mexico station must obey New Mexico statute even when carrying ads for nearby Texas firm,' New Mex. Board of Examiners v. Roberts, 23 RR 2042; 70 NM 90; 370 P. 2d 811, aff.; 25 RR 2087; 374 US 424 (1962)

172. **Conspiracy Suit over Network Affiliation,** 'Cancelling affiliation to transfer to new network owned station no violation of anti-trust laws,' Poller, WCAN-TV v. CBS, 22 RR 2080, 174 F. Supp. 802, affirmed 109 US App. DC 170, 284 F. 2d 599, rev. 368 US 464 (1962)

173. **Colgate, Ted Bates Use of Mock-Ups on TV Commercials,** 'Not permitted to use Mock-up to deceive viewer; substitution due to photographic process is OK,' FTC, 22 RR 2043; 24 RR 2058; 310 F. 2d 89; 380 US 374; see 6 RR2d 2024 (1965)

174. **CBS TV Network Compensation Plan,** 'More pay the more programs carried declared violation of prohibition of exclusive affiliation by FCC after pressure from Justice Dept.,' CBS, 23 RR 769 (1961); 24 RR 513 (1962)

175. **CBS v. Amana Sponsorship Case,** 'Sponsorship of TV program not sale of commodity within meaning of Robinson-Patman Anti-Trust law; discounts do not have to be equal for all advertisers, (see 368),' CBS v. Amana. (CA 7th); 22 RR 2019; 295 F. 2d 375 (1961)

176. **Block Booking on TV,** 'Block bookings of motion pictures for TV is violation of antitrust laws,' US v. Loew's, 24 RR 2032; 371 US 38 (1962)

177. **CBS Plagiarism on Playhouse 90,** 'Network used article published by Life in 1949, Ct. awarded damages of $50,000,' News Story: Broadcasting, 25 June p. 76 (1962)

178. **WDKD Smut Broadcast License Denial,** 'Indecent materials cause denial,' Palmetto, 23 RR 483 (1962); 33 FCC 250 (1962)

179. **CBS, NBC Coverage of Debate Not News,** 'Coverage of debate by candidates invited by Press Association not news coverage, equal time applies,' (changed, see 303,586), 24 RR 401 (1962)

180. **'Sidewinder' Rights to Name,** 'Character created while employee owned by station, however, former employee has right to portray character,' News Story: Broadcasting, 20 Aug. p. 76 (1962)

181. **WLLE Playing One Song All Day and Smutty Remarks,** 'Letter was sent to all licensees noting WLLE playing of one song all day when call letters changed (see 600) and remarks made between record were discordant and did not qualify as inventive or in the public interest,' Raleigh-Durham, 24 RR 221 (1962)

182. **KXTV Union Secondary Boycott,** 'TV station not simply carrier of advertising, but by adding labor and service producer of products (see 352), said NLRB, but Dist. Ct. overturned and remanded,' News Story: Broadcasting, 19 Nov p. 72 (1962)

183. **WWL-TV Promise v. Performance,** 'Short-term renewal granted to Loyola University commercial station for not meeting promises (see 164),' Loyola, 24 RR 766 (1962)

184. **Cullman Doctrine,** 'When presenting one sponsored side of an issue licensee cannot reject a presentation of the other side simply on the ground that he cannot obtain sponsorship for that presentation thus leaving the public uninformed,' Cullman Broadcasting, 25 RR 895 (1963)

185. **WCLM-FM License Revoked for Aiding Illegal Gambling,** 'SCA Multiplex channel of FM station used to broadcast horse race results to be received by bookmaker's,'

Carol Music, 3 RR 2d 477 (1963), 8 RR 2d 93, cert. denied. (1966)

186. **KWK Fraudulent Promotion Revocation,** 'Treasure not hid,' KWK, 25 RR 577, 1 RR 2d 457 (1963), 34 FCC 1039, 35 FCC 561, 2 RR 2d 2071, US App DC (1964)

187. **KHOB State Control of Interstate Advertising,** 'Sup. Ct. ruled that State retained jurisdiction over advertising, even though ads distributed on an interstate basis; 'indirect effect on commerce of country',' Head v. New Mexico Bd., 23 RR 2042 (1962); 25 RR 2087, 374 US 424 (1963)

188. **WBTW Privacy in Rape Case,** 'Names of victims not used, but occupations and pictures of car which were readily identifiable. Ct. ruled 'name' in S. Carolina statute should be interpreted as equivalent of 'identity',' Nappier, 1 RR 2d 2012, 322 F.2d 502 (1963)

189. **KYW Defamation in Documentary,** 'Name and place of business of man found guilty of crime broadcast, but appeal had conviction overturned just prior to broadcast; damages found,' Purcell v. Westinghouse, 1 RR 2d 2016 (1963)

190. **FCC Attempts to Limit Commercial Time,** 'FCC issued Notice of Proposed Rulemaking limiting commercial time, but Congress upset over issue; so FCC released Policy Statement which became basis for 0.281(7) (i,ii,iii). Commercial AM-FM stations exceeding 18 minutes per hour, or 20 minutes per hour for 10% or more total weekly hours of operation and which, during political campaigns or seasonal business markets exceed 22 minutes for 10% of total hours could not be renewed routinely by FCC staff. TV stations could not exceed 16 minutes per hour, but during high demand political campaigns could go to 20 minutes for 10% of total hours of operation,' 36 FCC 45 (1964); (changed, see 442, 600)

191. **TV Option Time Prohibited,** 'Networks can not option time in affiliation contracts,' FCC Rept. & Order, 34 FCC 1103, 25 RR 1951 (1963)

192. **Essaness Minority Program Proposal,** 'Chicago station proposes to program only for minority groups; FCC states must program to all groups in service area,' Essaness Assoc. 25 RR 479 (1963)

193. **NBC v. FCC and Withdrawal Payments,** 'FCC rules it must approve payment for expenses incurred when competing applicant withdraws--becomes Rule 73.3525 of Title 47 CFR,' 25 RR 67 (1963)

194. **Standard Criteria for Competing Applications,** 'Review of the standard criteria utilized for judging competing applications,' 1 RR 2d 237 (1963), see also, 1965 Policy Statement on Comparative Hearings, 5 RR 2d 1901 (1965)

195. **Double Billing Ruling,** 'FCC rules against Double Billing (73:1205),' 23 RR 175 (1962), 1 FCC 2d 1068 (1965), 38 FCC 2d 1051, 25 RR 2d 1759 (1972)

196. **Imitation of Advertising is Unfair Competition,** 'Company used the slogan, 'Where there's life. . . there's bugs' in advertising combination floor-wax-insecticide, imitating Budweiser slogan, 'Where there's life. . . there's Bud' in which over $40 million had been invested. Ct. granted injunction against not-with-standing the fact the products were noncompetitive,' 306 F. 2d 433 (5th Cir. 1962), cert. denied 372 US 965, 83 S. Ct. 1089 (1963)

197. **Quorum for FCC,** 'FCC rules four members quorum, 3-1 vote legal,' Jefferson Standard, 1 RR 2d 423 (1963)

198. **Local Tax on Programming,** 'Opinion of Att. Gen. Kentucky: Can't put local tax on TV programs & advertising,' 1 RR 2d 2058 (1963)

199. **WMOZ Falsification of Logs,** 'License revoked for false logs,'WMOZ, 36 FCC 201, 1 RR 2d 801 (1964)

200. **Announcer's Property Rights,** 'Record included one-minute excerpt of CBS announcer's voice during Kennedy assassination. No property rights in news, but in announcer voice and style,' CBS v. Docu. Ltd, 2 RR 2d 2011 (NY Sup. Ct. 1964)

201. **Experience Counts,** 'FCC stated where on quantitative basis applicants equal, the qualitative comparison based on broadcast experience becomes decisive,' Rockland Broadcasting, 2 RR 2d 39, 36 FCC 303 (1964)

202. **Use of Newspaper for News,** 'Use by station of newspaper items for newscast may be unfair competition if station competing with newspaper for advertisers or 'subscribers' and news is fresh and of commercial value to paper. Practice not encouraged,' Comm Broadcasting, 6 RR 2d 589 (1965) and, 'State has jurisdiction concerning unfair competition but even if copyrighted news, use does not violate copyright act if factual content only,' Pottstown, 6 RR 2d 2027, 247 F.Supp 578 (ED Pa. 1965)

203. **Malice Not Needed,** 'Nothing in 1st Amendment requires showing of malice as prerequisite to recovery for violation of right of privacy of person not public official. Negligence sufficient,' Yousoupoff v. CBS, 265 NYS 2d 754 (NY Sup. Ct.), 6 RR 2d 2033 (1965)

204. **Jurisdiction in Copyright Case,** 'Entering affiliation agreements in state is systematic activity subjecting network to jurisdiction of state in copyright case,' Scott v. WKJG (ND Ind.), 5 RR 2d 2065 (1965)

205. **Public Disclosure of FCC Records,** 'Sup. Ct. required public disclosure except where FCC determines not in public interest (see 629),' MCA v. FCC, 85 S. Ct. 1459; 381 US 279 (1965)

206. **WMAY Newscaster as Candidate,** 'Appearance of employee-candidate is use under equal time rule,' WMAY, 4 RR 2d 849 (1965)

207. **Billy Sol Estes,** 'TV Coverage of trial prejudicial; sentence reversed under Due Process Clause of 14th Amendment,' 381 US 532; 85 S. Ct. 1628; 6 RR 2d 2104 (1965)

208. **Sheppard Case,** 'Jury exposure to massive publicity of information not introduced at trial required new trial,' Sheppard v. Maxwell, 384 US 333, 86 S. Ct. 1507 (1966)

209. **Copyright-responsibility for,** 'If station has either actual or constructive knowledge of copyright infringement, but proceeds to advertise illegal copy, without making adequate investigation held liable for infringement,' Screen Gems-Columbia v. Mark-Fi Records, 256 F.Supp. 399 (SD NY), 7 RR 2d 2191 (1966)

210. **Capone Invasion of Privacy,** 'Capone, deceased, has no right to privacy and right cannot be asserted by next of kin,' Maritote v. Desilu, 345 F. 2d 418; 5 RR 2d 2077 (1965)

211. **Subscription TV,** 'In 1963 Calif. voters out-outlawed Pay-TV. Cal Sup. Ct. overturned as unconstitutional,' Weaver v. Jordan, 411 P.2d 289, cert. denied, 385 US 844;7 RR 2d 2166 (1966)

212. **WLBT-Standing Case,** 'Court held that responsible spokesman for representative groups in listening community pursuing broad public interest have standing as petitioners to deny license renewal. FCC has interpreted as allowing single individual to ask for license revocation,' Office of Comm. of United Church of Christ v. FCC, 359 F 2d 994 (1966), and Harrea Broadcasting, 52 FCC 2d 998, 33 RR 2d 1075 (1975)

213. **Need to Do Ed Programs,** 'Commercial stations are obligated to carry programs which fulfill educational needs whether or not non-commercial stations exist in the community of license (see 442),' UHF Channel Assignment, 2 FCC 2d 527, 6 RR 2d 1643 (1966)

214. **License Control,** 'Broadcast that 'amoeba was loose,' caused substantial disturbance and licensee should have maintained greater control (see 600),' WIST, 2 FCC 2d 597, 6 RR 2d 793 (1966)

215. **Piercing the Corporate Veil,** 'FCC has jurisdiction over parent co. although not licensee as it was sole owner of subsidiary,' Federated Pub., 6 FCC 2d 279, 9 RR 2d 252 (1967)

216. **Sec. 315 Immunity,** 'Licensees' immunity from civil action for libelous statements made by candidate extended to statements made by those appearing on program with candidate,' Gray Comm., 14 FCC 2d 766, 14 RR 2d 353 (1968)

217. **Fortnightly v. United Artists,** 'Sup. Ct. reversed lower Cts. and held that CATV did not do performance within meaning of 1909 Copyright Act and so no copyright infringement,(see 295 and 302)' 88 S. Ct. 2084; 392 US 390; 13 RR 2d 2045 (1968)

218. **Southwestern Cable,** 'Affirmed FCC's jurisdiction over all CATV systems,' Midwest TV v. Southwestern Cable, 88 S. Ct. 1994; 392 US 157; 13 RR 2d 2045 (1968)

219. **Anti-Smoking Commercial Decisions,** 'Banzhaf petitioned FCC to take off cigarette ads; FCC ruled equal time for anti-smoking spots not required, but some fair balance on controversial issue needed,' Banzhaf v. FCC, 405 F. 2d 1082 (1968), 14 RR 2d 2061 & **Congress Rules Cigarette Ads Off-Air,'** law bans cigarette ads on TV-Radio only, 15 U.S.C. 1335 (1/2/71)

220. **Examples of Station ID violations,** see 'Public Notice,' 10 FCC 2d 399, 11 RR 2d 1607, 53:1201 (1967)

221. **Dual Network Operation,** 'FCC waives Rule 73.137 to permit ABC to operate four radio networks,' (see 312) 11 FCC 2d 163, 12 RR 2d 72 (1967), 17 FCC 2d 508, 16 RR 2d 84 (1969)

222. **Personal Attacks and Fairness Doctrine,** 'When a station broadcasts personal attacks they must allow a response from individual attacked. Unlike newspapers which are not required to allow reply (Miami Herald v. Tornillo, Sup. Ct. 418 US 241, 1974) broadcast frequencies are scarce and there are legitimate claims by those unable without government assistance to gain access. Broadcaster's 1st Amendment rights are abridgeable, as different,' Red Lion v. FCC, Sup. Ct. 395 US 367; 16 RR 2d 2029 (1969); see also Wis. Assoc. of Nursing Homes v. Jr. Co., 285 NW 2d 891 (1979).

223. **Policy is Control,** 'Network-owned TV station broadcast a pot party, prearranged by one of its reporters. Lack of policy deprived licensee of control,' WBBM, 15 RR 2d 140 (1969)

224. **No Fairness Doctrine for ads,** 'Licensee has right to refuse ads and not accepting ads from union urging boycott did not violate Fairness Doctrine,' Oil, Chemical & Atomic Workers Union, 18 FCC 2d 501, 17 RR 2d 153; 20 RR 2d 2005; 48 FCC 2d 1, 30 RR 2d 1261, 436 F.2d 248 (1969)

225. **Broadcasting of Lottery Information,** 'Public Notice,' 21 FCC 2d 846, 18 RR 2d 1915 (1970)

226. **Sound Effects in Announcements,** 'Public Notice, (see 600),' 20 RR 2d 98 (1970)

227. **Zapple Doctrine or Quasi-Equal Opportunities,** 'When a station sells time to supporters or spokespersons of a candidate during an election campaign, the licensee must afford comparable time to the spokesperson for an opponent,' Nicholas Zapple, 23 FCC 2d 707, 19 RR 2d 421 (1970)

228. **Use of Broadcast Facilities by Candidates for Public Office,** 'Public Notice,' 24 FCC 2d 832, 19 RR 2d 1913 (1970)

229. **Network Syndication and Financial Interest Rules,** 'Public Notice which eliminated networks from distribution and profit-sharing in domestic syndication and restricted their activities in foreign markets to distribution of programs of

which they were the sole producers,' Amended 73.658 (j), 23 FCC 2d 382, 18 RR 2d 1825 (1970), (see 264, 625)

230. **License Revocation on Renewal,** 'Herald-Traveler station in Boston filed against by group which promised better programming, integration and diversity of local media control. Newspaper claimed not fair as only promises and paper would fold. FCC revoked license and newspaper ceased publication shortly thereafter,' WHDH, 444 F. 2d 841 (DC App.)1970); 403 US 923, cert. denied, 15 RR 2d 411 (1971)

231. **Policy Statement Concerning Comparative Hearings Involving Regular Renewal Applicants,** 'FCC devised policy to lay to rest WHDH effect on license renewals,' 22 FCC 2d 424, 18 RR 2d 1901 (1970)

232. **Policy Statement Overturned,** 'DC App. Ct. overturned FCC stating that full comparative hearing must be held, with license judged on evidence, all relevant criteria, including integration of minority groups into station operation. 'Superior' performance, which means 'far above average' to be plus of major significance. It includes elimination of excessive and loud advertising, quality programs, re-investment of profit, diversification and independence from governmental influence to promote 1st Amendment objectives,' Citizens Communications Cntr v. FCC, 447 F. 2d 1201; 24 RR 2d 2045 (DC App.1971), (see 343)

233. **Licensee Discretion,** 'Refusal to show integrated situations (black man and white woman kissing) would be discriminatory, however no evidence violated licensee discretion,' Citizens Communication Cntr, 22 FCC 2d 705, 20 RR 2d 19 (1970)

234. **Cavett Interview Edited,** 'Network edited interview stemmed from appropriate concern of effect on a pending trial. FCC will not intrude in this sensitive area if good faith application by licensee,' Letter to Ottinger, 31 FCC 2d 852, 18 RR 2d 1031 (1970)

235. **Religious Fairness,** 'Presentation of evolution theory material does not itself raise Fairness Doctrine issue unless biblical creation story and evolution were topics of controversy in community,' Tillson, 24 FCC 2d 297; 18 RR 2d 189 (1970)

236. **FTC Controls Misleading Ads,** 'FCC has not made and does not intend to make judgments whether particular ads are false and misleading. Will defer to FTC as per formal memorandum of understanding,' Reply to Center for Law and Social Policy, 23 RR 2d 187 (1971); see also Deceptive Advertising, 'Public Notice' 32 FCC 2d 360, 23 RR 2d 1550 (1971)

237. **Negotiating with Public Interest Groups,** 'A licensee is not obligated to participate in negotiations concerning employment practices and programming,' WKBN, 30 FCC 2d 958, 22 RR 2d 609 (1971)

238. **Fairness Doctrine,** 'DC App. Ct. rules that Banzhaf decision can be extended to other issues even though FCC stated was 'unique' situation. Must decide whether licensee has otherwise met its fairness obligations,' Friends of the Earth v. FCC, 449 F 2d 1164; 22 RR 2d 2145 (DC App. 1971)

239. **Fairness for Public Service Spots,** 'Public service messages for Armed Services not subject to Fairness Doctrine; however may be if one side of controversial issue presented,' Jelinek, 24 FCC 2d 156, 19 RR 2d 501 (1970), affirmed Green v. FCC, 477 F. 2d 323; 22 RR 2d 2022 (1971)

240. **Fairness Against President,** 'Some time must be afforded for appropriate spokesman to reply to Presidential speeches on Viet Nam,' Comm. for Fair Broadcasting of Controversial Issues, 19 RR 2d 1103 (1970), reversed on other grounds, CBS v. FCC, 454 F. 2d 1018; 23 RR 2d 2019 (1971)

241. **Fairness for Public Service Spots,** 'United Appeal Public Spots deemed subject to Fairness Doctrine,' AVCO, 32 FCC 2d 124, 23 RR 2d 111 (1971), (see 421)

242. **Use of Broadcast and Cablecast Facilities by Candidates,** 'Public Notice,' 37 Fed. Reg. 5796; 23 RR 2d 1901 (1972)

243. **Minority Service,** 'Ct. did not decide whether licensee has primary obligation to serve its city of license or full service area but petition to deny for not serving 90% black Washington, D.C. refused as black population is only 10% of full-service area,' WMAL-Stone v. FCC, 24 RR 2d 2105, 466 F. 2d 316 (1972)

244. **Handling of Public Issues Under the Fairness Doctrine and Public Interest Standards of the Communications Act**--1st Report, 36 FCC 2d 40, 24 RR 2d 1917 (1972)

245. **Federal Politicians Better than Local,** '§312 amended adding (a)(7), requiring broadcasters to allow reasonable access to or permit purchase of reasonable amounts of time by a legally qualified candidate for Federal Elective Office on behalf of his candidacy,' P.L. 92-225 (1972)

246. **Carroll Doctrine--WLVA-TV,** 'In ascertaining a Carroll (see 137) issue applicant must prove factual data to make a prima facie case that the economic consequences of the challenged application will lead to a derogation of service to the public. Three interdependent aspects: 1) revenue potential of market; 2) effect of economic loss on public service programming; 3) loss will not be offset by applicants proposed increased non-network programming,' 459 F. 2d 1286; 23 RR 2d 2081 (DC App. 1972)

247. **Astrology Policy,** 'NBC had policy following NAB Code (as did other nets) banning non-news material presented for purpose of fostering belief in astrology. However, WFMY-TV, CBS and NAB sued by astrological forecasting service for antitrust conspiracy to limit access for program featuring forecasts. Motion to dismiss denied as Ct. found sufficient cause of action on theory of state action and 1st Amendment rights. Settled out of court, (see 600),' Mark v. NBC, 25 RR 2d 2083,

468 F. 2d 66 (Cal. 1972); letter, 34 FCC 2d 434 (1972); Gemini v WFMY, 70 F. Supp. 559 (MD NC 1979)

248. **Smothers' Bros. Censorship Not State Action,** 'Program producers cannot sue network because of its censorship under the Communication Act of 1934 unless network activities constituted 'governmental or state action,' Smothers v. CBS (CD Calif.), 25 RR 2d 2099 (1972), (see 304)

249. **Right to Reply,** 'Automatic right of reply by spokesman of opposing party to Presidential addresses rejected,' Democratic National Committee v. FCC, 460 F. 2d 891, cert. denied, 409 US 843; 23 RR 2d 2165 (1972)

250. **Lottery,** 'Congress by enacting 18 USC 1304 empowering FCC and Justice Dept. to regulate and enforce Federal Lottery Laws had preempted state law in field,' Miss. Broadcasters Assoc. v. Danforth (Mo. Cir. Ct.), 26 RR 2d 967 (1973)

251. **Diversity,** 'It is upon ownership that diversity of content rests and greater weight should have been accorded minority ownership; remanded to FCC. Dealt with issues of experience, participation in local affairs, etc.', 495 F. 2d 929 (DC App. 1973); 419 US 986, cert. denied; 28 RR 2d 1115 (1973), 69 FCC 2d 607, 43 RR 2d 811 (1978)

252. **Primer on Ascertainment of Community Problems by Broadcast Applicants,** 27 FCC 2d 650, 21 RR 2d 1507 (1971), clarified, 47 FCC 2d 519, 29 RR 2d 1739.

253. **FCC Expert Body,** 'The FCC does not think the public interest would be better served by a policy that substituted open bidding for licenses for the reasoned decision-making of an expert body accountable in its actions to Congress,' Letter to Hon. William Proxmire, 27 RR 2d 1321 (1973), (see 452)

254. **Code Communication Broadcasting,** 'A radio station may not transmit announcements asking a Dr. (identified by code number) to call the Physician's Bureau. This is point-to-point communication, not broadcasting and no urgent need shown,'

KFAB, 1 RR 2d 403 (1963), and see WANV, 27 RR 2d 1607 (1973)

255. **Selling Time Not Required,** 'Broadcast licensee's general policy of not selling ads to individuals or groups wishing to speak on issues they consider important does not violate the FCC Act or 1st Amendment. The Ct. will not apply the Fairness Doctrine to editorial advertising; however if such time sold Fairness Doctrine and Cullman aspect must be observed,' CBS v. Democratic National Committee, 412 US 94 (Sup. Ct. 1973); 19 RR 2d 977 (1970); 27 RR 2d 907 (1973)

256. **Right to Reply FCC Decision Upheld,** 'FCC upheld when denied DNC right to some time to reply to Presidential addresses on economic policy,' 481 F. 2d 543 (DC App. 1973)

257. **'Clipping' of Net Programs,** 'Public Notice, warning stations that may be fraudulent action,' 40 FCC 2d 136, 26 RR 2d 1253 (1973)

258. **Political Advance Copy Not Permissible,** 'Improper for station to request candidate submit copy of speech before broadcast,' Western Comm. Broadcasting, 43 FCC 2d 730, 28 RR 2d 1091 (1973)

259. **Program Length Commercials,** 'Public Notice,' 44 FCC 2d 985, 29 RR 2d 469 (1974), (changed, see 442)

260. **Playing Radio in Business May Be Performance of Music,** 'Small Restaurant does not 'perform' copyrighted music when playing radio through less than four speakers. However, new Copyright Act, §110(5) imposes liability where proprietor has commercial system installed or converts standard home receiver into equivalent of commercial sound system which pays copyright royalty. Another factor is whether establishment of sufficient size to justify subscription to commercial background music service,' 20th Century v. Aiken, 422 US 151 (CA 3d 1975), 30 RR 2d 1053 (1974) and Sailor Music v. Gap Stores, cert. denied, 1982; and 668 F.2d 84 (2d Cir. 1981); BMI v. US Shoe, 678 F.2d 816 (1982)

261. **Not Carrying Religious Program Fair,** 'Station did not violate Fairness Doctrine by refusing to carry religious program,' RKO General, 46 FCC 2d 240, 29 RR 2d 1459 (1974)

262. **Licensee Discretion to Censor,** 'Deleting Crest's name from Johnny Carson monologue for humorous but critical comment is licensee decision,' National Citizens Comm., 49 FCC 2d 83, 31 RR 2d 293 (1974)

263. **What is Public Figure,** 'Absent clear evidence of general fame or notoriety an individual should not be deemed a public personality for all aspects of his life; damages for actual injury that can be proven,' Gertz v. Robert Welch, 418 US 323 (1974)

264. **Network Antitrust resolved by Consent Decree,** 'Consent judgments were entered against ABC and CBS to restrain monopolization of prime time TV entertainment programs in violations of Sherman Antitrust Act, based on an NBC consent decree entered into earlier.

Affiliated and owned-and-operated stations of the networks were found to depend upon the networks for virtually all their entertainment programming. The commercial value of such control over programming, in addition to the first network showing, includes stripping (broadcasting program series episodes more than once a week after initial network exhibition), syndication, foreign distribution, merchandizing, literary and musical rights, etc.

During the 1950's many advertisers purchased programs from independent suppliers (producers and production companies) for showing on networks. By 1967 only 11% were advertiser supplied and as of this judgment no prime-time shows are advertiser supplied. The FCC, in response to network dominance of production or subsidiary rights adopted rules (see 229,625) forbidding networks from demanding financial interests or syndication rights from producers before putting on (73:658(j), but networks continued to seek such rights as long-term renewal options with preset license fee escalation rates; exclusive options on spinoffs; creative program control; right to

all profits from network exhibition; and right of first refusal at end of option period.

The consent judgment, certain provisions which will be in effect for 10 years and others for 15 years, enjoined networks from acquiring syndication and other distribution rights or profit shares in non-network exploitation of entertainment programs produced by others. Domestic syndication was prohibited by the networks but would allow network-produced and certain foreign programs to be distributed in foreign markets. In order to increase competition networks themselves may produce no more than 2 1/2 hours per week in prime time (with similar restrictions in other time periods).

Other practices prohibited are purchasing exhibition rights other than those incident to network use; a ban on requiring a program supplier having to use network production facilities; a prohibition against purchasing another network's programs when there is a condition that the other network purchase similar rights; and no exclusive yearly options for more than a total of 4 years. The networks may not have exclusive rights in connection with exhibition of feature films either theatrically, nontheatrically, on discs, cartridges or cassettes, or on closed circuit TV in certain situations. The networks are barred from retaining rights to option program pilots not selected for broadcast beyond 35% of the pilots produced so as to allow other networks and stations access to remaining product. If a spinoff depicts a noncontinuing character, the network may contract only for first negotiation and a limited first refusal right and the use of repeat broadcasts of series episodes is curtailed. With respect to talent agreements, individuals performing continuing or essential creative services on a prime time series licensed to a network are barred from entering agreements which prevent them from providing their services to the series if it is later licensed elsewhere.

The judgment does not affect network ability to acquire certain rights for nonnetwork broadcast (49 RR 2d 1343; 1981) distribution of programs abroad and they may recover money advanced for development,' US v. CBS, Civil Action No. 74-3599-RJK; US v. ABC No. 74-3600-RJK (C.D. Calif. 1980); US v. NBC, 74-3601-RJK (C.D. Calif. 1977); 'Ct. of Appeals has ruled that $2.3 million may be awarded to Columbia Pictures,

Gulf & Western, MCA, 20th Century-Fox and Warner Communication from ABC and CBS to repay costs studios incurred in responding to pretrial discovery subpoenas,' 666 F.2d 364 (1982), Sup. Ct. cert. denied

265. **Documentaries and Fairness,** 'Reversed FCC decision that 'Pensions-Broken Promises' violated Fairness Doctrine. The Fairness Doctrine requires a demonstrated analysis of imbalance on controversial issues,' NBC v. FCC, 516 F. 2d 1101 (DC App. 1974); vacated as moot, 424 US 910, cert. denied (1976)

266. **How to Get the Broadcaster,** 'The FCC publishes a manual to inform the public of procedures available such as Fairness Doctrine complaints, personal attacks, equal opportunity, petitions to deny, petitions for rulemaking, and informal complaints and requires the manual to be kept in the Public File,' Broadcast Procedure Manual (1972), 37 FCC 2d 286, 25 RR 2d 1901 and revised 49 FCC 2d 1, 31 RR 2d 224 (1974)

267. **Documentary Freedom,** 'ABC cannot be enjoined (prior restraint) from showing crib burning in documentary on fire safety. The basic concept of freedom of speech and press applies to the broadcast industry,' ABC v. Smith Cabinet (CA Ind.) 30 RR 2d 837 (1974)

268. **Licensees Responsibility Under Amendments to the Communication Act Made by the Federal Election Campaign Act of 1971,'** Public Notice,' 47 FCC 516; 30 RR 2d 567 (1974)

269. **Courtroom Sketching,** 'Orders of a Federal District Judge which not only forbade in-court sketching, but publications of sketches wherever made constitutionally overbroad. Sketching not shown obtrusive or disruptive,' US v. CBS, 497 F.2d 102, 30 RR 2d 1349 (CA 5th1974)

270. **Policy Statement on Fairness Doctrine,** 'Product advertising per se is not a statement on a controversial issue so long as the ad merely extols the virtues of the product and takes no explicit position on matters of public controversy. No

scheme of government-dictated access (free or paid) for discussion of public issues practicable or desireable,' 48 FCC 2d 1; 30 RR 2d 1261 (1974)

271. **Agreements Between Broadcast Licensees and the Public,** 'Policy Statement,' 57 FCC 2d 42, 35 RR 2d 1177; (1975)

272. **Applicability of Sponsorship ID Rules,** 'Public Notice on Sec.73.1212,' (1975); see Gaylord, 67 FCC 2d 25, 40 RR 2d 830 (1977); Silverman, 63 FCC 2d 233, 39 RR 2d 1713 (1977); US Postal, 41 RR 2d 877 (1977); Dept. of Justice, 41 RR 2d 881 (1977); and 52 FCC 2d 701, 33 RR 2d 975 (1977)

273. **Deceptive Advertising,** 'FTC given clear regulatory power over deceptive advertising reaching down to local level,' Magnuson-Moss Act, PL 93-637, 88 Stat. 2183 (1975)

274. **Past Programming Challenge,** 'To successfully challenge past programming, petitioner must make specific allegations of fact, which, if true, would establish that overall programming could not have reasonably met needs and interests of community including substantial minority. Licensee not required to program in proportion to minority numbers in population,' Newhouse, 53 FCC 2d 966, 33 RR 2d 1514 (1975)

275. **Editorializing,** 'No obligation to editorialize,' McPherson Broadcasting, 54 FCC 2d 565, 34 RR 2d 785 (1975)

276. **Primer on Ascertainment of Community Problems by Broadcast Renewal Applicants,** 57 FCC 2d 418, 35 RR 2d 1555 (1975); modified, 61 FCC 2d 1, 38 RR 2d 885, (changed, see 442)

277. **Renewal on Past Performance,** 'RKO-General, KHJ-TV, filed against by Fidelity in comparative hearing in 1966. In 1967 Justice Dept. filed antitrust action against RKO-General for fixing prices on tires. FCC said would take into consideration when finally decided. Consent decree signed 1970 so not factor, but Fidelity requested adding as issue. ALJ found

that RKO was lacking in past performance in programming and community relations; 'presenting old films of excessive violence.' RKO station WNAC-TV Boston subsequent to decision challenged also. FCC reversed ALJ on KHJ and granted renewal based on; RKO had promised in 1962 old films and had provided old films. RKO was one of many stations in market and credit should be given to existing service. DC App. Ct. reviewed and stated 'FCC when faced with a fairly and evenly balanced record may, on the basis of the renewal applicants past performance, award him the license.' RKO had agreed to sell WNAC upon condition FCC renewed license, 1978. Decision was that FCC could determine that both applicants were poor or minimally acceptable,' Fidelity TV v. FCC, 515 F 2d 684 (DC App. 1975); 44 FCC 2d 149, 16 RR 2d 1181 (1969); 32 RR 2d 1607 (DC App. 1975) (see 417); Case led to following Policy Statement

278. **Formulation of Policies Relating to the Broadcast Renewal Applicant, Stemming from the Comparative Hearing Process,** 'Until Congress acts no quantitative standards will be adopted and applicant must continue to run on its record measured by whether programming was sound, favorable, and substantially above a level of mediocre service. Case-by-case basis.' FCC Report & Order, 66 FCC 2d 419, 40 RR 2d 763, Aff'd, 44 RR 2d 547 (DC App. 1977)

279. **Violence Not Indecent,** 'Violence and mayhem are not obscene, indecent or profane as defined in §303 (m)(1)(D) of the Act, or 18 USC 1464,' Polite Society, 35 RR 2d 39 and see Pacifica, 56 FCC 2d 94, 32 RR 2d 1331 (1975)

280. **Topless Radio,** 'On March 27, 1973 FCC announced inquiry into broadcast of obscene, indecent or profane material. Radio shows asked sexual questions on talk-in shows; $2000 forfeiture levied on Sonderling, 27 RR 2d 1508 (1973). Citizens Committee and Am. Civil Liberties Union filed petition for remission and reconsideration. Ct. affirmed FCC on merits, but upheld standing of appellant's as public interest in free flow of information would not be vindicated if licensee alone finds burden too great to contest FCC action,' Illinois Citizens

Comm., v. FCC, 31 RR 2d 1523 (1974) 515 F. 2d 397 (DC App. 1975)

281. **Drug Lyrics Confusion,** 'FCC issues Public Notice, 28 FCC 2d 409 (1971), stating that licensees must make reasonable efforts to determine before broadcast the meaning of music containing drug oriented lyrics. After many complaints about prior censorship and procedures which would be considered reasonable FCC issues second Memorandum and Order, 31 FCC 2d 377 (1971), clarifying and modifying; (1) FCC not prohibiting playing songs, (2) no reprisals against stations which did play drug oriented songs, but (3) licensee responsibility to know content and make judgment regarding wisdom of playing such songs. Appealed to Ct., which stated that purpose and actual result was to remind the industry of a pre-existing duty to assume responsibility for all material which is broadcast and no case had yet been presented of license revocation on issue. Writ of certiorari denied by Sup. Ct,' Yale Broadcasting v. FCC, 478 F. 2d 594 (DC App. 1973); 414 US 914, cert. denied (1973); 28 RR 2d 938; 21 RR 2d 1576; 21 RR 2d 1698; 31 FCC 2d 385, 22 RR 2d 1808 (1971)

282. **Prime Time Access Rule Constitutional,** 'Prime-time Access Rule adopted in 1970 prohibits networks from using more than 3 hours of prime-time each night in order to give independent producers prime-time access. Held constitutional and consistent with FCC obligations under 1st Amendment to promote diversity of program sources, (see 600),' Mt. Mansfield v. FCC, 442 F. 2d 470; 21 RR 2d 2087 (1971); National Assoc. of Ind. TV Producers and Directors v. FCC, 516 F. 2d 526 (1975); Ct. remanded for rule changes, 33 RR 2d 2087 (1975)

283. **Prime Time Access Rule Changes,** 'Rule 73.658(k); Exemptions and Waivers (see 600),' 50 FCC 2d 829, 32 RR 2d 697, 1975; 2nd Report and Order, FCC; 53 FCC 2d 335, 33 RR 2d 1089 (1975)

284. **Suburban Modified,** 'Presumption of service to larger community will only be considered in comparative hearings on

renewal,' 54 FCC 2d 1, 34 RR 2d 603 (1975); clarified, 59 FCC 2d 9, 35 RR 2d 666

285. **What does it take to Lose,** 'License is renewed short-term where broadcast unsubstantiated weather reports, lottery promotion, contest disrupted traffic, violated technical rules, failed to supervise, lacked due care in correspondence with FCC. Revocation too harsh as broadcast significant public service programming,' Action Radio, 51 FCC 2d 803, 33 RR 2d 51 (1975)

286. **Broadcasting Rape Victim Name,** 'No liability for truthfully publishing the name of rape victim released to the public in official court records,' Cox v. Cohn, 420 US 469; 32 RR 2d 1511 (1975)

287. **Loud Commercials,** 'Public Notice,' 5 RR 1621 (1965); 1 FCC 2d 10, 5 RR 2d 1631 (1975); 'After years of public complaints about ads sounding louder than surrounding program material the FCC has determined that complaints have been decreasing and there is a more widespread use of electronic loudness controllers. Therefore any additional government regulation is deemed unnecessary,' 56 RR 2d 390 (1984)

288. **Contests,** 'Rule 73:1216, 60 FCC 2d 1072, 38 RR 2d 828 (1976) on Licensee Conducted Contests,' Some examples: Causing damage to public & private property, McLendon, 3 RR 2d 817 (1964); Caused trespassing, traffic congestion, SIS, 6 RR 2d 792 (1966); Broadcast of Station Contests, 37 RR 2d 260 (1976), (see 600)

289. **Fraudulent Billing Rule Amended,** 'Rule 73.1205,' 59 FCC 2d 1268, 37 RR 2d 715 (1976)

290. **Change in Station ID Announcement Requirements,** 'Rule 73.1201(d),' (1976), 61 FCC 2d 149, 37 RR 2d 1223

291. **Programming Minimums,** 'Official amounts of certain programming would be censorship,' Hubbard, 48 FCC 2d 517 (1974); but unofficial processing guidelines for FCC Staff were:

Non-entertainment must be more than 8%, 6% and 10% respectively for commercial AM, FM, TV. TV must show more than 5% local programming and 5% or more informational programming--6 a.m. to 12 midnight,' FCC Report No. 14173, May 12, 1976, see 37 RR 2d 144 (1976), (changed, see 442)

292. **Personal Attack Rule,** 'Personal attack rule does not apply to every personal attack, but only to a personal attack broadcast during the presentation of views on a controversial issue of public importance,' Straus v. FCC, 530 F 2d 1001; 35 RR 2d 1649 (1976)

293. **Lowest Unit Rate,** 'Amendment; 45 days before primary election and 60 days before federal or special election stations can only charge candidate lowest unit charge for same class and amount of time for the same time period,' 47 USCA 315(b), Pub. L. 93-225 (1972)

294. **Lottery,** 'Congress changed law, 18 USCA 1307 (1976), to exempt broadcast in state or adjacent state if own state has lottery. Announcing a winning number is news on day drawn and can be broadcast. Can do advertising, prize list, or information. Sup. Ct. remanded a pending case to determine if decision was moot in light of Congressional action. Ct. declared not moot and affirmed original ruling. The decision allows any state with or without lottery to broadcast about lottery as news,' NJ State Lottery Comm. v. US, 29 RR 2d 157, 491 F.2d 219 (CA 3d, 1974); 34 RR 2d 825

295. **Copyright Law Revised,** 'PL 94-553; Covers cable TV, etc. Lifetime of copyright owner plus 50 years, Copyrighted when created,' Effective 1978; USCA Title 17 (1976)

296. **State Can Broadcast Religion,** 'Oregon state, licensee of TV station, is not barred by the Constitution from broadcasting religious programs,' Corvallis TV, 59 FCC 2d 1282, 37 RR 2d 1045 (1976)

297. **No News OK,** 'Failure to broadcast any news programming in its previous license term did not constitute failure as promised no news. Economic consideration for struggling FM stations, but now station should reevaluate,' Patrick Henry, 62 FCC 2d 293, 39 RR 2d 671 (1976)

298. **Lottery Consideration,** 'Consideration is not: postage, watching, writing for tickets, going to station, going to business, etc,' KCOP TV, 59 FCC 2d 1321, 37 RR 2d 1051 (1976)

299. **Misuse of Survey Results**: 'Hypoing is artificial inflation of audience. Unfair trade practice complaints on use of survey and hypoing will be sent to FTC (see 600),' 73.4035; 73.4040; 58 FCC 2d 513, 36 RR 2d 938 (1976)

300. **Fairness Doctrine Review,** 'When reviewing a Fairness Doctrine complaint, the FCC looks to overall performance and good faith efforts, not simply one program or series of programs,' Storer Broadcasting, 60 FCC 2d 1097, 38 RR 2d 669 (1976)

301. **Announcement Charge,** 'There is no rule or policy which proscribes the type announcement for which a licensee may charge--obituary-dedication, etc,' La Fiesta, 59 FCC 2d 1175, 37 RR 2d 983 (1976)

302. **CATV Report and Order,** 'Regulation of CATV, Copyright Agreement--cable required to pay copyright. The Channel Capability and Access Channel requirements were held by App. Ct. to exceed FCC jurisdiction,' Cable TV Report and Order, 36 FCC 2d 143, 25 RR 2d 1501 (1972); 37 RR 2d 213 (1976); 42 RR 2d 659, 45 RR 2d 581 (1978)

303. **Press Conferences and Debates as News,** 'Press conferences and debates of candidates are exempt 'news events' where broadcast live, in entirety, and not sponsored or controlled by licensee or candidate. Allowed Carter-Ford debates,' Aspen Institute, 55 FCC 2d 697 (1975), affirmed Chisholm v. FCC, 538 F. 2d 349 (DC App.); cert denied, 429 US 890 (1976); 36 RR 2d 1437 (1976), (see 179,586)

304. **Family Viewing Policy,** 'In 1975, the NAB adopted a family viewing policy providing that entertainment programming inappropriate for viewing by a general family audience should not be broadcast during the first hour of network programming in prime time and in the immediate preceding hour. The policy also required the use of advisories to alert viewers to any prime time programs containing material that might significantly disturb significant segments of the audience. The three major TV networks had previously indicated their willingness to comply with such a policy. The Writers Guild, Directors Guild, Screen Actors Guild and Norman Lear's Tandem Productions brought actions against the NAB, three networks and FCC challenging the adoption of the policy. The plaintiffs contended that the policy violated the 1st Amendment, Administrative Procedure Act, antitrust laws, and Section 326 of the FCC Act. They sought declaratory and injunctive relief, and Tandem sought damages as 'All in the Family' was moved to a less desireable time slot due to the policy.

A Federal District Ct. in California concluded that the family viewing policy had been adopted by the NAB and networks in response to threats, influence and pressure of the Chairman of the FCC; that the improper pressure was a per se violation of the 1st Amendment; that the FCC had violated the Administrative Procedure Act by using 'the raised eyebrow' to foster public policy instead of procedure; that action by the networks and NAB was 'governmental action' under the lst Amendment claim because of the pressure and because the networks, NAB and FCC had participated in an unprecedented joint venture to effect the independent judgments of other broadcast licensees; and networks and NAB had violated the lst Amendment by becoming surrogates in the enforcement of government policy.

However, a Federal Ct. of Appeals in California has vacated the opinion on the ground that the doctrine of primary jurisdiction requires the FCC to consider the claims prior to any court action. The 'doctrine of primary jurisdiction' generally applies when a court is presented with issues involving a regulatory scheme. The judicial process is suspended pending referral of such issues to the appropriate administrative body, presumably in order to achieve uniformity and consistency in

regulation and to allow the court to benefit from the expertise and insight of the agency. A similar doctrine, requiring the 'exhaustion of administrative remedies' prior to judicial review, applies when a claim must be heard in the first instance by an administrative agency first. The District Ct. felt that the FCC was already biased and it would not serve any purpose for the FCC to review their own pressure efforts. The Ct. of Appeals disagreed and utilized the doctrine of primary jurisdiction to request a determination by the FCC of whether it had properly walked the tightrope. The Ct. also noted that informal procedures of a government agency (the raised eyebrow) resulting in self-regulation by an industry often avoided the need for formal government intervention. Even if such procedures were characterized as official action by the agency, the Ct. of Appeals concluded the District Ct. should not have thrust itself so hastily into the delicately balanced system of broadcast regulation and should have deferred initially to the FCC.

The FCC concluded, after four years of reconsideration during which the NAB Code was declared a violation of antitrust law (see 492), that the Family Viewing Hour policy adopted by the NAB was voluntary. There was nothing, according to the FCC, inherently wrong with 'jawboning' (which is what Samson did when he smote the Philistines with the jawbone of an ass),' Writers Guild of America, West v. FCC, 423 F. Supp. 1064 (US Dist. Ct. Cal. 1976), 36 RR 2d 711 (oral opinion); 38 RR 2d 1409 (written opinion); overruled and remanded to FCC, 46 RR 2d 813 (CA 9th, 1979); 55 RR 2d 1064 (1983)

305. **Adequate Coverage of Controversial Issues of Public Importance,** 'W. Virginia station did not adequately cover the locally 'critical issue' of national strip mining legislation. The FCC is not powerless to insist that stations give adequate and fair attention to public issues,' Rep. Patsy Mink, 59 FCC 2d 987, 37 RR 2d 744 (1976)

306. **Off-Air Concert Promotion,** 'Station promotions of non-broadcast off-air concerts while other non-station connected concerts are not nearly so well advertised may be unfair

competition,' Radio WCMQ, 62 FCC 2d 487, 39 RR 2d 506 (1976)

307. **Citizen-Broadcaster Agreements,** 'Rules will not be adopted to require the reporting and FCC enforcement of Citizen-Broadcaster agreements,' National Black Media Coalition, 61 FCC 2d 1112, 38 RR 2d 263 (1976)

308. **Prior Restraint Unconstitutional,** 'Prior restraint prohibiting broadcasting facts strongly implicative of confessions unconstitutional,' Nebraska Press Assoc. v. Stuart, 427 US 539 (1976)

309. **Report and Order in the Matter of Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees,** '10-point model program suggesting steps for licensee to follow in developing equal employment opportunity plans,' 62 FCC 2d 708, 39 RR 2d 421 (1976)

310. **Women in Programming,** 'FCC will not be drawn into controversy over treatment of women in programming,' CBS, 59 FCC 2d 1127, 37 RR 2d 972 (1976); see also, NOW v. FCC, 40 RR 2d 679, 555 F. 2d 1002 (DC App. 1977)

311. **Public Figure Redefined,** 'Time Magazine erroneously reported divorce had been granted on grounds of adultery as well as extreme cruelty. Mrs. Firestone was not a public figure because she had not thrust herself to the forefront of any particular public controversy,' Time v. Firestone, 424 US 448 (1976)

312. **Statement of Policy on Network Radio,** 'Report and Order allowing multiple networking; 73:132; 1977 Report & Order, March 23, 42 FR 16415, 63 FCC 2d 674, 40 RR 2d 80 (1977)

313. **Personal Attack But Not Defamatory,** '$1000 fine for personal attack on landlord as 'slum-lord,' etc. News documentary is not exempt from personal attack rules as broadcast over 3 times in a year,' WNET, Ed. B'c'g Corp, 65

FCC 2d 152, 40 RR 2d 1676 (1977); however, 'in similar case, referring to a land-lord as a 'slum-lord' was not strictly defamatory under the innocent construction rule. Term can be construed to mean a person who owned buildings in a poor-dirty neighborhood. Under innocent construction rule, allegedly libelous statements must be taken as a whole, and if capable of any innocent construction, the statement is not defamatory,' Rasky v. CBS, 431 N.E. 2d 1055 (Ill. App. 1982)

314. **Processing Standard for Equal Employment Opportunity,** 'The FCC will look first to station's employment profiles as reported on Form 395. Processing guides, (latest) used will be: Stations with fewer than five full-time employees will be exempt from written EEO program; stations with five to 10 employees will have EEO program reviewed if minority group or women do not number, in comparison with local workforce, 50% over-all and 25% in top four job categories (officials, manager, professionals, technicians, sales); stations with 11 or more full-time employees must reach 50% parity over-all and in top four categories; stations with 50 or more employees will receive complete review of EEO programs at renewal,' (1977 & 1980) (see 339)

315. **Federal-State Laws in Area of Broadcasting,** 'Public Notice with respect to preemption of local laws by the Communications Act of 1934, as amended,' 41 RR 2d 248 (1977); Example: 'FCC's preemption of regulation of special pay cable programming rendered invalid NY price regulation on such programming,' Brookhaven Cable TV v. Kelley, 573 F2d 765, 42 RR 2d 1185 (CA 2d 1978)

316. **Persistent Violations Revocation,** '(see 285) Refusal to renew license affirmed on the ground that long history of persistent violations of FCC operating rules was sufficient,' United v. FCC, 34 RR 2d 1465, 55 FCC 2d 416, 40 RR 2d 1646 (DC App. 1977)

317. **Advertising--Fairness Doctrine Reconsidered,** 'Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards, Public Notice of some importance, 58

FCC 2d 691 (1977); exempted from the Fairness Doctrine product commercials which do not obviously and meaningfully address a controversial issue of public importance. The Ct. upheld this policy stating, 'merely advocating the use of a product does not of itself raise a controversial issue, even if the product is controversial in the minds of some viewers. Nothing in the Supreme Ct's decision upholding the constitutionality of the political editorializing and political attack rules suggests that the obligation to present opposing points of view must be applied to all constitutionally protected speech. Advertisements in the editorial category, which consists of direct and substantial commentary on controversial issues of public importance continue to be under the Fairness Doctrine,' National Citizens Comm. for Broadcasting v. FCC, 567 F. 2d 1095 (1977); cert. denied, 98 S. Ct 2820 (1978).

318. **Children's TV Report and Policy Statement,** 'ACT petition. FCC refused to limit ads on children's programs, but adopted other items,' 50 FCC 2d 1, 31 RR 2d 1228 (1974), affirmed 564 F. 2d 458 (1977), 40 RR 2d 1577 (1977); also refused to adopt 14 hr. a week minimum standard for children's programs; no reconsideration, 546 F. Supp. 872 (DDC. 1982)

319. **Children's Programming,** 'FCC will not redefine children's programming to include programs viewed by children, but intended for adults,' 63 FCC 2d 26, 39 RR 2d 1032 (1977); upheld, 712 F. 2d 677, 54 RR 2d 293, 55 RR 2d 199 (DC Cir. 1983)

320. **Ads with Premiums,** 'FTC declines to adopt prohibition on all ads directed to or viewed by children which contain premium offers,' 40 RR 2d 1 (FTC 1977)

321. **Controversial Ads,** 'Ad constituted one side of a controversial issue,' Energy Action Comm., 64 FCC 2d 787, 40 RR 2d 511 (1977)

322. **Supreme Ct. Rules Home Video Recording Not Copyright Violation,** 'Ct. overturned lower decision that recording at home on VTR constituted copyright infringement.

Sony maintained no direct involvement with purchasers and the equipment has significant noninfringing uses. There is significant programming where copying is authorized. When used for noncommercial or nonprofit activity, even when the whole work is reproduced, the Ct. ruled "fair use" if the viewer might otherwise have watched in the home without charge when the program was originally broadcast. Congress would have to determine if royalties should be assessed.

The 1971 Home Recording Act allows for home audio recording where it is for private use and with no purpose of reproducing or otherwise capitalizing commercially,' Sony v. Universal, 659 F. 2d 963 (9th Cir. 1981); 52 LW 4090, 55 RR 2d 156 (US Sup. Ct. 1984)

323. **Pay Cable TV,** 'FCC cannot restrict pay cable programming or bar cablecasters from showing commercials on channels on which programs are presented for a direct charge,' Home Box Office v. FCC, 567 F. 2d 9 (DC App. 1977), 40 RR 2d 283, 434 US 829, cert denied (1978)

324. **Entire Act Not News,** '1st Amendment does not immunize the media from liability for damages when they broadcast a performer's entire Human Cannonball Act without consent,' Zacchini v. Scripps-Howard, 433 US 562, 40 RR 2d 1485 (1977)

325. **Use of Stolen Information in News,** 'Though government may deny access to information and punish its theft, government may not prohibit or punish the publication of that information once it falls into the hands of the press unless the need for secrecy is overwhelming,' Landmark Comm. v. Virginia, 435 US 829, 98 St. Ct. 2588 (1978)

326. **Press Access Not Greater Than Public's,** 'Press not entitled to access to prison conditions any more than general public,' Houchins v. KQED, 438 US 1 (1978)

327. **Newsroom Security,** 'Legislation passed Congress (10/1/80) requiring all federal, state and local law enforcement agencies to obtain a subpoena before searching newsroom or newsperson

unless person involved is suspected of crime; information necessary to prevent death or serious bodily injury; imminent destruction or concealment of material not produced in response to a Ct. order or if contraband material. Law came about because of Zucker v. Stanford Daily, 436 US 547 (1978)

328. **Watergate Tapes,** 'Common law right of access to judicial records did not entitle TV networks and others to copy White House tapes used in criminal trial of Watergate defendants,' Nixon v. Warner Communication, 435 US 589 (1978)

329. **Forfeiture Ceiling Raised,** '§503(b)(2)(A) amended raising fine power of FCC to $20,000 maximum for willful or repeated violations,' also see Lenawee B'c'g, 42 RR 2d 390 (1978), Pub. L. 95-234.

330. **Primer on Political Broadcasting and Cablecasting,** 69 FCC 2d 2209, 43 RR 2d 1353 (1978)

331. **Minority Programming,** 'All minority programming done just on Sunday morning--licensee should present when reasonably could be expected to be effective,' Sonderling Broadcasting, 68 FCC 2d 752, 43 RR 2d 573 (1978)

332. **Don't Promise Too Much,** 'Where an applicant proposed 36.3% local programming the opponent raised question of whether licensee could afford to so program. A slight demerit was given for failure to dispel inherent doubts. Case also dealt with community needs and ascertainment. The key factor was that the premise local needs can be met only through programming produced locally was rejected by the FCC,' WPIX, 68 FCC 2d 381, 43 RR 2d 278 (1978)

333. **Don't Lie--to Anyone,** 'The submission of a misleading and untruthful response to an interrogatory served by competing applicant is as serious as lying to the FCC as ultimately it deceives the FCC,' WNST, 70 FCC 2d 1036, 44 RR 2d 492 (1978)

334. **'Clipping' Revocation,** 'License revoked for clipping parts of network shows to insert local ads, misrepresentation to network and FCC. Not excusable that corporate licensee did not know--manager of station was officer and on board of directors to achieve local integration,' Las Vegas Valley, 589 F2d 594, 44 RR 2d 683 (DC App. 1978)

335. **Network Control of Owned Station,** 'Short-term license renewal of CBS owned station because network misrepresented 'winner-take-all' tennis matches. Network misrepresentation hereafter attributed to licensee corporation operating network and could have resulted in revocation or hearing for all their licensed stations,' CBS, 69 FCC 2d 1082, 43 RR 2d 1085 (1978)

336. **Double-Billing Revocation,** Berlin Communication, Inc., 68 FCC 2d 923, 42 RR 2d 1513 (1978); aff'd, 46 RR 2d 621; 626 F.2d 869 (DC App. 1979), (see 403)

337. **FCC Not Required to Review Changes of Entertainment Formats,**'The US Supreme Ct. has upheld an FCC policy against reviewing past or proposed changes in a radio station's entertainment programming during license renewal or transfer proceedings. Under 309(a) and 310(d) of the Communications Act of 1934, the FCC must consider the 'public interest, convenience and necessity' when assigning broadcast licenses. The Ct. concluded that neither the language nor the legislative history compel FCC supervision of format changes, and that such supervision would not advance the welfare of the listening public, would pose substantial administrative problems and would deter innovation in radio programming.

The Ct. also found the FCC's policy did not conflict with the First Amendment rights of listeners, since the 'Fairness Doctrine' of Red Lion Broadcasting, 395 US 367 (1969) did not imply that the 1st Amendment grants individual listeners the right to have the Commission review the abandonment of their favorite entertainment programs,' FCC v. WNCN Listeners Guild, 506 F.2d 246; 101 S.Ct. 1266 (1981)

338. **Program Length Commercials Memorandum,** 26 RR 2d 1023 (1973); 44 FCC 2d 985, 29 RR 2d 469 (1974); 69 FCC 2d 682, 43 RR 2d 683 (1978), (changed, see 442)

339. **Equal Employment Opportunities,** 'FCC must conduct hearing when a petition to deny renewal raises substantial and material questions of fact or when renewal will not serve public interest. Where statistical disparity in minority employment substantial and licensee's minority employment is outside zone of reasonableness (flexible concept comparing employment with availability of minorities in area and recruitment policies of station) FCC conducts own inquiries, but if it cannot or does not wish to do so itself it should permit discovery by petitioners,' Chinese for Affirmative Action v. FCC and Bilingual Coalition v. FCC, 595 F 2d 621 (DC Cir. 1978)

340. **Upgrading an Application,** 'To permit a licensee to receive credit for improvement after an investigation or the expiration of the license term would undermine the basis of FCC enforcement procedures,' Trustees of U. of Penn., 69 FCC 2d 1394, 44 RR 2d 747 (1978)

341. **Control and Supervision,** 'The standard of adequate control and supervision is a strict one, but it is not one of strict liability for every employee peccadillo. Supervision must be reasonably diligent,' Trustees of U. of Penn., 69 FCC 2d 1394, 44 RR 2d 747, 46 RR 2d 565 (1978)

342. **New Financial Qualification Standard,** 'The FCC announced new financial qualification standard for radio applicants and transferees. The ability to construct or operate a new facility for three months, without relying upon advertising or any other revenue,' 69 FCC 2d 407, 43 RR 2d 1101 (1978); and three months for TV,' 72 FCC 2d 784, 45 RR 2d 925 (1980), 87 FCC 2d 200, 49 RR 2d 1291 (1981)

343. **Comparative Renewal Problems,** 'In 1969, Cowles, Florida, sought renewal of its license. Another firm, Central Florida, applied for same frequency. After comparative hearing between applications the FCC gave Cowles its renewal.

Ct. of Appeals set aside and remanded on the grounds that the FCC had inadequately investigated anti-renewal factors and the renewal process was unclear. By determining that the licensee's past performance record was 'superior' the FCC had apparently created an irrebuttable presumption of license renewal, contrary to the full-hearing requirement of the Communications Act. The FCC then reconsidered and again ruled for Cowles. The FCC and the reviewing Ct. agreed that an incumbent licensee is entitled to some degree of renewal expectancy in a comparative hearing. This factor is to be weighted with all the other factors, and the better the past record, the greater the renewal expectancy weight. This will prevent paper promises by challengers from being given equal weight with proven performance (see 230); licensees will be encouraged to insure quality service and; comparing of incumbents and challenges as though new applicants would result in haphazard restructuring of the broadcast industry. The Ct. warned the FCC that renewal expectancy may not be used if doing so would be harmful to the public interest, noting that so far no incumbent television station licensee has ever been denied renewal (except WHDH) in a comparative challenge despite the filing of many such challenges,' Central Florida Enterprises v. FCC, 598 F. 2d 37 (1979), cert. dismissed, 99 S. Ct. 2189, 44 RR 2d 345 (1978), 44 RR 2d 1576 (1979); affirmed, 683 F. 2d 503, 51 RR 2d 1405 (DC Cir. 1982)

344. **FCC-EEOC Memorandum of Understanding,** 'The FCC and EEOC plan to cooperate as FCC holds that discrimination by licensee can be said to be operating against public interest. Broadcasters have unique problems and responsibilities in the area of Equal Employment,' Memorandum of Understanding, 70 FCC 2d 2320, 43 RR 2d 1505 (1978)

345. **Multiple and Newspaper Ownership,** 'FCC proposed, 8 RR 2d 1735 (1970) prohibiting commercial licensee owning more than one full-time station in the same market. Not passed, except for divestiture of CATV systems owned in the same market with broadcast station. Sup. Ct. upheld FCC policy grandfathering most existing cross-ownerships of newspaper-broadcasting, disallowing future cross-ownerships and

requiring break-up of 'egregious' cross-ownership situations,' National Citizens Comm. v. FCC, 555 F. 2d 938 (1977); 98 S. Ct. 2096 (1978); 436 US 775, 43 RR 2d 152 (1978); 51 RR 2d 449 (1982)

346. **Adequate TV Service for NJ,** 'Provision of adequate service to NJ does not require construction of separate or shared NJ auxiliary studios by out-of-state (NY) licensees. No VHF stations licensed in NJ. RKO allowed to retain WOR, if moved to NJ, 1983, (see 417); 62 FCC 2d 604, 39 RR 2d 137 (1976), affirmed 574 F. 2d 1119 (1978), 52 RR 2d 353 (1982), 55 RR 2d 911 (US App. Ct. 1984)

347. **Political Reasonable Access,** 'A station denies reasonable access by not selling prime time, but does not have to sell political time within any news show,' Anthony R. Martin-Trigona, 42 RR 2d 567, 42 RR 2d 1599 (1978)

348. **Indecent Language--Pacifica,** 'Broadcast of indecent language, not necessarily obscene, can be regulated because: (1) Children have access and are unsupervised; (2) received in home--people's privacy interest involved; (3) No warning possible; (4) license power of government. §326 of Comm. Act prohibiting censorship by FCC does not limit the FCC from imposing sanctions on licensees who engage in obscene, indecent or profane language. 'We simply hold that when the FCC finds that a pig has entered the parlor, the exercise of its regulatory power does not depend on proof that the pig is obscene.' The dissent noted that the Ct. for the first time allows the government to prevent minors from gaining access to materials that are not obscene, and are therefore protected by the 1st Amendment. A work is not obscene unless 'the work, taken as a whole, lacks serious literary, artistic, political, or scientific value (Miller v. Calif. 413 US 15, 1973). The community whose standards are applied are the local communities where the work is displayed or uttered. The FCC has taken the position that 18 USCA 1464 is limited to spoken words and additional legislation is needed if the FCC is to reach indecent displays on television,' FCC v. Pacifica, 98 S. Ct. 3026 (Sup. Ct. 1978); 43 RR 2d 493, 438 US 726 (1978)

349. **Financial Qualifications,** 'FCC does not require a legally binding commitment when a loan is used to finance a station, but a reasonable assurance the loan will be available,' 44 RR 2d 487 (DC App. 1978)

350. **Problems Defining Legally Qualified Candidate,** Docket 78-103, added Section 73: 1940 to regulations; 68 FCC 2d 1049, 43 RR 2d 905, 43 FR 32790; Subsections (g) and (h) of the Communications Act of 1934, Section 312(a) (7), corrected by 43 FR 55769, 69 FCC 2d 979, 44 RR 2d 481 (1978)

351. **First and Third Class License Requirements Dropped,** 'FCC no longer requires stations to employ operators with third or first class licenses. Restricted Radio Telephone permit (obtainable without test) is sufficient,' 70 FCC 2d 2371, 44 RR 2d 1521 (1979), 87 FCC 2d 44, 49 RR 2d 1453 (1981); 'Broadcast remote transmitter control requires a licensed operator have supervisory control during all periods of operation, however that operator need only be able to terminate the station's operation should it become a source of harmful interference or be operating inconsistent with law or treaty,' 57 RR 2d 302 (1984)

352. **Secondary Boycott Illegal,** 'NLRB has ruled that it is illegal for AFTRA union of striking radio or TV announcers to pressure ad agencies to withdraw prerecorded 'spot' announcements from a struck station. AFTRA violated the secondary boycott and 'hot cargo' provisions of Federal labor law, which prohibit the use of coercive tactics against the suppliers or customers of a struck business. AFTRA had contended that its tactics were lawful because sending a members' voice on tape to a struck station was the same as forcing him personally to cross a picket line,' NLRB, 240 NLRB 40 (1979)

353. **ASCAP/BMI Blanket License for TV Music Legal,** 'After 10 years of litigation and three previous Ct. decisions, including a US Supreme Ct. decision, a Federal Ct. of App. in NY has affirmed dismissal of CBS's claim that blanket license of

copyrighted music by ASCAP and BMI violates federal antitrust law. A blanket license, usually for one year, permits licensee to use any music controlled by performing rights society as often as desired for either flat sum or percentage of user's revenue. CBS contended the agreement unreasonably restrained trade. The Supreme Ct. held that blanket license was not a per se violation of the Sherman Antitrust Act. On remand, the Ct. of App. concluded that no proof restraint of competition. Under terms of a 1950 consent degree, ASCAP and BMI may obtain only non-exclusive licensing rights from member-composers and may not restrict or interfere with a members right to issue directly to any user a non-exclusive performing rights license (see 623). However, CBS had not attempted to purchase performing rights from copyright owner. The feasibility of getting a direct license from each individual composer was established by evidence refuting CBS' allegations of barriers to direct licensing. If CBS makes the effort and has difficulty, then it would be entitled to obtain a blanket license,' Broadcast Music v. CBS, 441 US 1 (1979); 620 F.2d 930 (2d Cir. 1980);

'At first a Fed. Dist. Ct. in NY ruled that blanket licenses used by ASCAP and BMI with local TV stations violated antitrust law. However this was reversed on appeal as it was held that the plaintiffs had not proved restraint exists. Television producers could acquire music performance rights from composers at the same time the producers acquire synchronization rights (right to use in film separate from right to perform) and then pass on cost. Reasonable source licensing availability was reasoning used to support blanket license in the case of networks and same reasoning applied to local stations as no evidence to show that local stations could not get performance licenses directly from copyright owners and no evidence that per-program license fees were too costly,' Buffalo Broadcasting Co., v. ASCAP, 546 F. Supp. 274 (SDNY 1982); 744 F. 2d 917 (2d Cir. 1984)

354. **No 1st Amendment Privilege Prevents Inquiry into the State of Mind of those who edit, produce or publish in Libel Suits,** 'Public figure, retired Army officer Anthony Herbert, sought damages for allegedly defamatory segment on 60 Minutes. To meet burden of proof of actual malice attempted to inquire into the state of mind of those who participated in

production. Producer Barry Lando (co-defendant with Mike Wallace, CBS, Atlantic Monthly Magazine) refused to answer certain questions in deposition. District Ct. ruled defendant's state of mind was of central importance to the issue of malice. Reversed, but Supreme Ct. upheld as 'it is evident that courts across country have long been accepting evidence going to the editorial process of the media without encountering constitutional objection.' Ct. distinguished between this case and Miami Herald v. Tornillo and CBS v. DNC (see 222,256); saying that they involved efforts to control publication in advance and not post-publication inquiries. Principal concern to balance 1st Amendment protection of press and need to protect individuals from defamatory publications,' Herbert v. Lando, 99 S. Ct. 1635, 441 US 153 (1979)

355. **Cable TV Access Rules Invalid,** 'Supreme Ct. held FCC did not have statutory authority to adopt cable TV access rules which had been adopted in 1976, requiring system with 3,500 or more subscribers to make as many as four channels available to public on first-come, non-discriminatory basis. In Southwestern (see 218) court held that FCC does have authority to regulate cable where regulations are reasonably ancillary to effective performance of the Commission's various responsibilities for the regulation of television. In Midwest Video (see 302) court upheld rule requiring origination of programs by systems of 3,500 subscribers or over and to maintain facilities for local production and presentation of programs. Access rules, the court said, transferred control of the content of access channels from cable operators to the public. Section 3(h) of the Communications Act prohibits the FCC from treating persons engaged in broadcasting as common carriers. A common carrier is one who provides communications facilities to all persons who wish to use them to communicate programs or messages of their own design and choosing. The court stated that the access rules required cable to become common carriers. It was also not a frivolous argument that access rules might have violated due process of 5th Amendment by exposing cable operators to criminal prosecution for offensive broadcasts by access users over which operators had no control,' FCC v. Midwest Video, 99 S. Ct. 1435; 45 RR 2d 581 (1978)

356. **Ct. of Appeals Affirms Renewal Without Hearing for Station Charged with Violating Citizens Agreement,** 'KCOP had petition to deny license renewal filed by association of citizens which claimed deficiency in programming and breach of agreement. FCC denied petition without holding evidentiary hearing, pursuant to Section 309(d) of Communications Act. Criticisms of quality of programming imprecise and unspecific and no material questions of fact or prima facie evidence. FCC has discretion to pursue allegations of excessive violence in programming. Ct. found that FCC decision was garbled on question of agreement breach. Agreement had been incorporated into license renewal application. These become representations to FCC and are treated as promises of future performance. FCC declined to conduct a hearing on grounds it would not arbitrate vague terms and KCOP had satisfied its obligations,' National Association for Better Broadcasting v. FCC, 591 F. 2d 812, 44 RR 2d 793 (DC Cir. 1978)

357. **Repeated Violation of Personal Attack Rule,** '$1,000 judgment against WIYN for personal attack calling organization 'subversive' and 'far left.' Attack on honesty, character or integrity. Forfeiture statute (47 USC 503 (b)), provides that each day violation is a separate offense. The lower court held 19 separate offenses (one for each day after seventh day following broadcast party not notified). Appeals court overturned, stating FCC must prove willfulness or repeated violation and each day notice not given by station does not constitute independent violations,' US v. WIYN Radio, 464 F. Supp. 101 (ND Ga. 1978); 44 RR 2d 1501, and 47 RR 2d 335, 614 F. 2d 495 (5th Cir. 1980)

358. **Business Privilege Tax Legal on Broadcasters,** 'A Pennsylvania statute authorizes City of Pittsburgh to levy tax upon '...all persons, transactions, occupations, privileges, subjects and personal property' except manufacturing. Radio and TV stations sought to enjoin collection on grounds they were 'manufacturers.' Ct. held that despite complexity of changing sound and visual information into electronic signals,

broadcasting is not 'manufacturing.' Broadcasters do not change or produce new, different, or useful articles, but merely effect 'a superficial change in the original materials.' Primary purpose of broadcasting was transmission of commercial messages and the sale of advertising, not translation of events into electronic impulses,' Golden Triangle v. City of Pittsburgh, 397 A. 2d 1147 (Pa. Supr. Ct. 1979)

359. **Company Not Public Figure, Criticism Not Protected 1st Amendment Speech,** 'A slander action was brought against ABC's KGO-TV and the Better Business Bureau for quote that close-out sale was deceptive by promises of bargains not bargains at all. Trial court ruled plaintiffs were public figures and had to prove malice, citing NY Times v. Sullivan, 376 US 254 (1964), Curtis v. Butts, 388 US 130 (1967), and Gertz v. Welch, 418 US 323 (1974), which applies 'actual malice' to public officials; public figures; and to private persons who have become public figures by voluntarily injecting themselves into public controversy. Supreme Court of Calif. overruled: were not 'public figures' required to prove 'actual malice'. Merely doing business with parties to a public controversy does not elevate one to public figure status. Selling goods and advertising sale because of Gertz and Time v. Firestone, 424 US 448 (1976) is a test of public 'controversy' not public 'interest'. Ct. balanced limited 1st Amendment interest of defendants against plaintiffs' reputation interest; '...a person in the business world advertising his wares does not necessarily become part of an existing public controversy. It follows those assuming the role of business critic do not acquire a 1st Amendment privilege to denegrate such an entrepreneur." Vegod Corp. v. ABC, 88 Cal. App. 3d 95; 25 Cal. 3d 763 (1979), cert. denied

360. **Movie for TV Depicting Subject of Public Interest Not Invasion of Privacy,** 'NBC broadcast of "Tail Gunner Joe" about the late Senator Joseph McCarthy, did not defame or invade the privacy of Roy Cohn or David Shine, former aides. Subject matter still a matter of public interest and unless the advertising was false or published with reckless disregard for the truth, or unless the selection of actors was done in a

defamatory manner, NY's Right of Privacy statute was not violated. As to balanced presentation charge the court held this to be essentially a matter of editorial judgment and not libelous. As public figures they would have to prove actual malice,' Cohn v. NBC, 414 NYS 2d 906 (1979), affirmed 430 NYS. 2d 265 (1980)

361. **News Item Not Libelous Without Clear Identity,** 'NBC was sued by various ranchers for statement made on NBC Nightly News during coverage of 1973 Wounded Knee occupation, concerning land leasing practices on Indian Reservation. Ct. held statements not defamatory as no direct derogatory remarks about any of ranchers or any group of ranchers who leased land from Indians. Summary judgment affirmed,' Glover v. NBC, 594 F. 2d 715 (8th Cir. 1979)

362. **Mistaken Identification of Person as Suspect Not Libel as Due Care Taken,** 'Station reporter named plaintiff as suspect in robbery. The individual was not involved; not a public figure; had not injected himself into a matter of public interest; although some law enforcement officers had mentioned the plaintiff as being the suspect under investigation. Relying primarily on Oklahoma law, the Ct. held that the station should have exercised that degree of care which ordinarily prudent persons engaged in the same kind of business usually exercise under similar circumstances. Reporter had reasonable basis, displayed no indifference or negligence and 'the need to report matters as quickly as possible is not merely good competition but serves a paramount concern of society to have access to information of public concern as soon as possible,' Benson v. Griffin TV, 593 P. 2d 511 (Okl. App. 1979)

363. **NBC's Broadcast of "Holocaust" Did Not Require Presentation of Contrasting Viewpoints under Fairness Doctrine,** 'Group filed Fairness Doctrine complaint against WNBC contending that Germany did not have a policy of exterminating Jews in World War II. Under the Fairness Doctrine, if a station presents one side of a controversial issue of public importance, it must afford reasonable opportunity for the presentation of contrasting viewpoints. FCC ruled that alleged

'issue' was 30 years old and not now a controversial issue of public importance. 'In taking this action, we realize that there may be some people who question whether or not the Holocaust occurred. However, the complainant has provided no evidence, and indeed we are aware of none [to] cast doubt on the fact that the Holocaust is a part of history,' In re Complaint of Friedrich P. Berg, Ridgeway Group, against WNBC-TV, 45 RR 2d 649 (1979)

364. **Communications Act Provision Requiring Public Broadcasters to Record all Public Issue Programs Unconstitutional,** 'Court of Appeals held that Section 399(b) violates 1st and 5th Amendments of Constitution. It required all noncommercial educational radio and television stations to record all broadcasts in which any issue of public importance was discussed. Purposes of provision unsatisfactory; no legitimate government interest; and difference in treatment between public and commercial broadcasters involved fundamental 1st Amendment rights,' Community-Service Broadcasting of Mid-America v. FCC, 593 F. 2d 1102, 43 RR 2d 1675 (DC Cir. 1978)

365. **Renewal of TV License Despite Cross-ownership,** 'A citizens group filed a petition with the FCC seeking denial of renewal of WSYR-TV, Syracuse, NY on grounds station part of a group of holdings owned by Newhouse Broadcasting. Newhouse owned AM, FM, cable, two major newspapers, ALL in Syracuse (see 345). Without a hearing FCC renewed and DC Court affirmed. Court ruled that group had failed to show any specific abuses attributable to common ownership, or that common ownership created economic monopolization violating the Sherman Anti-Trust Act. According to the FCC's cross-ownership rules, one of these elements must be present before FCC will consider cross-ownership in a license proceeding. At the time of renewal FCC had cross-ownership rule requiring Newhouse to divest itself of cable, but this rule was modified so as to be inapplicable to certain pre-existing systems. In a separate proceeding the Syracuse group challenged a subsequent license renewal of WSYR-TV,' Syracuse Coalition for the Free Flow of Information in the Broadcast Media v. FCC, 593 F. 2d

1170, 44 RR 2d 581 (DC Cir. 1978), see 73 FCC 2d 186, 46 RR 2d 35 (1979)

366. **Supreme Court Declares Unconstitutional NY Law Requiring Rental Owners to Permit Cable TV Installation Unless Sufficient Compensation,'** 'A number of companies compete to bring pay TV into apartment complexes; Cable, Multipoint Distribution, SMATV, etc. A landlord brought suit against Teleprompter and City of NY challenging constitutionality of statute which allowed cable to install facilities to service tenants and limited compensation (usually $1 unless damage shown). Cable used to give 5% of gross revenue from building. Sup. Ct. agreed that any permanent physical occupation authorized by the government is a taking without regard to the public interests it may serve, even if only minimal economic impact on the owner. Remanded. NY Ct. then held statute proper exercise of state's police power provided more appropriate compensation paid subject to Ct. review,' Loretto v. Teleprompter Manhattan; 459 NYS 2d 743; 102 S. Ct. 3164 (1982); 446 NE 2d 428 (1983);

'FCC preempts all state and local entry regulation of satellite master antenna systems (SMATV),' NY State Comm. on Cable TV v. FCC, 749 F. 2d 804, 57 RR 2d 363 (DC App. 1984)

367. **Broadcaster Not Infringing Common Law Copyright in Program Idea Submitted,** 'In 1959, Szczesny submitted to WGN an idea for a TV show consisting of filmed horse races and using numbered cards to determine 'home winners.' WGN acknowledged receipt of submission but stated no new program material was being solicited. In 1967 the plaintiff viewed WGN's program 'Let's Go To The Races,' which showed films of horse races. Viewers could obtain coded tickets at sponsors for cash prizes. Plaintiff contended in his suit that WGN had infringed his common law copyright in his idea and had breached an implied contract for use of that copyright. (This took place before the introduction of new Copyright Act which would protect any idea put into concrete form--such as his submitted concept (see 295). Ct. found the program had been independently developed by WGN. Independent producer began to work on idea in 1955; no one from WGN spoke to

producer about plaintiff's idea; denied knowledge of plaintiff's idea. Appeal was denied primarily on lack of timely objection but noted that requiring element of novelty (originality and concreteness) was traditional; however, this requirement had been rejected in California (Blaustein v. Burton, 9 Cal. App. 3d 161 (1970),' Szczesny v. WGN, 201 USPQ 703 (Ill. App. 1977, opinion published 1979)

368. **Advertising Discounts Not Price Discrimination,** 'After founding of the American Association of Ad Agencies in 1917, the AAAA was successful in obtaining a standard 15% discount for agencies which placed advertising for their clients. In 1956 a civil antitrust action by the Justice Department resulted in consent decrees enjoining the AAAA and other trade associations from preventing media from granting commissions to advertisers dealing directly or to house-owned advertising agencies. Among the prohibited practices were the fixing of the amount of compensation allowed or received from clients, and the practice of giving rebates of the discounts back to the clients. The media may make independent judgments of who gets discounts. Recently, the FTC reversed an earlier action which had required the same proportional discounts be given to small advertisers as were given to large advertisers or agencies under the Robinson-Patman Antitrust law. Smaller advertisers are not significantly harmed by a cumulative volume discount rate structure, according to the FTC and any such order would raise prices to all advertisers; motivate media to refuse to sell to small advertisers; and would injure competition,' Ambook Enterprises v. Time, 612 F. 2d 604 (2d Cir. 1979); Times-Mirror Co. v. FTC, CCH Trade Regulation Reports, Para. 21, 937 (July 1982)

369. **NBC Liable for Common Law Copyright Infringement,** 'While in Africa, Burke filmed a dramatic fight between a zebra and a lioness. Burke sent film at request to naturalist Grzimek who used for lectures and broadcast on German public TV. Grzimek later gave film to British company which included it in nature program. NBC purchased nature film from British and broadcast it in 1977. Burke sued NBC. Since Jan. 1, 1978, the effective date of current

Copyright Act, 'common law' copyright no longer exists, and all protection is by federal statute. Prior to new Copyright Act, the creator of an artistic or literary work had the common law right to copy and profit from that work; could distribute or show it to a limited class of persons for a limited purpose without losing right. This common law copyright continued until general publication and then specific requirements had to be met to protect under 1909 Law. Burke had never applied for statutory copyright and NBC argued that Burke had lost his common law right because of general publication when used over German public TV. Ct. has held that was not general publication as used only for lectures and on noncommercial TV; specific and limited (see 489). TV, under 1909 law does not constitute a 'publication.' Judgment for Burke,' Burke v. NBC, CCH Copyright Reports, Para. 25,075 (1st Cir. 1979) cert. denied

370. **Damages for Unauthorized Use of Names and Likenesses of "Starsky & Hutch" and "Charlie's Angels"**, 'Spelling-Goldberg Productions had registered the names and owned all rights to the service marks and 'all rights of publicity of the stars of the shows as the characters they play.' Eighteen manufacturers licensed to merchandise products; $1,800,000 for Charlie's Angels alone; and had granted an exclusive license for T-shirt transfers. Defendants had, without a license, infringed on trademarks and rights of publicity and had competed unfairly under the Lanham Act. Damages and relief of $14,400 based on minimum of 120,000 unauthorized transfer's sold at a profit of $12 each. Court refused treble damages or award of attorney's fees,' Spelling-Goldberg Prod. v. Schneider, Civil No. 78-1907 (DNJ. 1979)

371. **FCC Refuses to Protect Exclusivity of "Phil Donahue" from Satellite Distribution to Cable,** 'FCC rules and contract provisions had granted TV stations the exclusive right to broadcast syndicated programs in their viewing area. Syndicated programs were sold, licensed, distributed and offered to stations in more than one market for non-network broadcast, not including live presentations. WOTV had been granted exclusive rights by Multimedia to carry 'Donahue' show

on tape-delayed basis in Grand Rapids, Mich. Show was produced and broadcast live in Chicago on WGN-TV; recorded and distributed. Two cable companies in Grand Rapids began carrying WGN's Donahue show via satellite-live, several days before tape of show got to WOTV. Cable operators refused to give exclusivity protection and WGN had not agreed that the satellite could carry their programming to cable systems, but FCC has ruled WGN's permission not necessary once signal broadcast (see 497). In a concurring statement Commissioner Quello expressed concern over impact of requested order on 'superstation' (term recently trademarked by Ted Turner-WTBS-TV Atlanta). Super-stations retransmit TV signals via satellite beyond their market (see 433). Dissent: Commissioner Washburn noted discourages diversity of programming. Multimedia then transferred program from WGN to WBBM (not on satellite) when contract expired,' In re Manhattan Cable Television, Inc., 73 FCC 2d 25, 45 RR 2d 1695 (1979)

372. **Upheld FCC Denial of License for Double-Billing,** 'FCC is not obligated to explain its decision not to renew license when stations had engaged in 5 1/2 years of double-billing with knowing participation of licensee's sole shareholder. The station would send two bills to local advertisers--one for true cost of ads and other for higher amount which local advertiser sent to national advertiser for reimbursements under cooperative shared-cost ad plan. Argument that CBS misleading advertising of 'winner-take-all' tennis matches was similar and greater threat to public interest was not comparable. The CBS matter, according to the Ct, involved single occurrence and double-billing was obvious misconduct, (see 335)' White Mountain Broadcasting v. FCC, 598 F. 2d 274 (DC Cir.), 45 RR 2d 681 (1979)

373. **Lienholder Rights to License,** 'The Utah Supreme Court has held that a trial court did not impinge upon FCC jurisdiction when the court declared that the purchaser of a radio station had defaulted in its time payments, and therefore the purchaser's interest in the license and other assets was forfeited back to the seller, as provided in the sale agreement. The FCC would have to approve the license transfer, but as between purchaser and

seller, the seller owned the license. If the FCC did not approve transfer, license could be terminated,' Themy v. Seagull Enterprises, 595 P. 2d 526 (Utah 1979)

374. **No Defamation as No Proof 'Actual Malice,'** 'A summary judgment was granted WTAE-TV and its consumer affairs editor. They broadcast that steak sale ads mentioned neither grade of meat nor price per pound; that commercial grade meat was lowest grade available; and that store allowing sale terminated endorsement. Steak company held became public figure when they voluntarily involved themselves in sale by managing and advertising it,' (also see 359) Steaks Unlimited v. Deaner, 468 F. Supp. 779 (WD Pa. 1979); upheld, 623 F.2d 264 (3d Cir. 1980)

375. **Free Press vs. Fair Trial,** 'Supreme Ct. holds that press may be barred from a pretrial hearing of a motion to suppress evidence in Gannett; however the Constitution guarantees the public and press the right to attend criminal trials. This is not an absolute right as the judge may choose to close trial when 'overriding circumstances' are present and articulated,' Gannett v. De Pasquale, 443 US 368 (1979); Richmond Newspapers v. Virginia, 448 US 555 (1980); Chandler v. Florida, 101 S. Ct. 802 (1981)

376. **Programming for Minority Audiences,** 'A licensee has no obligation to divide its coverage of community problems according to the racial, ethnic or religious composition of the community. There is merit to the contention that licensee can rely on general programming to meet the specific needs of minority audiences,' Georgia Brd. of Education, 70 FCC 2d 948, 44 RR 2d 1599 (1979)

377. **Pay TV Rules Amended,** 'Regulation of subscription TV relaxed to allow development. Eliminated requirement that there must be four conventional stations before Pay-TV and 28 hour limitation,' Subscription Television Service, 46 RR 2d 460 (1979); 90 FCC 2d 341, 51 RR 2d 1173 (1982); 'FCC declines to permit Public TV stations to engage in subscription TV operations on a general basis for the public interest would be

adversely affected if this were to become the dominant form of delivery of for public broadcasting, but will accept requests for waivers which will be granted in appropriate individual circumstances,' 56 RR 2d 311 (1984)

378. **Pay TV Multi-Point Distribution is 'Broadcasting,'** 'The transmission of pay TV programs which are of interest to the general public constitutes 'broadcasting' even though one cannot view without paying a fee for special equipment,' Orth-O-Vision, Inc., v. Home Box Office, et. al., 46 RR 2d 628 (SDNY, 1979); 'therefore FCC jurisdiction supercedes NY Cable TV Commission,' NY Cable TV Comm. v. FCC, 669 F.2d 58 (2d Cir. 1982)

379. **Allocation of Time; Fairness Doctrine; Nuclear Energy,** 'Four Calif. stations presenting editorial advertising sponsored by a utility company failed to afford reasonable opportunity for contrasting viewpoints. Although the amount of time was proportionate, the frequency and extent of presentations during peak audience listening periods showed disparity,' Public Media Center, 72 FCC 2d 776, 45 RR 2d 1751 (1979)

380. **Fairness Doctrine Covers Political News Coverage When Rebroadcast Too Late,** 'Debate between candidates for governor, rebroadcast two and one-half days after original broadcast was not exempt on-the-spot news coverage. 'One-day rule' governs on-the-spot treatment,' New Jersey Public Broadcasting Authority, 73 FCC 2d 808, 46 RR 2d 558 (1979)

381. **Opinions Expressed in News Commentary Distinct From Editorial Opinion,** 'Commentary by news anchorman, written by station news director is different from opinion of licensee; even if the opinion held by the news people is also held by the licensee. Commentary does not become an editorial subject to personal attack rule unless licensee authorizes commentator to speak for the station,' Let's Help Florida Committee, 74 FCC 2d 584, 46 RR 2d 919 (1979)

382. **Fairness Doctrine Does Not Make Public Access Mandatory,** 'A mandatory system of public access to broadcast facilities to comply with Fairness Doctrine would amount to common carrier status for broadcasters and is not legal, 'Handling of Public Issues under Fairness Doctrine and Public Interest Standards, 46 RR 2d 999 (1979)

383. **Qualified Candidates,** 'State election laws and state election officials' decisions prevail concerning who is a legally qualified candidate, unless such determinations are overturned in court,' John J. Marino, 71 FCC 2d 311, 45 RR 2d 356, and 'People classified as candidates under the Federal Election Campaign Act are not necessarily candidates under 73:1940,' National Citizens Committee for Broadcasting, 75 FCC 2d 650, 46 RR 2d 1 (1979), (see 385,510)

384. **Lowest Unit Rate,** 'Stations must provide candidates lowest unit rate for a given class of time, but there is no requirement to offer the cheapest class of time (see 385), but must apply all discounts notwithstanding amount of time purchased,' Warren J. Moity, Sr., 46 RR 2d 399, and 'the 45-days before the primary election rule deals only with the lowest unit rate that may be charged, not with the dates during which a candidate may or may not be granted access,' Carter-Mondale, 74 FCC 2d 631, 46 RR 2d 829 (1979)

385. **Federal Candidates Access,** 'Since networks are both licensees and their affiliates' programming agents, they are covered by political broadcasting sections of Communications Act;

The Presidential nominating process is not isolated state primary/caucus campaigns, but a nationwide effort and networks cannot base their acceptance or rejection of requests upon the date of the national nominating convention;

With respect to requests for time, a candidate must be legally qualified at time of the proposed broadcast, but does not need to be qualified when request is made;

Federal candidates desires for specific time periods and length of time should be honored whenever possible and an

arbitrary ban on the use of a particular class or length of time is not reasonable;

Stations must honor candidates' assessment of media needs and request for time cannot be met with just news coverage or other exposures exempt from §315. Each candidates' request is to be considered individually, not against backdrop of campaign as whole, or multiplicity of candidates,' Carter-Mondale, 74 FCC 2d 631, 46 RR 2d 829; affirmed, 46 RR 2d 1711 (Ct. App. 1980); affirmed in CBS v. FCC, 453 US 367, 49 RR 2d 1191 (Supr. Ct. 1981)

386. **Political Editorial,** 'Political editorial regulations apply in a recall election, even when incumbent's name is not on ballot. If an editorial endorses one candidate spokesman for all those not endorsed must be given chance to reply and the original editorial does not need to be rebroadcast to balance the numerous replies against the one time endorsement,' Friends of Howard Miller, 72 FCC 2d 508, 45 RR 2d 1142 (1979)

387. **What is 'News-Show' or 'Entertainment',** 'Good Morning, America and Today Show are news programs for their entirety and therefore exempt from §315. The Tonight and Tomorrow Shows are basically entertainment, and are therefore not exempt from §315,' ABC, Inc., 46 RR 2d 944 (1979), (see 429)

388. **Seven-Day Rule Does Not Apply to Reasonable Access Request,** 'An opponent who requests time more than seven-days after another candidate for the same position has appeared must not be turned down if request is for reasonable access' and not 'equal opportunities,' Kennedy for President Committee, 80 FCC 2d 93, 46 RR 2d 1539 (1980)

389. **Rule Change Narrows Fairness Doctrine by Separating From Political,** 'The Personal Attack Rules-(315(I) and 73:1920)-are amended to exempt from all §315 uses of broadcast and cable facilities by candidates for public office, and to eliminate all applicability of the Fairness Doctrine to § 315 uses,' Personal Attack Rules and Applicability of the Fairness Doctrine, 78 FCC 2d 457, 45 RR 2d 1635 (1979)

390. **Cost % Spent on Local Programming Not Important,** 'The percentage of revenue devoted to local programming is not a valid criteria for judging a station's public service record,' KCOP-TV, Inc., 45 RR 2d 1063 (1979)

391. **AM/FM Joint Ownership 'Grandfathered',** 'Applications creating new or transferring control of existing AM/FM combinations, filed after June 6, 1979 are subject to future FCC action which could prohibit such combination ownership. Pending applications are grandfathered,' Cross-Ownership of AM/FM Combinations, 45 RR 2d 1327 (1979)

392. **Public Affairs, News or Entertainment Logging,** 'Public affairs series may contain some shows devoted to entertainment as long as those shows devoted to entertainment are logged as entertainment. Entertainment news material can be logged as news only if presented as an integral part of a regular news program,' Service Broadcasting, 46 RR 2d 413 (1979) (see 442)

393. **Scheduling of Public Affairs Programming,** 'Placing all public affairs programming in the late evening, early morning 'ghetto' raises the FCC's eyebrows,' Amaturo Group, Inc., 46 RR 2d 865 (1979)

394. **Licensees Must be Treated Equally on Same Issue if Similar Circumstances,** 'Although FCC can deal on case-by-case basis because of lack of information of all violations, cannot single out one transgressor for denial or hearing among a number of licensees under scrutiny if the same issue (i.e., network affiliation contracts). Must explain the basis for differing treatment that are of legal significance to warrant disparity when licensees are in the same investigation,' George T. Hernreich, KAIT-TV, 72 FCC 2d 511, 45 RR 2d 963, and United TV, 46 RR 2d 655 (1979)

395. **Blacks More Important Than Women,** 'Ownership and management by blacks deserves more credit in a competitive

hearing than such involvement by women,' Radio Gaithersburg, Md., 72 FCC 2d 821, 45 RR 2d 1709 (1979)

396. **Revocation Despite Public Service,** 'In 1976, WHBI had its license revoked for numerous violations including, promoting a lottery, abdication of control to time brokers, improper logging. Ct. told FCC to review case, giving greater consideration to multi-language public service programming. FCC reconsidered and revoked license anyway as (1) record was vague, often not logged and not sufficient to mitigate, and (2) three other stations in market broadcast 23 languages (see 600), so revocation not detrimental to the public interest,' Cosmopolitan Broadcasting, 581 F.2d 917 (DC Cir. 1978); 75 FCC 2d 423, 46 RR 2d 1285 (1979)

397. **Plugola Practices,** 'FCC decides not to propose a formal rule against plugola (plugging product for personal gain). It assumes that reasonable diligence will be used and FCC will deal with on a case-by-case basis,' Broadcast Announcement of Financial Interests of Broadcast Stations and Networks and their Principals and Employees in Services and Commodities Receiving Broadcast Promotions, 76 FCC 2d 221, 46 RR 2d 1421 (1980)

398. **Newspaper-Broadcast Crossownership,** 'Multiple ownership rules are not contingent upon how many signals received in market, but how local issues can be covered with diversity,' Petitions for Waiver of 73:35, 73:240 and 73:636, 74 FCC 2d 497, 46 RR 2d 684 (1979)

399. **Court Rules that Violation of FCC's Personal Attack Rule Gives Private Cause of Action,** 'In 1977, KDKA broadcast talk show during which guest stated motion picture director Pare Lorentz had been a member of Communist Party. Lorentz filed suit for libel, invasion of privacy, negligence and reckless infliction of emotional distress. Cause of action was based on KDKA's alleged failure to comply with Personal Attack Rule (73:123). Defendants moved for summary judgment arguing that FCC Act did not authorize private civil action; Lorentz argued there was implied cause of action. This

is the only district court saying, 'We find it appropriate to provide interested citizens with a meaningful personal and practical approach to the matter of violations in giving the right to bring suit to redress infractions of the rule.' Case appealed and broadcaster's lost; Penn. adopting negligence standards, Lorentz v. Westinghouse., 472 F. Supp. 946 (W. D. Pa. 1979); 679 F. 2d 322, 51 RR 2d 953 (1982), (see 474, 477)

400. **Elements Needed to Protect Idea Submitted,** 'In 1964, Edgar Faris conceived an idea for a sports quiz show for which he prepared and registered a format. Six years later, he met with KTLA personality to discuss. Nothing came from meeting, but some time later show, similar to proposed idea was started. Faris filed suit against personality Enberg, Golden West and others, alleging breach of express contract, breach of implied-in-fact contract, plagiarism, breach of confidence, and breach of an implied-in-law contract. All complaints were dismissed.

The Ct. held that in order to prove existence of an implied-in-fact contract, one must show: that he or she prepared the work; that he or she disclosed the work to the offeree for sale; unless agreed otherwise it can be concluded that the offeree knew the conditions under which it was tendered (i.e., the opportunity to reject the attempted disclosure if the conditions were unacceptable); and a reasonable value was placed on the work. In this case no evidence submitted was for sale. Ct. held than an implied contract is not created just because a phone call is returned or a request is made to read a work unconditionally submitted. A confidential relationship is not created just by submission. There must be evidence of communication of confidentiality,' Faris v. Enberg, 97 Cal. App. 3d 309 (1979)

401. **Libel, If Defamatory, Rather Than Slander,** 'The Supreme Ct. of Alabama has held that certain radio broadcasts, if defamatory, taped by a church pastor at a station constituted libel rather than slander. The court relied upon decisions from other jurisdictions and upon the Restatement of the Law of Torts, Second, which states: '(1) Libel consists of the publication of defamatory matter by written or printed words, or its embodiment in physical form or by any other form of communication that has the potentially harmful qualities

characteristic of written or printed words.' Defamatory material broadcast by radio or otherwise is libel whether or not it is read from a manuscript,' First Independent Baptist Church of Arab v. Southerland, 373 So. 2d 647 (Ala. 1979); Gray v. WALA, 384 So. 2d 1062 (Ala. 1980)

402. **Breach of Non-Competition Contract by DJ,** 'Provision in employment contract was that DJ would not work in same county for station for one year after leaving. Within six months of being terminated he went to work for another station. Trial court was overturned by Alabama Supreme Court. Even though stations broadcast different music their audiences overlapped to a significant degree. Covenant not to compete was enforceable as long as three elements satisfied: (1) employer must have substantial protectible right unique in his business; (2) the restriction is relevant and reasonable to the protection of that right; and (3) there is no imposition of undue hardship on employee. In this instance, the fact that station is personalized and identified to its listeners by announcers is a substantial business right. The restraint on employment for one year within county is relevant and reasonable as applied to same type of job and there was no hardship. Injunctive relief was inappropriate, but liquidating damages upheld,' Cullman Broadcasting v. Bosley, 373 So. 2d 830 (Ala. 1979); also Murray v. Lowndes, 284 SE 2d 10 (1982); Beckman v. Cox, 296 SE 2d 566 (Ga. 1982)

403. **Revocation of Licenses; Standard of Proof by FCC Necessary,** 'Clear and convincing standard of proof needed at agency level according to Collins v. SEC (562 F. 2d 823), applies to FCC, where loss of livelihood is involved,' Sea Island Broadcasting v. FCC, 46 RR 2d 1339, 627 F. 2d 240 (DC Cir. 1980)

404. **Libel of Advertising Agency,** 'Media Buying Service sent letters to TV stations allegedly suggesting agency breached contracts and failed to pay bills. Letters were libelous per se because they tended to injure reputation by disparaging integrity in agency's business dealings,' Matthews, Cremins, McLean, Inc., v. Nichter, 256 SE 2d 261 (NC App. 1979)

405. **Copyright Damages Awarded to Iowa State University for Unauthorized Use of Student Film by ABC,** 'In 1972, Iowa State offered ABC rights to film made by students about Olympic wrestler Dan Gable. ABC refused to buy. During Munich Olympics, two segments of 12 seconds and two and one-half minutes were used. Iowa State notified ABC of its copyright claim. ABC then used eight-seconds on 'Superstars' show. Ct. awarded total damages of $15,250, plus attorney fees of $17,500 because ABC had initially denied infringements and had defended lawsuit vigorously,' Iowa State Univ. v. ABC, 475 F. Supp. 78 (SDNY 1979); 621 F.2d 57 (2nd Cir. 1980)

406. **FCC Eliminates Top-50 Policy of TV Station Ownership,** 'Limitation on group ownership of stations in the top-50 markets, adopted in 1968 is eliminated. FCC concluded that multiple ownership rules were sufficient to achieve programming diversity and prevent economic concentration. Top-50 policy did not significantly affect diversity as applied only to ownership of stations in different cities, whereas rule restricting cross-ownership in the same market deals directly with diversity. Regional ownership rule restricting a party to two stations within a 100 mile radius continued. FCC will require, even though no rule, hearing for any application raising substantial public interest issues arising in connection with top-fifty acquisition,' Multiple Ownership of Television Stations, 46 RR 2d 1141 (1979); affirmed, NAACP v. FCC, 682 F.2d 993, 51 RR 2d 1215 (1982)

407. **Right of Publicity,** 'The majority of jurisdictions have recognized that if a prominent person promoted and commercially exploited his name and likeness during his lifetime; that right can be inherited. Involved are considerations of fundamental fairness for an entertainer or athlete has devoted his or her life to attain celebrity status, and it would be unfair to permit a commercial enterprise to reap windfall benefits from those labors at the expense of the celebrity's heirs or beneficiaries. The ability to leave a valuable property interest to one's heirs also serves the public interest by encouraging enterprise and creativity,' Following is a listing of cases which

show the development of this legal principle: Lugosi v. Universal Pictures, 25 Cal. 3d 813 (1979); Gugliemi v. Spelling-Goldberg, 25 Cal. 3d 860 (1979)--no right if not exploited during lifetime. Memphis Development Foundation v. Factors, Inc., 616 F. 2d 956 (6th Cir. 1980)--right not descendible in TN; 441 F. Supp. 1323 (W.D. TN 1977)--right survives death; Factors, Etc., Inc., v. Pro Arts, Inc., 652 F. 2d 278 (2d Cir. 1981)--not descendible. Martin Luther King, Jr., v. American Heritage, 508 F. Supp. 854 (ND Ga. 1981)--did not exploit during lifetime so not protected, (reversed); 296 SE 2d 697 (Ga. 1982); affirmed in 694 F. 2d 674 (11th Cir. 1983); Groucho Marx Productions, Inc., v. Day and Night Co., 689 F. 2d 317 (2d Cir., 1982)-right descendible; Commerce Union Bank v. Coors, 7 Med L. Rptr. 2204 (TN. Chanc. Ct. 1981), affirmed 1984--right not descendible. Factors, Etc., Inc. v. Pro Arts, Inc., 541 F. Supp. 231 (SDNY 1982); Lancaster v. Factors, Etc., Inc., 9 Med. L. Rptr. 1109 (TN Chanc. Ct. 1982): Factors, Etc. v. Pro Arts, 562 F. Supp. 304 (SDNY 1983); 701 F. 2d 11 (2d Cir. 1983)--not inheritable or contractable after death; Reeves v. United Artists, 572 F. Supp. 1231 (ND Ohio 1983)--followed Zacchini v. Scripps-Howard (see 324) that right of publicity like right of privacy and not descendible;

'California enacts statute establishing descendible right of publicity,' Calif. Civil Code, §990, 3344 (1984);

'Tennessee adopts statute establishing descendible right of publicity,' Personal Rights Protection Act of 1984, Senate Bill 1566;

'Kentucky enacts statute recognizing descendibility of right of publicity with no use for commercial profit for 50 years without written consent,' Chapter 263, 1984 Kentucky General Assembly, (see 428)

408. **Employment Contract is Assignable Unless Employee Fired,** 'In one instance an employee's contract assigned to a new owner bound the employee for the remainder of the contract and he cannot quit and go to work for a competing station. But, where an employee is fired, the station cannot hold employee to non-competition clause as it would deprive employee of livelihood,' Evening News v. Peterson, 477 F.

Supp. 77 (DDC); Orion Broadcasting v. Forsythe, 477 F. Supp. 198 (WD Kty. 1979)

409. **Federal Trade Commission Adopts Guidelines for Endorsements and Testimonials in Advertising,** 'FTC §255.1 requires endorsements always reflect honest opinions, findings, beliefs, or experiences of the endorser and may not contain any representations which would be deceptive, or could not be substantiated if made directly by the advertiser. Ads which present experiences of consumers must be comparable to the performance consumers will generally achieve. If endorsers appear to be actual consumers, then either actual consumers must be used or the ads must disclose that the people shown are not actual consumers. §255.2 provides that any connection between endorser and seller which might materially affect weight or credibility must be disclosed, but payment to an endorser who is an expert or personality need not be disclosed as it would be expected.' Federal Trade Commission, Endorsements and Testimonials in Advertising, 16 CFR Part 255 (January, 1980)

410. **TV Commercial Can't Copy From TV series,** 'DC Comics owns copyright to Superman and has licensed its use for promotion, and, on occasion, licensed such use by a consumer electronics retailer known as Crazy Eddie. He produced a TV commercial for his business which was nearly in every aspect copied in detail from the 'trailers' for the Superman TV series and had not obtained a license for the spot. The court found the only variation in the commercial from the trailer was Crazy Eddie's name and business purpose were substituted for Superman's name and purpose. The average lay person would instantly recognize the source. Crazy Eddie argued his commercial was a parody. The court recognized a parody is entitled to greater freedom than other uses, but the commercial was held not to be a parody and would irreparably impair Superman's licensing value. Injunction was granted,' DC Comics v. Crazy Eddie, CCH Copyright Law Reports, Para. 25,097, 205 USPQ 1177 (SDNY 1979)

411. **Exclusive Right to Trademark 'Bionic' Limited,** 'In 1974, Universal produced 'The Six-Million Dollar Man,' followed by 'The Bionic Woman.' Universal applied for several trademarks. The American Footware Co. did a trademark search and noted the term 'bionic' had not been registered in relation to footwear and registered the trademark name 'Bionic Boot'. The court found that Universal had not registered or applied for that specific trademark and American had priority of use. Universal could not show the term had acquired a secondary meaning so that the public associated the term with Universal or its series. Universal claimed the public would be confused as to the source but the Ct. disagreed. The exclusive right to a trademark is derived from its actual use in the marketplace and Universal used in the area of TV and toys, so both companies could use term if one referred to TV show and the other to footware,' American Footwear v. General Footwear, 609 F. 2d 655 (2d Cir. 1979)

412. **Misrepresentation Leads to License Denial,** 'Applicant, not its counsel, is responsible for complying and application is denied for misrepresentation and withholding of substantial information,' WADECO, Inc. v. FCC, 628 F.2d 122, 47 RR 2d 177 (DC App. 1980)

413. **FCC Amended Cable TV Rules Removing Blackout of Network Duplication,** 'Stations, to get blackout of network programs on cable systems in their market so they have exclusive first showing must prove need for protection,' Spartan, et. al. v. FCC, 47 RR 2d 1521; 619 F.2d 314 (4th Cir. 1980) (CA 4th, 1980)

414. **Hoax Kidnapping of DJ Denial of Renewal,** 'Failure of control by absentee licensee when promotional hoax aired about 'missing' DJ. Serious, prolonged event involved police and led to inaccurate news broadcasts,' Walton (KIKX), 47 RR 2d 1233 (1980), also WMJX, 85 FCC 2d 251, 48 RR 2d 1339 (1981)

415. **Suburban Station EEO Efforts,** 'Surburban stations EEO efforts will be evaluated on work force data from city and county of license including larger metropolitan area nearby,'

Suburban Wash. DC Renewal, 77 FCC 2d 911, 47 RR 2d 417 (1980)

416. **Contract for Time May or May Not Be Valid If Not Used Timely,** Tanner (now Media General) provides promo material (jingles) for cash and use of station's commercial time which it brokers to others. Contracts stated use of time valid until used. In Oklahoma, Ct. ruled that spots unused were forfeited after reasonable time had passed. KGYN had made all necessary cash payments and no longer used material supplied by Tanner. In Minnesota Ct. ruled contract did not specify the time for performance and held reasonable time was seven-year term of the contract. In Utah, Ct. ruled that there was no time limitation and Tanner was entitled to fair market value of spots and time credits. There station still owed on contract and was still using material. The courts have not reached consistent results, but generally feel 'valid until used' is not ambiguious, (see 425), 'Tanner v. Plains, 486 F. Supp. 1313, 47 RR 2d 519 (WD Okla. 1980); Tanner v. KOWO, 549 F. Supp. 411 52 RR 2d 317 (D. Minn 1982); Tanner v. Granite, 49 RR 2d 219 (Utah Dist. Ct. 1980); Sparta-Tomah, 716 F. 2d 1155, 54 RR 2d 769 (7th Cir. 1983); Tanner v. Mesa, 571 F. Supp. 28 (D. Colo. 1983)

417. **RKO-General License Revocations,** (see 277) ' In 1980 FCC revoked WNAC, KHJ and WOR on basis that licensee, in cooperation with parent corporation, participated in illegal trade scheme; filed inaccurate financial reports and misrepresented facts. Ct. noted that illegal trade practice could not be retroactively applied; that inaccurate financial data was insignificant and not allowing a hearing on intent was unlawful. The court requested that FCC holding corporate licensees to a higher standard than individual owners be clarified. Ct. upheld FCC's WNAC revocation on basis of lack of candor. Although KHJ and WOR renewals were conditioned on Boston decision cases did not illustrate direct misconduct and, on remand, each station was entitled to distinguish its policies. FCC denied license renewals on rehearing.

FCC then ordered noncomparative hearings on RKO's remaining 13 licenses. Ct. ruled that companies seeking to

obtain RKO's 13 licenses were entitled to file competing applications at once. Congress passed §331, modifying the Communications Act of 1934, which states that it shall be FCC policy that if a licensee of a commercial VHF station agrees to reallocation of its channel to a State where there is no VHF commercial TV channel (NJ or Delaware), the FCC, notwithstanding any other provision of law shall issue a license for a five-year term. RKO then moved WOR to NJ and was issued a five-year license; approved by App. Ct. against challenge,' 670 F. 2d 215, 50 RR 2d 821 (1981); 685 F. 2d 708, 52 RR 2d 1 (1982); 53 RR 2d 469 (1983); 728 F. 2d 1519, 55 RR 2d 911 (DC Cir. 1984);

The FCC commenced hearings in 1985 for 149 competing applications for RKO's 12 radio stations and for WHBQ-TV, Memphis. Further hearings await a decision on whether RKO is to retain KHJ-TV, Los Angeles. Action was apparently prompted by an admission that the RKO Radio Network had overstated its audience and thereby overcharged advertisers by as much as $7.9 million since 1980.

418. **Sex Discrimination in Employment by CBS,** 'In 1976, former employee of KNXT, L.A. instituted class action alleging employment discrimination on the basis of sex in violation of Title VII of Civil Rights Act of 1964. Consent decree approved by Federal District Ct. had CBS agreeing to increase women in upper managerial and production positions when vacant through 1984; scholarship at USC for women; Career Development Training Seminar; station EEO officer; technical training for women employees, etc. Employee who sued received $30M, but agreed to resign. Consent decree is not an admission of violation; merits of case not tried and CBS does not have to promote or hire unqualified nor promote or hire best qualified applicant,' Cotton v. CBS, Inc., Case No. 76-2215 HP (CD Cal. July 9, 1980); see also Walker v. KFGO, 518 F. Supp. 1309 (DN Dak. 1981)

419. **Unfair Labor Practice to Fire Employees Attempting Union,** 'NLRB found TV station in Duluth, Minn., committed unfair labor practice in violation of 8(a)(3),(1) of National Labor Relations Act when discharged certain employees,

eliminated six o'clock news. Stations claimed low ratings but board found actions were effort to avoid unionization election of newsroom staff and were reprisals for union victory and unlawful,' RJR Communications, Inc., and Local 346, Teamsters, 1980 CCH Labor Law Reports, Para. 16,914 (1980)

420. **Ali Gets Legal Expenses for Defense of Libel Lawsuit from ABC,** 'In 1975, Muhammad Ali was critical of referee Perez in Ali-Wepner fight as Cosell pursued subject provocatively. Perez sued Ali for libel. Ali won but it cost $193,352 in legal expenses. Ali, a member of AFTRA, which has a code which ABC has signed, provides that the producer of any program would indemnify performer against acts done or words spoken by performer at producer's request. Ali had been paid $5M for interview and claimed his statements made at Cosell's request. ABC refused to pay and Ali instituted arbitration proceedings under AFTRA collective bargaining agreement. Arbitration panel found ABC liable. The US Supr. Ct. has held that courts should not review the merits of arbitration decisions because they should be binding and final if agreed to in collective bargaining agreements. But, ABC appealed. Review of record found decision rational even though ABC claimed AFTRA Code did not require indemnification for ad-libs. Arbitrators had found remarks induced by Cosell; it had been taped, reviewed, edited by ABC,' ABC v. Ali, 489 F. Supp. 123 (SDNY 1980)

421. **FCC Rules United Way PSA's Do Not Violate Fairness Doctrine,** 'ABC, NBC, CBS broadcast United Way PSA's during National Football League games. National Committee for Responsive Philanthropy filed complaint with FCC that PSA's endorse only one side of controversial issue of public importance in that United Way allegedly monopolizes workplace donations, allocates funds inequitably and avoids controversial charities. FCC concluded networks not unreasonable in determining spots did not discuss directly or meaningfully possibly controversial procedures of United Way and denied request for balance,' (see 241), In re Complaint of NCRP v. ABC, NBC, CBS, 78 FCC 2d 1072, 47 RR 2d 1367 (1980); upheld Ct. of App. (1981)

422. **Copyright Suit Dismissed for Lack of Substantial Similarity,** 'The distinction between an idea and its expression was the issue when writer alleged that 'egg' skit on Tony Orlando show infringed copyright on lecture on eggs. Ct. noted that copyright protection is available only for expression of idea, and not for idea itself. Attribution to egg of human qualities is idea and sequence of events follow from common theme. Suit dismissed,' Gibson v. CBS, CCH Copyright Law Reports, Para. 25, 164 (SDNY 1980)

423. **Employer Liability and Plugola,** 'Mutual Broadcasting System cannot be held liable for an illegal agreement allegedly breached by employee. Generally, employer is responsible for acts of employees. A talk show host received money in exchange for his promise to promote a product (Plugola). While employee might be liable for breach, the court found that employee's acts were not in futherance of his employer's business and were outside scope of employment so Mutual not responsible,' Friedman v. MBS, 380 So. 2d 1313 (Fla. App. 1980)

424. **Sale and Use of Unauthorized Pay-TV Signal Decoders Illegal,** 'Communications Act, §605, prohibits unauthorized interception of broadcasts unless for the use of the general public. Courts have ruled that Pay-TV is broadcast only for use of paying subscribers; that to determine otherwise would threaten economic vitality; and violates FCC consumer protection policy in investment in equipment by public,' Chartwell v. Westbrook, 637 F. 2d 459 (6th Cir., Dec. 1980); National Subscription TV v. S. & H TV, 644 F.2d 820 (9th Cir., May 1981); FCC Public Notice, Manufacturers and Sellers of Non-Approved Subscription TV Decoders are Cautioned (August 15, 1980); AT&C v. Western Techtronics, 51 RR d 85 (1982); People v. Babylon, 194 Cal. Rptr. 134, 759 (Cal. App. 1983); Hoosier Home Theatre (TVQ) v. Adkins, 595 F. Supp. 389 (SD Ind. 1984)

425. **Scope of Employment on Radio Programming Services Contract,** 'A former radio station employee who purchased

prerecorded music and program materials acted within scope of employment and authority so station is obligated to pay on contract. The supplier had no notice of, and no reason to inquire about, any limitation on employee's authority. Station continued to use and pay for contracted materials, thereby approving contract,' White River Valley Broadcasters v. Wm B. Tanner Co., 487 F. Supp. 725 (ED Ark. 1979)

426. **FCC Renewal Denial for Failure to Follow Programming Promises,** 'KDIG-FM, now KIFM proposed to broadcast 5.38% news, 1.53% public affairs and 1.53% other exclusive of sports and entertainment. In 1971 station sought to amend its proposal citing financial losses but promised at least 1.1% public affairs and to increase significantly news, religious and instructional programming. FCC decided station did not intend to fulfill its promises when initially made and did not show good faith efforts as only .93% news, no public affairs, insufficient staff, unresponsive to problems, needs and interests of community. Ct. upheld FCC. Promise vs. performance inquiry is directed toward determining whether licensee made reasonable and good faith efforts and an examination of the licensee's efforts is material, (see 600),' West Coast Media, 47 RR 2d 109 (1980); 695 F. 2d 617, 52 RR 2d 1295 (1982); 'After exhausting all legal appeals West Coast asked FCC for permission to sell the station. The FCC denied the request since the licensee had pursued the renewal application to its unsuccessful conclusion and no longer possessed a license to transfer. Permitting a distress sale would signal other licensees not to opt to sell to a minority group until they knew the ultimate outcome of their attempt to renew, which would not encourage the early entry into broadcasting of minority owners. West Coast is authorized to continue to broadcast until a permanent licensee can be found so as to avoid loss of service to the viewing public,' 56 RR 2d 483 (1984)

427. **Copyright Infringement,** 'A Connecticut station broadcast 23 musical compositions without payment of ASCAP fees and without permission of copyright holders. Station operating at a loss was not non-profit use. Ct. enjoined further infringement and awarded statutory damages of $1,000 per infringement and

attorney's fees,' Boz Scaggs Music v. KND Corp., 491 F. Supp. 908 (D Conn. 1980); also $54,000 damages - $26,400 attorney fees; Rodgers v. Quests, 213 U.S.P.Q. 212 (ND Ohio 1981)

428. **Johnny Carson Wins Right-of-Publicity Suit,** 'Carson's right of publicity was invaded by a company that intentionally appropriated his identity for commercial exploitation. Johnny's Portable Toilets may not use the phrase 'Here's Johnny,' as a corporate or trade name in connection with the advertising or sale of portable toilets,' 498 F. Supp. 71 (ED Mich. 1980); Reversed, 698 F. 2d 831 (6th Cir., 1983); 'A preliminary injunction was obtained barring the use of Johnny Carson's name, portrait or picture for advertising purposes in connection with the movie 'The Eileen Ford Story'. Newspaper articles had displayed his photo and indicated he would make his movie debut in the film which he denied,' Carson v. King (NY Cnty., 1984)

429. **Donahue Show Given Exemption as News Interview Show for Political Candidates,** 'When a candidate for public office uses a broadcast facility the station's licensee must afford equal opportunities for such use to all other candidates for that office unless the show is exempt as a bona fide newscast, news interview, news documentary or on-the-spot coverage of a bona fide news event. Multi-media requested Donahue be considered a news interview show and therefore exempt from 315(a). FCC denied initially noting that show involves personal commentary, permits expression by audience and a majority of guests were of general, rather than timely, interest,' (see 387) Socialist Workers Party, 65 FCC 2d 229 (1976), Multimedia, 84 FCC 2d 738, 48 RR 2d 1273 (1980)

'However, later approved exemption,' 56 RR 2d 143 (1984)

430. **ABC Fails to Enjoin Sportscaster From Joining CBS,** 'ABC suffered agony of defeat when sportscaster Warner Wolf breached good faith negotiated contract to join CBS. Ct. felt that Wolf had violated first refusal provision of ABC contract at CBS' instigation, but denied injunction as could not easily supervise the performance of a personal services contract to ABC. First refusal right was not restrictive covenant but three

month moratorium on employment,' ABC v. Wolf, 430 NYS 2d 275 (App. Div. 1980); 438 NYS 2d 842; 420 NE 2d 363 (NY 1981)

431. **Use of Phrase Not Trademark Infringement,** WISN obtained license to use 'I Love You Milwaukee' slogan. Slogan had been registered with Trademark office as a service mark for entertainment services. Three months before end of campaign WOKY began to use 'I Love You' slogan and M.B.H. Enterprises filed suit. Ct. reluctant to allow M.B.H. to have for exclusive commercial use such a common phrase despite successful registration and cited lack of showing of confusion,' M.B.H. Enterprises v. WOKY, 633 F. 2d 50 (7th Cir. 1980); see also Invisible v. NBC, 212 U.S.P.Q. 576 (CD Cal. 1980)

432. **Public TV Station May Refuse to Air Network Program,** 'In 1980 PBS network ran 'Death of a Princess' about a Saudi Arabian princess and her commoner lover who were executed publicly for adultery. The program was critical of Saudi religious, cultural and political life. Saudi government protested noting it might endanger American citizens in Middle East. Alabama ETV and University of Houston cancelled broadcast. Challenge by subscribers and viewers of stations. Fed. Dist. Ct. in Alabama granted summary judgment for stations, but Fed. Dist. Ct. in Texas ordered University to broadcast. Alabama upheld in that refusal to broadcast was legitimate exercise of statutory authority and protected by 1st Amendment. Another panel reversed Texas decision. Cases were consolidated and reheard.

Resulting decision affirmed Alabama and reversed Texas decisions. Although public broadcast licensees, stations possess same programming discretion as commercial broadcasters. While state is subject to 1st Amendment constraints not applicable to private licensees, FCC has determined licensees have sole right and independent responsibility to select programming (see 337). Public stations are not public forums and not required to provide right of access to viewers. The 1st Amendment does not preclude the government from exercising editorial control over its own medium of expression thus did not have to present program.

In an unrelated case a class action suit was filed against the program's producers, PBS and others on behalf of alleged class of nearly one-billion followers of the Islamic faith and Americans who respect Islamic traditions. Damages of $20 billion were sought. Court dismissed as law of defamation protects individuals, and group that sued was so large that program could not have defamed any individual members. To permit action by such a large group would render meaningless 1st Amendment rights to explore issues of public import,' Muir v. Alabama ETV Commission, 688 F. 2d 1033, 52 RR 2d 935 (CA 5th, 1982); Khalid v. Fanning, 506 F. Supp. 186 (ND Cal. 1980); Sup. Ct. appeal denied

433. **FCC Eliminates Cable TV Rules Concerning Distant Signal Carriage Restrictions and Syndicated Program Exclusivity,** 'Cable systems can now carry as many distant signals as desired which will foster competition and add diversity as does not affect materially the quantity of local programming. Still required to carry local signals as well,' Cable Television Syndicated Program Exclusivity Rules, 45 Federal Register 60186 (Sept. 1980); upheld Malrite v. FCC, 652 F. 2d 1140, 49 RR 2d 1127 (2d Cir. 1981);

'FCC declines to reconsider exclusivity rule change and refuses to expand Sports Programming (Blackout) Rules which prohibit cable systems located within 35 miles of a sport team's community from importing distant signal broadcasts of a live sports event taking place within the community if not available over local TV station,' In the Matter of Cable TV Syndicated Program Exclusivity and Carriage of Sports Telecasts, 56 RR 2d 625 (1984)

434. **Trespass by TV Newsperson,** 'A TV newscaster guilty of trespassing when he went on private property to film a police investigation of a reported shooting incident. Remanded to trial court to determine damages caused by trespass,' Prahl v. Brosamle, 295 N.W. 2d 768 (Wisc. App. 1980)

435. **Screenplay for Television Movie Did Not Infringe Book,** 'Drama titled 'Murder in Texas' did not infringe book 'Blood and Money' although both works recounted events

surrounding death of Houston socialite Joan Hill as factual historical event. Only expression can be protected by copyright, not news,' David Merrick v. Dick Clark, Case No. 80 Civ. 5877 (SDNY 1980), (see 535)

436. **Tax Court Denies Deduction for Clothes, Makeup and Haircuts,** 'Newsman deducted as business expense wardrobe, laundry, dry cleaning, haircuts and makeup. The IRS disallowed the deductions. Tax Ct. held Revenue Code §262 specifically denies deductions for personal, living or family expenses and burden of proof is on taxpayer. Three tests must be met for clothing to be deductible (1) required or essential, (2) not suitable for general or personal wear, and (3) in fact, not worn for general or personal use,' Hynes v. Commissioner, 80(10) CCH Standard Tax Reports, Para. 7932 (1980)

437. **NBC-CBS Did Not Libel Jeweler,** 'Harry Levinson, not a public figure but a jeweler of worldwide prominence, was linked with 'mob boss' Anthony 'Big Tuna' Accardo in numerous telecasts. Following the rule of innocent construction, adhered to in Illinois, the Ct. ruled the publications could be construed innocently as not reflecting adversely on Levinson's abilities in business and were not actionable as libel per se,' Levinson v. Time, et. al., 411 NE 2d 1118 (Ill. App. 1980)

438. **Not Libel if Fair Comment,** 'A California statute recognizes the privilege, in the absence of malice, of fair comment on matters of general public interest. KNXT showed the arrest of an auto shop owner for not giving required written estimates prior to beginning repairs. Car shown to be in good working order except for broken spark plug, but repair cost $160. Ct. noted decision might have been different if national media rather than local as would not have been of general public interest everywhere,' Rollenhagen v. City of Orange, 116 Cal. App. 3d 414 (Cal. Ct. App. 1981)

439. **Ct. Can Get Out-takes From 60 Minutes,** 'CBS required to turn over to Dist. Ct. out-takes from report on fast-food franchises. A month after aired a federal grand jury returned

indictments for conspiracy and fraud against the company involved and defendants served CBS with subpoena. Appeals Ct. recognized needs of news gathering, but has to be weighed against defendants' need and judge would have to view before invoking journalists' privilege. Later ruled judge erred in release of some material to defendants', US v. Cuthbertson, 630 F.2d 139 (3rd. 1980); Rehearing (3d Cir. 1981)

440. **TV Stations Privileged to Report,** 'A qualified or conditional privilege permits stations to report legal proceedings provided publication is fair and accurate statement and made without malice,' Mark v. KING Broadcasting, 618 P. 2d 512 (Wash. App. 1980) and Mark v. Fisher's Blend Station, 621 P 2d 159 (Wash. App. 1980); 635 P 2d 1081 (Wash. 1981)

441. **Radio Station Violated Equal Pay and Civil Rights Act,** 'A former talk show hostess awarded $21M in damages and back pay as she was paid less than a male colleague performing equal work. The disparity in salaries was sex-based and violated the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 which entitled her to the difference between what earned and amount should have earned. She was also asked to perform certain clerical tasks the male host was not required to perform and then was fired in retaliation for her refusal to perform such work,' Futran v. Ring Radio, 501 F. Supp. 734 (ND Ga. 1980)

442. **FCC Elimination of Programming Minimums, Commercial Maximums, Logs, Ascertainment Requirements for Radio-TV,** 'Noting the growth of radio stations the FCC has decided to rely upon market-place forces to achieve balanced programming and in determining commercial levels. In the area of programming (see 291), will now be asked to offer programming responsive to public issues and each station may take into account the services provided by other radio stations in the community rather than providing something for everyone.

Formalized ascertainment requirements will give way to ascertainment procedures to assure that all significant segments of a community are contacted regarding problems, needs and

issues and a list setting forth five to ten issues that the station covered during the year must be maintained in the public file.

Limits on commercials have been eliminated (see 190) with the expectation that audiences, advertisers and individual station owners will act to curb abuses or excesses. Thus, is cleared the way for program-length commercials previously disapproved (see 259, 338).

Program log requirements have been eliminated as a paperwork burden on stations, but public files containing relevant program information will be required; (see 598, 600),' Federal Communications Commission, Deregulation of Radio, 84 FCC 2d 968, 49 RR 2d 1 (effective April 3, 1981); 53 RR 2d 805; 53 RR 2d 1371; affirmed, 706 F. 2d 1224, 53 RR 2d 1501; 707 F. 2d 1413, 53 RR 2d 1371; 719 F. 2d 407, 54 RR 2d 811, 1151 (DC Cir. 1983);

'Since TV stations for years have performed at levels considerably higher than those required by rules the FCC eliminated the quantitative programming and commercial guidelines, the promise vs. performance standard, the formal ascertainment, program log requirements, commercialization standard and the program length commercial prohibition. The random long form audit is also eliminated,' Deregulation of Commercial Television, 56 RR 2d 1005 (1984);

'Eliminates noncommercial Radio-TV formal ascertainment guidelines and program log requirements,' 56 RR 2d 1157 (1984)

443. **Radio Station May Not Broadcast 'Away' Games Violating Rights Given to Another Station,** 'Wichita State won injunction against KWKN preventing them from broadcasting away games in Wichita area as exclusive rights given by State to KAKZ. KWKN tried to get away games by signing contracts with schools with which Wichita State was to play, but Ct. ruled State's opponents had no right to broadcast their games in Wichita,' Wichita State University v. Tri-City Broadcasting, District Ct. of Sedgwick County, Kansas, Case No. 81-C-130 (1981)

444. **Can TV Stations Broadcast Video Tapes Entered into Evidence?,** Nixon v. Warner Communications, 435 US 589

(1979), (see 328) recognized presumption in favor of public access to judicial records. Richmond Newspapers v. Virginia, 65 L. Ed. 2d 973 (1980) held that absent an overriding interest, the trial of a criminal case must be open to the public.

Ct. ruled that Abscam trial tapes entered into evidence may be copied and televised; however, the Fifth Circuit refused to allow the media to copy tapes admitted into evidence at the trial of the speaker of the Texas House of Representatives which came from another FBI operation.

KSTP in Minnesota sought to copy and televise three hours of videotape received in evidence about the kidnapping of the wife of a clergyman which had been taped by the kidnapper and which included repeated sexual rapes of the victim. There the Ct. denied the station request as no public interest would be served as in the case where political corruption was involved,' US v. Myers, 635 F.2d 945 (2d Cir. 1980); Application of KSTP, 504 F. Supp. 360 (D. Minn. 1980); Belo Broadcasting v. Clark, 654 F. 2d 423 (5th Cir. 1981)

445. **Failure to Program to Unmarried Adults Not Basis for License Denial,** 'All five D.C. TV stations refused to carry dating service program so company filed petition to deny license renewal. FCC held and Ct. affirmed that no particularized local need as single adults in D.C. are no more in need of finding a date than single adults elsewhere,' Walker v. FCC, 627 F. 2d 352, 47 RR 2d 361 (DC Cir. 1980)

446. **Legal Expenses Incurred by Broadcaster in Defending an FCC License Revocation Proceeding are Tax Deductible,** 'Inaccurate filings, false information led to license revocation. $46M in legal fees for hearings deductible,' BHA Enterprises v. Commissioner, 74 T.C., No. 46 (1980)

447. **FCC Denies License Renewal, Affirmed on Basis of Lack of Veracity,** 'FCC denied license renewal for WSWG-AM-FM after investigation based on complaints by citizens group. Substantial shortfall in amount of time station devoted to non-entertainment; lack of good faith effort to do programming representations proposed in 1970; lack of candor in dealings with FCC; no effort to comply with EEO requirements and even

fired some black employees. Format change was considered only as evidence of station's lack of veracity,' Leflore Broadcasting v. FCC, 636 F.2d 454, 47 RR 2d 901 (DC Cir. 1980)

448. **Contempt Citation Against Reporter Refusing to Reveal Source,** 'Walter Roche of WBZ-TV refused to reveal confidential sources consulted for investigative report on local judges. Ct. held although sources could be identified from other testimony by other witnesses object was to use interviews to reveal inconsistent statements and order not oppressive, unnecessary or irrelevant,' In the Matter of Roche, 411 NE 2d 466 (Mass. Sup. Judicial Ct. 1980)

449. **Ct. Upholds FCC that Carter News Conference Exempt From Equal Time,** 'Then-President Carter held a news conference on the eve of the New Hampshire primary and Ct. held was exempt from equal opportunity requirements of §315 as on-the-spot coverage of a bona-fide news event. The FCC is only required to consider whether or not the broadcaster intends to promote the interest of a particular candidate in presenting such coverage. Then, four days before Illinois 1980 primary Carter gave a press conference and speech on the economy. The FCC affirmed that neither §312(a)(7) nor the fairness doctrine entitled Kennedy to free responsive time when time was available for purchase. The Ct. again upheld the FCC noting that while §315(a) sets forth a right of equal opportunity when there has been a prior use by another candidate; §312(a)(7) is not dependent upon prior use but requires the broadcaster to provide reasonable access to a candidate or to sell the candidate time at prescribed rates. The Fairness Doctrine claim was denied as Kennedy had not identified the particular controversial issue involved and no evidence that broadcasters had failed to present contrasting viewpoints on the economy,' Kennedy for President Comm. v. FCC, 636 F. 2d 417, 636 F. 2d 432; 47 RR 2d 1521, 1537 (DC Cir. 1980)

450. **Unauthorized Use of Chaplin Films,** 'Day after Chaplin died, Dec. 26, 1977, CBS broadcast half-hour retrospective comprised 40% of compilation done of footage from

copyrighted Chaplin films. Sued, CBS defended on basis of 'fair use'. Ct. found could have used public domain material; excerpts were quantitatively substantial and qualitatively great overall; had been denied previously such use; was not sufficiently newsworthy in themselves for exemption as original compilation was used in 1972 Academy Award show. Award by jury for $12,280 in statutory damages; $300M punitive; $300M unfair competition,' Roy Export Co. v. CBS, CCH Copyright Law Reports, Para. 25, 212, 208 USPQ 581 (SDNY 1980); affirmed 672 F.2d 1095 (2d Cir. 1982); Sup. Ct. denied appeal

451. **Lea Act, §506 of Communications Act Repealed,** 'The 34-year old amendment which prevented unions from coercing broadcasters to hire and maintain staff they did not need was repealed by Congress. Provision was in reaction to 1946 featherbedding by American Federation of Musicians,' P.L. 96-507, 12/8/80

452. **Congress Extended License Terms, Approved Lottery Procedure, Prohibited Payments to Get Withdrawal of Applications, & Deleted License Fees,** 'Communications legislation included in 1981 budget bill extended license terms to five years for television stations, seven years for radio.

A lottery procedure was established which the FCC, at its discretion, may use for initial grants of licenses.

Protection for licensees from frivolous competing applications by prohibiting payment to other applicants in exchange for withdrawal of their applications included along with deletion of license fees earlier proposed.

The FCC also authorized for a limited two-year period to provide Congress with an opportunity for regular and systematic oversight of the FCC's implementation of Congressional policy,' 8/13/81--Signed by President;

Lottery Selection rejected,' 89 FCC 2d 257, 50 RR 2d 1503 (1982);

'Congress then passed new lottery system under which selection between applicants may be made so long as the qualifications of the applicants thus selected are subsequently reviewed and approved by the FCC,' Cong. Rec., Vol. 128, No. 155, Signed by President (1982)

453. **Same Title May Cause Confusion,** 'A summary judgment is not possible when two films have the same title, as liability may be imposed by a jury if they find the use results in confusion as to the origin of plaintiff's product. Claim of misappropriation of an idea requires (1) novel idea, (2) disclosure of idea made in confidence, and (3) idea adopted and used by defendant,' Capital Films v. Charles Fries, 628 F. 2d 387 (5th Cir. 1980); see Narwood v. Lexington, 541 F. Supp. 1243 (SDNY 1982)

454. **Suit Dismissed Challenging Network Production of All Documentaries,** 'Twenty-six independent producers sued for Antitrust, 1st Amendment and Civil Rights violations ABC, NBC, CBS. Charged that in-house documentary production froze independents out of market, monopolized, and denied access. Court dismissed, technically, as did not constitute state action; TV industry defies traditional antitrust analysis; percentage of market insufficient for networks to control prices or exclude competition; affiliates may take or reject product. If proof that independents can produce at one-half cost and as high a quality may be inter-network conspiracy, but needs further proof,' Levitch v. CBS, 495 F. Supp. 649 (SDNY 1980); upheld, 697 F. 2d 495 (2d Cir. 1983)

455. **Volunteer On-Air Talent Access Not a Right,** 'After volunteer producer for non-commercial FM started sexual and racial harassment suit station refused use of facilities. Volunteer brought action claiming deprived right of access under Civil Rights Act of 1964 and violation of 1st Amendment. Court dismissed; access to broadcast media not constitutional or statutory right and station not public accommodation,' Bridges v. Pittsburgh Community Broadcasting, 491 F. Supp. 1330 (WD Pa. 1980)

456. **Pay TV Operation Blocked by Justice Department,** 'Planned 1981 operation of Premiere by Columbia, MCA, Paramount, 20th Century-Fox and Getty Oil may constitute price-fixing and group boycott violating §1, Sherman Act. Government showed reasonable likelihood Premier was

concerted action to make films available only to own corporations thereby refusing to deal with, and to boycott, other services, thereby restraining competition,' U.S. v. Columbia, 507 F. Supp. 412 (SDNY 1980)

457. **Cable System Cannot Cablecast Ohio State Football,** 'Warner Amex CUBE, Columbus, Ohio sought order to allow cablecast of Ohio State Football games. NCAA had sold exclusive rights to ABC, but previous negotiations and threat of antitrust suit had allowed ten earlier sold-out games to be carried by cable company. ABC then refused to give up exclusivity on games not sold out and Warner filed second antitrust suit. Ct. ruled that must show irreparable harm as inadequacy of money damages for injunction. Warner failed as within their power to still carry sold-out games and buy tickets of those games not sold out. Warner did buy out seats and did show games,' Warner Amex v. ABC, 499 F. Supp. 537 (SD Ohio 1980)

458. **City Ordinance Restricting Cable System Expansion Antitrust Violation,** 'Case of wide-ranging effect on city home rule struck down city ordinances placing a permanent geographical limitation on cable system expansion. City can be held liable for violation of antitrust law in restraint of trade by refusing to allow competition between cable companies. Case concerns control over the quantity and quality of communication which may not be of such local concern as to justify exercise of sovereign authority by city. Exercising pervasive controls would violate 1st Amendment and lose claim of antitrust exemption. Court found under present technology more than one cable company can be on same poles without adversely affecting public ways,' Community Communications v. City of Boulder, 630 F. 2d 704 (10th Cir. 1980); 496 F. Supp. 823 (D. Colo. 1980); 70 L. Ed. 2d 810, 50 RR 2d 1183 (Supr. Ct. 1981)

459. **Amended Public File Rule, 73:3526,** 'TV licensees are not required to place new statement of program service in public file at renewal time if statement on file is current,' 87 FCC 2d 1127, 50 RR 2d 704 (1981)

460. **Contract Must be Performed,** 'TV station which had entered into contract to carry basketball games from TV syndicator and which failed to do so must perform,' William B. Tanner v. Briarcliff, 50 RR 2d 737 (1981)

461. **Bona fide News Interview Program Political Exemption,** 'TV news interview show exempted from equal opportunities when two candidates get into argument for two of 30 minutes during which candidate did not respond to questions. Not loss of control by licensee,' Tucker v. KNXT, 50 RR 2d 768 (1981); and 'rebroadcast of news interview after six months, in regularly scheduled hour but during election campaign does not deprive show of exempt status as still newsworthy, controlled by station, not unreasonable,' Robert Hanna, 88 FCC 2d 346, 50 RR 2d 781 (1981)

462. **Political Action Committee Access,** 'Since federal candidates access is personal right no such right is afforded PAC's. Broadcaster obliged to give free response time to candidates if PAC obtains time,' 89 FCC 2d 626, 51 RR 2d 233 (1982)

463. **Denial of Renewal of One Out of Seven Stations Enough,** 'Sufficient remedial and deterrent effect to deny one license out of seven where misconduct limited and individual who did misconduct no longer with licensee,' Faulkner Radio, 88 FCC 2d 612, 50 RR 2d 814 (1981)

464. **State Law on Public Broadcasting Not Preempted by Federal Law,** 'NJ Sup. Ct. holds §315 does not preempt state statutes requiring public broadcasting to promote full discussion of issues consistent with balance, fairness and equity, in state race for governor,' McGlynn v. NJ Broadcasting Auth., 439 A. 2d 54, 50 RR 2d 867 (1981)

465. **Short-Term Renewal,** 'Licensee used station to further private interests in anti-competitive manner,' E. Boyd Whitney, 86 FCC 2d 1133, 49 RR 2d 1240 (1981)

466. **Renewal Denied,** 'Majority stockholder unlawfully transferred control, made misrepresentations, willfully violated technical rules, lacked candor,' Stereo Broadcasters, 87 FCC 2d 87, 49 RR 2d 1263; 50 RR 2d 1346 (1981)

467. **News Distortion-Slanting Defined,** 'Mere inclusion of incorrect information cannot lead to conclusion deliberate and petition for full hearing against TV network denied,' Yellow Freight v. FCC, 49 RR 2d 1663; 656 F. 2d 600 (1981), 'station editorial on conduct of mayor not news-slanting as no evidence of deliberate falsification and editorials did not relate to honesty, integrity or like personal qualities so not personal attack,' Mayor Maier v. WTMJ, 50 RR 2d 73 (1981); 53 RR 2d 377 (1983); 55 RR 2d 1603 (CA 7th 1984)

468. **Sales Reps May Have More Than One Client Per Market,** 'FCC repeals policy which had barred sales rep firms owning radio or TV license from representing rival station in same area,' 87 FCC 2d 668, 49 RR 2d 1705 (1981)

469. **CATV Cross-Ownership Rule Waived,** 'CBS permitted to own cable systems if aggregate number of subscribers less than one-half of one percent of total of US subscribers,' CBS, 87 FCC 2d 587, 49 RR 2d 1680 (1981)

470. **Newspaper Cross-Ownership Abuse,** 'Practice of newspaper with local license to list programs out-of-channel sequence and give itself preferential photos constitutes cross-ownership abuse,' KHQ, 87 FCC 2d 705, 50 RR 2d 21 (1981)

471. **Prohibition Against Retransmission,** 'Reminder by FCC that licensees and cable systems cannot retransmit without permission summarized contents or texts of messages transmitted by others,' Retransmission, 50 RR 2d 76 (1981); and 'ESPN Cable Network enjoined from cablecasting highlights of Boston Red Sox and Bruins games without consent of either team as not 'fair use' under Copyright Act, video taped from WSBK which offered to sell use. Although only 2 minutes in length from complete game court stated it was the quality of use and highlights were substantial as networks had paid for such

use,' New Boston Television, v. ESPN, Civil Action 81-1010-Z (D. Mass. 1981)

472. **Lottery,** 'The fact that proceeds of lottery held a at local fair were given in part to local civic and charitable organizations did not absolve licensee which carried, but warranted reduction in fine,' Smith Broadcasting, 87 FCC 2d 1132, 50 RR 2d 356 (1981)

473. **Waiver of Network Definition,** 73:658, 'Network definition is any organization offering interconnected programs on regular basis for 15 or more hours per week to at least 25 affiliated TV licensees in 10 or more states waived to permit interconnected religious programming of up to 30 hours per week,' Christian Broadcasting Network, 87 FCC 2d 1076, 50 RR 2d 359 (1981)

474. **No Private Cause of Action in Personal Attack,** 'Federal District Ct. may hear both state and federal claims in state libel case combined with personal attack charge even if personal attack claim fails so long as federal claim not frivolous. However one cannot obtain damages based just on FCC rule violation,' Lechtner v. Brownyard, 50 RR 2d 609 (WD Pa. 1981); 679 F. 2d 322, 51 RR 2d 953 (1982); and same result, Cyntje v. Daily News, 53 RR 2d 299 (6th DC 1982)

475. **Licensing of Films for TV Enjoined as Infringement of Copyright in Books,** 'In1935, late Clarence Mulford (Hopalong Cassidy) granted right to make films based on books. Copyrights to films expired and company sought to license 23 for TV exhibition as public domain material. Ct. ruled exhibition would violate existing copyright in books as substantial similarity,' Filmvideo Releasing v. Hastings, CCH 25,222 (SDNY 1981); affirmed 668 F.2d 91 (2d Cir. 1981)

476. **ABC Exclusive Right to Televise Sports Event Upheld,** 'ABC obtained exclusive rights for 1981 World Figure Skating Championships to be held in Hartford. CBS affiliate brought suit charging agreement represented unconstitutional restriction on freedom of press as called for local stations not to broadcast

footage until ABC finished entire broadcast if they wished entry into arena where event staged. If arena were privately operated, such a contract provision is valid, however, since city-owned constituted state action and attention directed to capacity in which city was functioning. Ct. ruled city not operating as government but in proprietary manner and restrictions were not arbitrary, but minimal, and allowing local TV coverage would diminish commercial value to ABC,' Post Newsweek v. Travelers, Skating Club and City of Hartford, 510 F. Supp. 81 (1981)

477. **Radio Station's Refusal to Air Hypnotic Political Ads Not Subject to Damages,** 'Candidate sought to purchase time for political ads using hypnotic techniques. Station requested exemption from FCC from any obligation to present, but FCC refused to issue a declaratory ruling. Station rejected ads and candidate sued for damages for violating §315 and 1st Amendment. Federal Court of Appeals dismissed on grounds §315 did not create private cause of action for damages and no governmental action was involved giving rise to 1st Amendment. Should have sought further action from FCC as Congress' intent for FCC supervision,' Belluso v. Turner Communications, 633 F. 2d 393 (5th Cir. 1980)

478. **Docu-drama OK Despite Inaccuracies,** 'In absence of showing contract violated and of clear and convincing evidence of irreparable injury injunction against showing denied for fictionalized film about Guardian Angels. In another case of famous Scottsboro rape trial NBC thought one of participants was deceased. After broadcast she wrote NBC that she considered broadcast libelous but NBC proceeded to rebroadcast. Ct. ruled that NBC had not negligently broadcast any untruths and had not broadcast with malice as she was public figure. Movie was not completely accurate. After petitioning Supreme Ct. appeal was settled out of court,' Sliwa v. Highgate, No. 24070/80 (N.Y. Sup. Ct. 1980); Street v. NBC, 7 Media Law Reporter 1001 (6th Cir. 1981)

479. **Poor Ratings Reasonable to Reassign Newsperson to General Reporting,** 'TV anchorman sought Ct. order to

reassign as anchor from general reporting reassignment. Alleged violated Fair Labor Standards Act which makes it illegal for employer to retaliate against employee who files charges or participates in labor dispute. Ct. denied as felt he would fail to prove action had discriminatory motive. Station contended reassignment was due to ratings and unfavorable consultant's report. Court refused to interpret ratings or report and news director and station manager simply had to think ratings were too low,' Haines v. Knight-Ridder, CCH Labor Law Reports, Para. 33,976 (D. RI 1980)

480. **Copyrighted 'Be a Pepper' Commercial Infringed by Sambo's,** 'Federal District Court in Dallas enjoined showing of Sambo's commercials, based on finding that copied essence of copyrighted Dr. Pepper commercial and jingle, 'Dr. Pepper v. Sambo's, 517 F. Supp. 1202 (ND Tex. 1981)

481. **Demonstration Did Not Create Unreasonable Risk,** 'The producer, syndicator and broadcaster of the Mickey Mouse Club were found not liable for injuries sustained by an 11-year old boy who attempted to duplicate a demonstration which required placing a BB pellet inside a balloon, which he swallowed. The demonstration did not create an unreasonable risk of harm and was not an invitation to act in such a way as to pose a clear and present danger of injury,' Walt Disney v. Shannon, 276 S.E. 2d 580 (Ga. 1981); see also, DeFilippo v. NBC, 446 A.2d 1036 (RI 1982)

482. **Not Proven NBC Incited Violent Act,** 'It was alleged that a rape scene in movie 'Born Innocent' motivated a similar attack on a nine-year-old girl in San Francisco. Ct. granted a nonsuit on grounds that the jury would not be able to determine whether NBC had incited the violent act. Plaintiff conceded NBC did not encourage or advocate violent acts so broadcast was protected speech. Court refused to impose liability on basis of simple negligence as would lead to self-censorship and seriously inhibit broadcasters in airing controversial programs.' Olivia N. v. NBC, 126 Cal. App. 3d 488 (Cal. Sup. Ct. 1981); US Sup. Ct; appeal denied.

483. **Greatest American Hero Does Not Infringe Superman,** 'Since expression of ideas was dissimilar and only theme or general idea had any similarities, does not infringe, 'Warner Bros. v. ABC, 654 F. 2d 204 (2d Cir. 1981); 523 F. Supp. 611; 530 F. Supp. 1187 (SDNY 1982); 720 F. 2d 231 (2d Cir. 1983)

484. **CBS Wins Libel Suit,** '60 Minutes interviewed the wife of Richard Alfego who had taken their children in violation of a child custody order. Alfego sued that although not named or shown his identity was obvious and his reputation was injured. Court acknowledged that news must be substantially complete and accurate and not distorted, but not every fact and detail sympathetic to every side need be presented. Wife's charges were opinion and not libelous so long as not based on undisclosed falsehood; dismissed,' Alfego v. CBS, 7 Media Law Reporter 1075 (D. Mass. 1981)

485. **Libel,** 'At WFBR, Baltimore, D.J. stated humorously, following looting by blacks during blizzard, that a local black TV commentator was seen entering a hospital for a bad knee, caused by carrying a TV during the blizzard. Although a public figure the jury awarded $30,000 from DJ, and $35,000 punitive damages from station. In affirming the award the Ct. rejected the general rule that limits situations in which punitive damages may be awarded against an employer when the remarks have been ad-libbed,' (see 37), Embrey v. Holly, 429 A. 2d 251 (Md. App. 1981)

486. **Limiting Commercial Radio Operator Licenses to US Citizen is Constitutional,** 'A D.J. and a radio station engineer challenged requirement that only US citizens can hold Radio Operator licenses. Although D.J.'s are not required to be licensed it was alleged career opportunities would be limited as many smaller stations require on-air personnel to perform technical functions which require an operator's license. §303(1) upheld as immigration is an exclusive federal interest, political in nature. The national interest in providing an incentive for aliens to become naturalized, or providing the President with an expendable token for treaty negotiating purposes is sufficient to

justify requirement,' Campos v. FCC, 650 F. 2d 890 (7th Cir. 1981)

487. **Libel--Animal Cruelty, Trespass,** 'KSL broadcast report of cruelty to horses. Ct. ruled for KSL on grounds of general interest, privilege and lack of malice shown. Remanded as KSL liable if shown departed from standards which exist, or ought to exist, in news media industry. WMC-TV broadcast report on starving cattle. Ct. of App. ruled that owner was private but he had burden of proof reports were false. Trial Ct. had erred in ruling station had to prove truth of story. In a third case, reporters entered home with Humane Society investigator, took pictures even though protested by owner. Court ruled was trespass as reporters have no special immunity or special privilege to invade rights and liberties of others, Seegmiller v. KSL, 626 P. 2d 968; Wilson v. Scripps-Howard, 7 Media Law Reporter 1169 (6th Cir.); Anderson v. WROT-TV, 441 NYS 2d 220 (NY Sup. Ct. 1981)

488. **City Loses Libel Suit Against ABC,** 'Relatively few reported cases of libel actions taken by cities. The Village of Grafton, Ohio, filed against ABC when a crawl was used on 'The Killing Ground' documentary which listed 54 locations of hazardous chemical waste dumps. Grafton was on the list. The Ct. ruled the statement was privileged because made about a city; the city had no reputation to be defamed as did a person; and the information came from a federal agency though erroneous,' Grafton v. ABC, 435 NE 2d 1131 (Ohio App. 1980)

489. **Star Trek Not Public Domain,** 'Between 1966 and 1968, 'Star Trek' was distributed without a copyright notice and a company claimed it had entered public domain. Court ruled this was not a publication under 1909 Copyright Act, in effect until 1978 as license agreements restricted access,' Paramount v. Rubinowitz, Case CV 81-0925 (ED NY 1981)

490. **Indecency Statute for Cable TV Overboard,** 'A Utah statute banning indecent, although not necessarily obscene, material on cable is unconstitutionally overbroad as invaded

area of free speech by failing to incorporate any reference to contemporary community standards,' Home Box Office v. Wilkinson, 531 F. Supp. 987 (D. Utah, 1981); 555 F. Supp. 1164 (ND.Utah 1982)

491. **Cable Need Not Carry Scrambled Pay-TV Signals,** 'Subscription TV stations petitioned FCC to require cable operators to carry scrambled signals. FCC refused to require carriage as no evidence needed for economic success of STV; would impose burden on cable operators; and could be done by contract,' WWHT v. FCC, 656 F. 2d 807 (DC Cir. 1981)

492. **NAB Code Provisions Ruled Violation of Antitrust,** 'Since 1952, the National Association of Broadcasters trade association has had a TV Code. The Justice Dept. challenged the Code's multiple product, time and program interruption standards.

The multiple product standard prohibited the advertising of two or more products or services in a single commercial (piggy-back) if the spot was less than 60 seconds.

Time standards limited the amount of commercial material to be broadcast each hour to 9 minutes per hour in prime time, plus minute for promotional announcements, and 16 minutes at all other times. Independent stations were allowed more time and children's programs were limited as to commercial time allowed.

Standards also limited the number of consecutive interruptions of the program and announcements per interruption.

The court ruled that the multiple product standard was a per se violation of §1 of the Sherman Act, and ordered a trial on the time and program interruption standards. The NAB ceased enforcing the code and appealed. A consent decree was agreed upon which halted use of the general industry code and networks and stations were urged to adopt their own independent policies; (see 600)' US v. NAB, 51 RR 2d 175, 553 F. Supp. 621 (DDC 1982)

493. **Equal Access to Justice Act,** 'Rules are adopted providing for the award of attorney's fees and other expenses to qualified

parties who prevail over the federal government in certain administrative and court proceedings,' Subpart K, 73:1501-73:1530, 50 RR 2d 1338 (1982)

494. **Stereo Broadcasting,** 'FCC authorizes AM stations to provide stereo broadcasts but abandons its attempt to select a single approved transmission system, leaving to the marketplace the determination. Minimal technical standards are established to prevent interference,' AM Stereophonic Broadcasting, 51 RR 2d 1 (1982)

495. **Political Conflict of Interest of Host,** 'A licensee's failure to determine prior to broadcast of interviews with political candidates that the host was serving as campaign treasurer for one of the candidates did not amount to intentional discrimination in violation of 73:1940,' Phyllis Cowan, 89 FCC 2d 382, 51 RR 2d 104 (1982)

496. **Financial Report, Form 324 Eliminated,** 'Lack of public interest for the information is given for elimination of financial report data (AM-TV); then Cable added,' Annual Financial Report, 51 RR 2d 135 (1982); 54 RR 2d 799 (1983)

497. **Satellite Retransmission of NY Mets Games on WOR-TV Does Not Infringe Copyright, but Substitution of Teletext Signal of WGN-TV Does,** 'Eastern Microwave retransmits WOR signal to cable systems, and Mets owner objected, contending violation of §106 of Copyright Act. Held retransmission exempt under §111(a)(3) as EMI is passive common carrier; (does not convert or control signal). However, when United Video, a passive carrier, retransmitted WGN signal and replaced vertical blanking interval Teletext with Dow Jones Teletext, this was held not passive. WGN intended material to be an integral series of related works, even if not viewed. Teletext, if not intended to be viewed in conjunction with program not protected and viewer utilization does not deprive of protection. Ct. felt technological advances motivated reform of Copyright Act which required Ct. to use flexibility in decision,' Eastern Microwave v. Doubleday Sports, 691 F.2d 125; WGN v. United Video, 693 F.2d 622

(1982); clarified, 692 F.2d 628, 52 RR 2d 1693 (1983); Sup. Ct. appeal denied

498. **Ex Parte,** 'Fine of $6,000 for contact by one party without notice to other or giving opponent opportunity to be heard is ruled not unreasonable nor excessive,' Desert TV, 88 FCC 2d 1413, 50 RR 2d 1283 (1982); 'Ex Parte rules requiring all written or oral contacts to be made part of record reaffirmed. To make all contacts illegal would inhibit policy making process,' Ex Parte, 53 RR 2d 1337 (1983)

499. **Short-term Renewal,** 'KGGM, Albuquerque for not meeting needs of Latin-American audience,' New Mexico Broadcasting, 50 RR 2d 340 (1982)

500. **Renewal Denied,** 'Peoria radio station denied license renewal due to misrepresentations regarding changes in ownership and control of the corporate licensee,' Peoria Community Broadcasters, Inc., and Central Illinois Broadcasting Co., 79 FCC 2d 311, 48 RR 2d 1164 (1982)

501. **Political Editorial Violation**, 'Although FM apparently violated political editorial, public and political file inspection rules, no action as not flagrant nor intentional,' WJFD, 50 RR 2d 1413 (1982)

502. **Local-Public Notice changed**, 'Requirement that applicants submit proof of publication of local notice of applications removed and replaced by single certification of compliance with notice requirement,' 51 RR 305 (1982)

503. **Comparative applicants,** 'Turning attention to subtleties when comparing ownership and management between applicants, review board affirms FM award,' Bradley, Hand and Triplett, 89 FCC 2d 657, 51 RR 383 (1982)

504. **Unserved Community Favored,** 'FCC review board favors license for station in larger, unserved community over smaller, served community,' Cornwall, 89 FCC 2d 704, 51 RR 2d 389 (1982)

505. **Low Power TV,** 'FCC authorizes low power TV as primarily rural and fill-in providing valuable local service and specialized programming. The imposition of multiple ownership restrictions is rejected to encourage participation by experienced broadcast operators,' Low Power, 51 RR 2d 476 (1982); 53 RR 2d 1267 (1983)

506. **License Renewal Denied, Remanded,** 'Reversing an Adm. Law Judge, FCC denied 'renewal expectancy' to hold that a one man owned-and-operated classical music FM station license should be given to challanger. Various grounds cited, including diminished preference of diversification (he owned no other station or media) and integration, failure to conduct community survey and to do news. Ct. remanded to FCC on basis that diversification does not mean actual diversity of views, but ownership. Thus, FCC had abandoned presumption that diversity of ownership is the 'litmus test' in seeking diversity of viewpoints. The FCC's conclusion that programming was of no value to community was contrary to the testimony and was the type of content evaluation prohibited by §326. The competing applicant owned other stations and would not be increasing the diversity of viewpoint even with more informational programming. Integration is a significant factor in determining whether programming is likely to be in the public interest by assessing how involved ownership will be in the day-to-day operations of the station (quantitatively). The Ct. felt the FCC had not explicitly weighted or explained its departure from precedent. Therefore the FCC's decision was set aside as unreasonable, remanded for reconsideration with the FCC to determine whether the case warranted reopening the record,' Simon Geller, 90 FCC 2d 250, 51 RR 2d 1019, 52 RR 2d 709 (1982); Committee for Access v. FCC, 737 F. 2d 74, 56 RR 2d 435 (DC Cir. 1984)

507. **Direct Satellite to Home Authorized,** 'FCC permits nonlocal broadcast service from satellite direct to home. Multiple ownership restrictions rejected in favor of minimilist regulatory approach to encourage rapid development. If DBS applicants retain control over content of their transmissions they

will be treated as broadcasters; however, may choose to operate as common carrier without control over content and would not be treated as broadcaster,' DBS, 90 FCC 2d 676, 51 RR 2d 1341 (1982); 'Ct. upheld regulations but vacated part of ruling that those parties who lease from DBS common carrier would not be treated as broadcaster as 'forbidden statutory experimentation'. Ct. declared that when signals go directly to homes with the intent that those signals be received by the public such tranmissions fit the definition of broadcasting even if a common carrier satellite leases its channels to a customer-programmer who does not own any transmission facilities. Someone is broadcasting and application of broadcast restraints to programmers, although infrequent, has been upheld. The Ct. cautioned the FCC to remain alert to diversification of media viewpoints and control as multi-channel use is a contingent right subject to public interest considerations,' NAB v. FCC, 740 F. 2d 1190, 56 RR 2d 1105 (DC Cir. 1984)

508. **FCC Reduced in Size,** 'Commissioners cut from seven to five members as of July 1, 1983 to streamline by decreasing size and cost,' 97-21, Second Session, August 18 (1982); and 'FCC bureaus reorganized, with Broadcast Bureau and Cable TV Bureau compressed into four new divisions: Audio Services; Enforcement; Policy and Rules; and Video Services,' (Nov. 1983)

509. **NonCommercial Stations Promotional Announcements Expanded,** 'Spots for program-related materials sold by non-profit organizations and to raise funds for station or non-profit performing arts organizations in connection with programs furnished allowed; so long as spots do not interrupt other regular programs,' Educational Promotional Announcements, 90 FCC 2d 895, 51 RR 2 1567 (1982)

510. **Legally Qualified Candidate Only if State Certified,** 'FCC affirms that not legally qualified candidate for equal opportunity purposes unless certified under applicable state law,' Mayor Bergin, 90 FCC 2d 813, 51 RR 2d 1535 (1982)

511. **UHF-TV Sets Need Only to Receive to Channel 70,** 'FCC eliminates requirement that TV sets receive UHF Channels 70 through 83 and provides for licensees operating on those channels to transfer to lower frequencies,' UHF-TV Reception Improvements, 90 FCC 2d 1121, 51 RR 2d 1628 (1982)

512. **Editorials by NonCommercial Stations Constitutional,** 'Held unconstitutional §399 of Communications Act to prohibit noncommercial stations from editorializing as no compelling governmental interest for restriction on free speech. Relatively small percentage of governmental funding. Public interest served by Fairness Doctrine requiring balanced presentation,' League of Women Voters v. FCC, 547 F. Supp. 379, 52 RR 2d 311 (1982); Supreme Ct. upholds, 52 LW 5009, 56 RR 2d 547 (1984)

513. **Fairness Doctrine Weighted by Overall Programming,** 'FCC rejects request that individual program or series of programs must comply with Fairness Doctrine. Compliance weighted by reference to overall programming. Balancing frequent paid commercials of one side against presentation of opposing view in less frequent but more substantial programming, particularly news, is not imbalance,' American Security Council, 52 RR 2d 419; Citizens for a RadioActive Waste Policy, 52 RR 2d 481 (1982)

514. **Interim Operators Which Broadcast Lottery Not Disqualified,** 'Difficulty of interim operation by antagonistic applicants rendered effective supervision of employees too difficult to warrant disqualification for broadcast lottery occurring during religious programming (see 316),' Gilbert Broadcasting, 91 FCC 2d 450, 52 RR 429 (1982)

515. **Cable System 'Must-Carry' Local Station Even If Last Channel Available,** 'Sole empty channel must go to local religious station even if subscribers uninterested,' and 'deleting must-carry signal with subsequent saturation of system is at operator's own risk,' New Milford Cablevision, 52 RR 2d 617 (1982); Rockland Cable, 53 RR 2d 253; KSDK, 53 RR 2d 283 (1983)

516. **Antitrust 'Block-Booking' Action May Proceed Against NBC,** 'Producers of 'Bonanza' and 'High Chaparral' brought antitrust action against NBC and purchaser of syndication rights, NTCA. Claim conspiracy to require buyers to take exhibition rights to other, less desireable programs to get desireable series. This tying arrangement is called block-booking. Dist. Ct. ruled producers had no standing to sue, but Ct. of Appeals reversed. The per se nature of the violation, if proven, would be illegal and affected producers who were in the target area of potential injury,' Aurora Enterprises v. NBC, 524 F. Supp. 655; 688 F. 2d 689; 52 RR 2d 693 (1982), (see 176)

517. **Networks May Decide President's Speech Bona fide News Event,** 'FCC declines to question network's pre-address decision that Reagan's last minute plea for support of policies and party scheduled shortly before mid-term election of 1982 was a bona fide news event,' Democratic National Committee, 91 FCC 2d 373, 52 RR 2d 713 (1982)

518. **Ct. Cannot Determine Validity of FCC Rule When Declaratory Judgment Action,** 'In a case where FCC rule conflicts with a provision of a franchise agreement between a city and a cable operator the appropriate conduct for a District Ct. is to recognize the primary jurisdiction of the FCC and stay proceeding pending resolution of validity by the agency,' City of Peoria v. GECCO v. FCC, 690 F. 2d 116, 52 RR 2d 787 (1982)

519. **Lack of Candor Issue Not Just Separate Issue,** 'FCC must be able to rely upon representations made before it in hearing process, and failure to provide complete and accurate information may always be examined during the hearing even if not designated as separate issue,' William M. Rogers, 52 RR 2d 831 (1982)

520. **Short-term Renewal,** 'Network clipping, single unintentional instance of lack of candor, issuance of memo pertaining to local tennis club that was arrears in ad payments not to cover in sports programming, serious exaggeration of station coverage area in

promotional coverage maps overridden by forty-eight years of service and affirmative steps to correct practices upon discovery, (see 600),' Gross Telecasting, 52 RR 2d 851 (1982)

521. **Diversification of Ownership of Primary Importance,** 'Review Board of FCC reemphasizes primary importance of diversification of ownership in comparative hearing,' Communications Properties, 52 RR 2d 981 (1982)

522. **Minority Ownership,** 'Female participation, while not as significant as other minority participation, (see 395), merits more than a slight preference, and where things are equal can be determinative. Issue must be certified to be considered. Female minority 100% integrated ownership wins over 100% local ownership. Minority policy is not dependent upon proof that minority-owned station will specifically program to meet minority needs, (see 376). In an effort to increase opportunities for minority ownership the FCC issued a policy statement supplementing 1978 Policy Statement (68 FCC 2d 979, 42 RR 2d 1689),' North Carolina Radio Service, 52 RR 2d 993; Horne Industries, 52 RR 2d 1009, 54 RR 2d 249 (1983); Waters Broadcasting, 52 RR 2d 1063; Minority Ownership in Broadcasting, 52 RR 2d 1301 (1982)

523. **Trafficking Rule Eliminated,** 'In 1962 FCC adopted rule requiring license to be held for at least three years or face hearing for trafficking. Eliminated to allow unfettered marketplace forces; however, the amount of funds receivable for (see 55) a construction permit is restricted and a one-year holding period is required for construction permit obtained through a comparative hearing or with minority tax certification or through distress sale,' 52 RR 2d 1081 (1982); 57 RR 2d 1149 (1985)

524. **Sale of Equipment Allowing Unauthorized Reception Illegal,** 'Manufacture and sale of equipment allowing unauthorized interception of Multipoint Distribution Service of Pay-TV is violation of §605 of Communications Act and permanent injunction granted (see 424),' Home Box Office v. Advanced Consumer Technology, 549 F. Supp. 14 (SDNY

1981); American Television and Communications v. Manning, 651 P. 2d 440 (Colo. App. 1982); American TV and Communications v. Western Techtronics, 529 F. Supp. 617 (D. Colo. 1982);

'More than $1 million in damages awarded Cablevision Systems in company's action against supplier of decoders, descramblers, converters and other devices used to intercept Cablevision's services. Previous injunction ignored and sales continued. This may be largest damages granted under FCC Act,' Cablevision Systems v. Annasonic (1984)

525. **Station's Requesting Nonduplication Protection Must Specify Cable Systems Carrying,** 'Declaratory ruling granted requiring stations requesting nonduplication of network programming or sports shows to specify the cable systems on which protection is to be provided,' Rule Making Proposal to Substantiate Requests for Carriage Or Nonduplication, 52 RR 2d 1327 (1982)

526. **WABC-TV License Renewed Despite Deceptive Programming,** 'Station staff members broadcast letters purporting to be from viewers but written by staff, fictitious interviews and questions supposedly from studio audience. License informed FCC upon disclosure, instituted corrective procedures, dismissed or forced to resign those involved. FCC admonished licensee for failure to exercise reasonable diligence, supervision and control to insure that no matter that would deceive or mislead public is broadcast. License renewed but full Commission would review next renewal application,' American Broadcasting Company, 52 RR 2d 1378 (1982)

527. **Directors Guild Members May Restrict Employment; Exempt from Antitrust,** 'From 1973 to 1978, the Directors Guild waived its requirement that members work only for signatories of Guild Agreement to enable HBO and other pay channels to become established. In 1978 Guild sought collective bargaining agreement from HBO. When terms were refused, Guild ordered members not to work for HBO. HBO sued alleging Guild members were independent contractors and Guild's order was illegal restraint of trade. Broad range of

concerted labor activity is exempt if union able to establish acts in self-interest and apart from non-labor group. Actor's Equity upheld in licensing agents and regulating their fees; (101 S. Ct. 2102 (1982). Guild was held exempt also from antitrust laws and HBO had not shown violation or loss or damage to its business,' Home Box Office, v. Directors Guild, 531 F. Supp. 578 (1982); 708 F. 2d 95 (2nd Cir. 1983)

528. **Termination for Just and Sufficient Cause,** 'News Reporter at WJKW-TV Cleveland terminated for 'just and sufficient cause.' Arbitration hearing upheld firing. Appealed, remanded, appealed and decision upheld on basis bargaining agreement was ambiguous and arbitrator could determine,' American Federation of Television and Radio Artists v. Storer, 660 F. 2d 151 (6th Cir. 1981)

529. **Federal Grant to Public Broadcasting Not Appealable,** 'A decision by National Telecommunications and Information Administration of Department of Commerce to grant federal funds for construction of public broadcast station not subject to review by Federal Ct. of Appeals. Two universities contended grantee had misrepresented information. The statute authorizing the Secretary of Commerce to distribute such grants is in the Communications Act of 1934, but, act does not provide for judicial review other than of FCC,' Xavier University v. NTIA, 656 F. 2d 306 (5th Cir. 1981)

530. **Independent Producers May Copyright Works Paid for by Federal Government,** 'A TV series commissioned by the Federal Government, produced by a public TV station, broadcast by PBS is not public domain notwithstanding §105 of 1976 Copyright Act which provides that there is no protection for any work of the U.S. Government. The production was not prepared by a government employee; would not deprive the public of access; and did not conflict with 1st Amendment interests. The Ct. assumed that an assignment to the government had taken place and agency had a copyright interest. Government was not precluded from receiving and holding copyrights transferred to it by assignment,' Schnapper v. Foley, 667 F. 2d 102 (DC Cir. 1981), Sup. Ct. declined appeal (1982)

531. **CBS 'Guns of Autumn' Did Not Defame Hunters,** 'Two documentary films broadcast in 1975 did not defame Michigan United Conversation Clubs. Programs were not 'of and concerning' the MUCC or individual members. They were not shown, described or identified,' Michigan United Conservation Clubs v. CBS News, 665 F. 2d 110 (6th Cir. 1981)

532. **Invasion of Privacy and Right of Publicity Claims Against ABC,** '20/20 segment, narrated by Geraldo Rivera, reported on alleged arson-for-profit scheme. Rivera stated had uncovered circumstantial evidence and then interviewed manager of building alleged to have been burned for profit. Under Illinois law, it is libel per se to impute a criminal offense to an individual. Seven statements were made about the manager, which when viewed in context charged him with such criminal activity. Even in form of opinion not constitutionally protected. Manager was private figure who had not thrust himself to the forefront of any particular public controversy,' Cantrell v. ABC, 529 F. Supp. 746 (ND Ill. 1981)

533. **Mental Patient's Consent to Filming Valid,** 'New York's Civil Rights Law not applicable when CBS documentary portrayed mentally incompetent patient who had signed consent form. Lower Ct. ruled he was not competent or capable to grant such consent but Appeal Ct. ruled report was privileged as news as long as not used for advertising or trade purposes,' Delan v. CBS, 445 N.Y.S. 2d 898 (NY Sup. Ct. 1981); 458 NYS 2d 608 (NY App. 1983)

534. **Damages for Airing Commercial After Contract Expired,** 'In 1973 agreement signed with performer for commercial to be used in 1974. Screen Actor's Guild put company on notice that term of employment contract had expired after that use. In 1975 commercial was used again. $1,000 compensatory damages and $15,000 punitive damages were awarded,' Welch v. Mr. Christmas, Inc., 454 NYS 2d 971; see also Dzurenko v. Jordache, 451 NYS 2d 102 (App. Div. 1982)

535. **Producer Must Repay Advance for Failing to Produce Mini-Series,** 'David Merrick was paid $916,666 to produce 'Blood and Money' for CBS. Under the Rights Agreement CBS agreed to pay total of $1,250,000 for his right, title and interest and to budget $10 million for the project. Merrick hired a writer and director and one year later Merrick was told project could not be completed on date in Production Agreement. CBS was not informed. CBS' agreement provided that if photography did not begin by August 1979 would terminate, with rights reverting to Merrick and CBS committed to pay balance provided no breach of contractual obligations. CBS and Merrick agreed to delay, but Merrick then repudiated oral modification. Ct. ruled that oral modification was upheld by actions and later repudiation constituted breach of contract and ordered return of advance and monies paid to his agents. Writer and Director may retain their fee and physical property rights to screenplay belong to CBS, but other rights revert to Merrick,' (see 435), CBS v. Merrick, 716 F. 2d 1292 (9th Cir. 1983)

536. **'Good Faith' Negotiation Clauses in TV Rights Contracts,** 'The International Skating Union contracted exclusive TV rights to Candid Productions for 16 years. In 1980 the ISU granted TV rights to CBS and Candid contended ISU did not, as required, bargain in good faith as signed with CBS before negotiating. Ct. ruled that promise to negotiate was vague, uncertain and unenforceable,' Candid Productions v. ISU, 530 F. Supp. 1330 (SDNY 1982); however, 'First refusal rights to televise sporting events are essential in the broadcast industry, for without them a network is placed in the position of promoting an event and enhancing its value without sufficient security to prevent the future benefit from being reaped by another broadcaster. Thus, when CBS refused French Tennis Open deal requiring it to promote Wimbledon or pay additional fee and NBC agreed since it already had rights to Wimbledon; Ct. agreed was odious and unconscionable demand and not bonafide proposal. Preliminary injunction given pending immediate trial,' CBS v. French Tennis Federation (NY Cty., Special Term, Jan. 1983)

537. **Misleading Survey in Commercial Violates Lanham Act,** 'Bristol-Myers ran a TV ad in which it reported a consumer-survey comparing 'Body on Tap' with competitive products. Vidal Sassoon, Inc., sued, contending that 900 women, as reported, did not participate in comparison; 1/3 were 13 to 18 years old and may not be 'women'; and only 1% statistically insignificant difference between top four ratings. Ct. granted motion for preliminary injunction to halt commercial on grounds that it was ambiguous and misleading violating §43(a) of the Lanham Act. Decision upheld on appeal,' Vidal Sasson, Inc., v. Bristol-Myers, 213 USPQ 24 (2d Cir. 1981)

538. **'WKRP' Episode Did Not Infringe Copyright,** 'Distinction between unprotectible 'idea' and its protectible 'expression' at issue when 1976 four-page radio script and sales proposal copyrighted which featured staff of fictional radio station involved in remote broadcast from business when interrupted by armed robber. WKRP in 1978 also featured episode involving remote broadcast from business interrupted by armed man. Copyrighted script never submitted to MTM and CBS, but issue became question of substantial similarity. Ct. relied upon abstractions test; essence of infringement lies in taking not a general theme, but particular expression in treatment, details, scenes, events and characterizations. WKRP episode not infringement because only an idea, and handling of scenes, details and characterization were not substantially similar. Implied contract requires direct submission,' Giangrasso v. CBS, 534 F. Supp. 472 (EDNY 1982)

539. **ABC Did Not Misappropriate 'Exclusive Story' on Cause of Elvis' Death,** 'Larry Seller's told Geraldo Rivera in 1978 he had exclusive story on cause of Elvis Presley's death. Insisted Rivera sign agreement that Sellers owned copyright and required ABC to credit him. Sellers agreed not to give or sell story to any other network or reporter. Two theories were given; that doctor and bodyguard had slowly replaced medication with placebos causing cardiovascular failure; alternatively, murdered to prevent Presley from seeking repayment of loan. Rivera informed Sellers could not use story

without verification. Sellers called once but did not divulge further information. Nine months later Rivera conducted two-month investigation and broadcast two-hour special which stated Presley died of interaction of prescription drugs. Sellers sued for misappropriation, breach of contract and copyright infringement. Although Sellers did mention this 'third' theory it was only in passing and background. A vague or indefinite contract will not be enforced under NY law. The idea used was neither specific enough, nor novel or unique enough to support misappropriation or copyright claims,' Sellers v. ABC, 668 F. 2d 1207 (11th Cir. 1982)

540. **'SuperStation WTBS Allowed to Broadcast NCAA Football in 1982, But Not National Baseball Championship Games,** 'Dispute over TBS right to broadcast NCAA football arose when NCAA altered exclusive affiliation with ABC offering two networks rights and offered cable or pay series on a trial basis. In 1982, NCAA signed with Turner for two-year supplemental series. Turner does not operate cable or pay system, but TBS is originator, over satellite, of cable programming. ABC affiliate in Atlanta and ABC sued on basis that they had contract with NCAA based on understanding supplemental series would be carried on cable or pay only; not conventional over-the-air station. CBS contract with NCAA did carry provision allowing one over-the-air station to carry series after contract signed with Turner. ABC had attempted to obtain specific provision prohibiting any over-the-air coverage for supplemental series. Ct. agreed that WSB-TV Atlanta and ABC would suffer irreparable harm and the NCAA had breached its contract with ABC. However, ABC had been dilatory in seeking relief; Turner had substantially changed its position in reliance on its NCAA contract; schools in supplemental series would be harmed, therefore, TBS could carry 1982 games, but were enjoined broadcasting games in 1983 through 1985. To alleviate damage to WSB, NCAA ordered to permit broadcast of two University of Georgia and two Georgia Tech games in addition to regular 1982 games to be carried by ABC,' Cox Broadcasting v. NCAA, C-89120 (Georgia Superior Ct. 1982).

However, Turner, who owns both Atlanta Braves and TBS wished to broadcast National League Baseball Championship

games under exception to ABC's rights which grants each club participating in series the right to permit its local flagship station to broadcast series in the team's home market. WTBS, ruled Ct. would damage ABC as its signal is not just in home market, but reachs 20 million homes in U.S. Injunction granted,' ABC Sports v. Atlanta National League Baseball Club, C-82-6104 (SDNY 1982)

541. **NCAA Football TV Network Contracts Violate Antitrust Law,** 'In 1952 the NCAA adopted by majority vote a plan that declared the NCAA was the exclusive representative of all member schools for the purpose of selling TV rights to football games. Colleges were not permitted to make own contracts with networks or individual stations. Rules also limited how many times on TV and amount of money from TV. Large football schools formed College Football Association in dissatisfaction with small schools in majority and in 1981 negotiated a lucrative offer from NBC while NCAA was negotiating with ABC, CBS and Turner. NCAA made public statements that violation of NCAA rules would be dealt with and the Universities of Georgia and Oklahoma filed suit to obtain injunction barring NCAA from disciplinary action. Temporary order was issued, but CFA members opted out of NBC contract.

The Ct. then ruled (upheld by Supreme Ct.) that since the vast majority of NCAA schools do not play football on TV or at all and yet vote to restrict the TV rights of the minority; and that the majority have voted to obtain a substantially larger portion of TV money; the NCAA has fixed prices and restricted the output of its members. These practices are illegal per se under antitrust law. The Ct. also held the plan was illegal under the rule of reason and had no redeeming pro-competitive benefits,' Board of Regents of University of Oklahoma v. NCAA, 546 F. Supp. 1276 (1982); 707 F. 2d 1147 (10th Cir. 1983); 104 S. Ct. 1268 (1984)

542. **FM Radio Assignment Policy Changed,** 'FCC's first priority in assigning FM stations will be to assure the availability of at least one full-time station for as many people as possible. FCC will then attempt to provide either a first local or second non-local signal depending on which would reach

greater audience. No further reservation of channels to community (see 558) and relaxation of policy to allow competing application to obtain a second channel in community if available, thus avoiding comparative hearings,' In the Matter of FM Assignment Policies and Procedures, 90 FCC 2d 88, 51 RR 2d 807 (1982)

543. **State Ban on Liquor Ads Constitutional if In-State Only**, 'Oklahoma's ban on alcoholic beverage advertising, under which cable TV in the state was prohibited from retransmitting out-of-state signals which contained such ads was deemed unlawful regulation. Federal Law preempts state regulation of cable TV signal carriage and there is no such federal ban on liquor advertising, 'Oklahoma Telecasters Association v. Crisp, 699 F. 2d 490, 53 RR 2d 903 (10th Ct. App. 1983); Capitol Cities Cable v. Crisp, 104 S. Ct. 2694, 56 RR 2d 263 (1984); 'Mississippi statute, which a lower Ct. found to be unconstitutional was upheld by the Supreme Ct. as there was significant governmental interest in controlling liquor ads within the state. The Ct. distinquished this situation from its Oklahoma decision by noting that Mississippi did not include in its regulatory scheme out-of-state advertising. Therefore, it was not preempted by federal law and reached no further than necessary for a legitimate state interest,' Mississippi Tax Commission v. Lamar Outdoor Advertising, 701 F. 2d 314 (5th Cir. 1983); Dunagin v. Oxford, 718 F. 2d 738 (5th Cir. 1983)

544. **Sale of TV Series and Simultaneous Re-run by Network Upheld,** 'MGM, producer of 'Chips' sold exclusive local run to McGraw-Hill. NBC, which had original license to broadcast certain number of times announced network re-run schedule. McGraw-Hill sued on basis of no exclusivity as contracted. Ct. issued decision same day NBC was to begin re-run that McGraw-Hill had not demonstrated probability of success of suit on merits; and did not show irreparable injury. NBC would suffer hardship if injunction requested was granted,' McGraw-Hill v. MGM, 537 F. Supp. 954 (SDNY 1982)

545. **Miami Dolphins Stop TV Station From Carrying Home Games, But Radio Station May Sue To Retain Astro Games,** 'Professional basketball, baseball and hockey are exempt from some provisions of antitrust law and are permitted to sell TV rights as single package, unlike college sports (see 541). The teams may also black-out home coverage of games to keep ticket sales high. A TV station 96 miles from Miami was to carry Dolphin games, outside 75-mile radius of NFL rule. However, new powerful transmitter would penetrate 75-mile limit and Dolphins refused TV coverage. Ct. ruled that should be based on signal penetration, rather than station location and station not allowed to carry,' WTWV v. NFL and Miami Dolphins, 678 F. 2d 142 (11th Cir. 1982);

However, 'KYST's contract to carry Astros Baseball games was cancelled and Houston Sports entered into a contract with rival. The Ct. considered whether radio broadcasting is such a part of baseball that it participates in the exemption from antitrust laws and concluded it does not. The unique characteristics and needs of baseball are not involved in a broadcast contract. Extending the baseball exemption to this particular situation is unrealistic, inconsistent and illogical. The issue raised was whether the Ct. could rule on an antitrust violation and breach of contract and Ct. determined it could,' Henderson v. Houston Sports, 541 F. Supp. 263 (S.D Tex. 1982)

546. **If Capable of Defamatory Meaning, No Summary Judgment Possible,** 'Overturned lower Ct. decision which had granted summary judgment, as inappropriate. In 1977, ABC broadcast documentary 'Sex for Sale' about effects of sex businesses on local communities. In voice-over commenting on street prostitution accompanying visual was three women walking down local street. Suit brought by one of women. Since her appearance was capable of defamatory meaning; no privilege; not public figure; it is up to jury to decide whether broadcast was understood to be defamatory,' Clark v. ABC, 684 F. 2d 1208 (6th Cir. 1982)

547. **Unauthorized Taping Off-Air By School District Not Fair Use,** 'An educational cooperative did large-scale off-air

videotaping of copyrighted films and distributed them to schools in NY. The Board argued it was making fair use and repeated showings permitted time-shifting to allow more flexible viewing for teachers and students. Since taping interfered with marketability of the copyrighted works (Learning Corporation of America no longer allows telecast of its educational films because of declining film sales believed due to such taping); taping was massive and highly sophisticated; licensing agreements are available from educational film companies for limited taping; taping was substantial and verbatim; was not fair use and permanent injunction granted, plus damages,' Encyclopedia Britannica Educational Corp., v. C.N. Crooks, 542 F. Supp. 1156 (WDNY 1982)

548. **Screen-Credit Breach Nets Actor $1.8 Million,** 'MGM-TV agreed in 1976 to give William Smithers up-front billing and no other performer would get better compensation in series 'Executive Suite.' For this most-favored credit arrangement Smithers agreed to less than his usual fee. After airing he learned his agreement had been changed on an unsigned form contract which he had declined. Blacklist threats were evidence of tortious breach of contractual duty of good faith and fair dealing. Damages for breach of contract, tortious breach, fraud, punitive damages for emotional distress totaled $1.8 million,' Smithers v. MGM, C-65508 (Cal. App. 1983)

549. **No Privacy Rights when Pirating Signal,** 'Using external visual and electronic inspection of antenna to determine if homeowner is pirating the signal is no violation of First Amendment right to privacy,' Movie Systems, Inc., v. Heller, 52 RR 2d 1483 (D. Minn. 1982); 710 F. 2d 492, 53 RR 2d 1711 (8th Cir. 1983); Movie Systems v. MAD, 54 RR 2d 932 (8th Cir. 1983)

550. **Policy Statement on Minority Ownership of Cable TV Facilities,** 'FCC expresses intention to use tax certificate authority (see 523), to promote additional minority ownership in the cable field,' 52 RR 2d 1469 (1982); 710 F. 2d 492, 53 RR 2d 1711 (8th Cir. 1983)

551. **Right to Refuse Advertisements On Reasonable Grounds,** 'Ct. held that no absolute right to reject commercials, only reasonable grounds such as technical quality, obscenity, libelous content, etc. Therefore, station should not have rejected commercials containing price comparisons just because prices could not be checked after broadcast of first announcement,' Sam's Style Shop v. Cosmos Broadcasting, 696 F. 2d 128, 52 RR 2d 1533 (5th Ct. App. 1982)

552. **Political Access Complaints Case-by-Case,** '§312 states that a station must not deny access to any candidate for federal office, regardless of what form that access takes. The FCC affirms its use of a case-by-case complaint activated approach to implementation of the reasonable access provisions. Were the FCC to abandon consideration of individual complaints in favor of a policy based on overall review at the time of licensee renewal, the timely resolution of access disputes would be impossible. Congress also intended such enforcement as it included the access provisions in the revocation section of the Act,' Reasonable Access Implementation, 53 RR 2d 89 (1983)

553. **Religious Rights May be Infringed to Investigate--Renewal Denial,** 'In a civil action arising by licensee Faith Center Church, the Ct. rejected the claims that investigation of the president and pastor of his personal church donations by the FCC, disclosure of the investigation to the press and public, and sharing of the information with state law enforcement authorities violated his 1st Amendment and Civil Rights. Ct. agreed that the investigation of his personal donations (in the context of investigating solicitation on broadcast stations) violated his 1st Amendment right to exercise his religion freely, since his faith requires that his donations remain secret in order to retain their sacred character. However, the FCC's duty to protect the public from misuse of funds solicited through the broadcast media are sufficiently compelling to justify. Ct. also rejected Civil Rights claims, holding that mere sharing of information does not suggest conspiracy,' Scott v. Rosenberg, 702 F. 2d 1263, 53 RR 2d 127 (9th Cir. 1983); continued refusal to comply with discovery order causes FCC to deny renewal of station; Faith Center, 53 RR 2d 797 (1983)

554. **Public Notice on Transferability of Broadcast Licenses,** 'Any station whose renewability appears to be affected by misconduct of joint licensee will be designated for hearing at the same time as the original station. Any stations not affected by the alleged conduct will be freely transferable. The FCC also affirmed its authority to revoke the licenses in one service on the basis of egregious violations of the rules of another service,' Public Notice, 53 RR 2d 126; Bernard Winner, 53 RR 2d 215 (1983)

555. **Public TV Need Not Use Captions for Handicapped,** 'Ct. had held that FCC, in renewal, had to consider whether in public interest for public TV station not to have captions based on Rehabilitation Act of 1973 (§504) of non-discrimination for handicapped in any federally assisted activity. Supreme Ct. ruled that while a public TV station has the duty to comply the FCC may find the licensees' efforts adequate since no adverse finding by Dept. of Education which was the proper agency to consider discrimination under Rehabilitation Act. The FCC has no enforcement responsibilities in relation to that law and there was no need to treat public stations more stringently than commercial stations,' Community TV of Southern California v. Gottfried, 459 US 498, 53 RR 2d 271 (Sup. Ct. 1983); 'In a subsequent case Ct. ruled that the FCC is not required under the same law to issue regulations to increase broadcast participation by the handicapped. The FCC agreed in 1980 to appoint a coordinator for broadcasting and the handicapped and stated it would consider findings of illegal discrimination against the handicapped in reviewing applications for new licenses and license renewals,' Cal. Assoc. of the Physically Handicapped v. FCC, 721 F. 2d 667, 55 RR 2d 1 (9th Cir. 1983)

556. **Ct. Prohibiting Criminal Trial Coverage Prior Restraint,** 'A one sentence order, not limited to time or geographic area too restraining when prohibited a TV station from broadcasting a news segment concerning a criminal trial. The alternatives to prior restraint were considered; and defendants only asked for segment to be withheld until after the

trial, in that area,' US v. McKenzie v. CBS, 697 F. 2d 1225, 53 RR 2d 301; 570 F. Supp. 578 (5th Ct. App. 1983)

557. **Not Personal Attack in Religious Cult Program**, 'Not an identifiable group, so not personal attack in program about religious cults which were charged with deceptive practices, brainwashing and human indecency,' Disciples of the Lord Jesus, 53 RR 2d 319 (1983)

558. **FCC Abolishes Suburban Policy, Berwick Doctrine and DeFacto Reallocation Policy,** 'The Suburban Policy, enacted by FCC in 1965, was to discourage applicants from filing applications for small communities near large cities but to identify with larger community. Burden was on applicant to show they really wished to serve suburban area.

The Berwick Doctrine applied the same public interest considerations to FM-TV as to AM by requiring an evidentiary hearing determining whether programming would be for larger or smaller community specified as community of license.

The Defacto Reallocation Policy affected only FM and TV when a channel assignment for one community was to be used to establish a service to another community. One had to request removal of channel from one city and show effective use to provide service to another unless one could show station to be licensed to unlisted community would be within 10 miles (Class B or C FM and all TV) of a community listed in the Table of Assignments. Now applicants need only submit petition for rulemaking to add unlisted community to Assignment Table,' 53 RR 2d 681 (1983)

559. **FTC Changes Ad Requirements of Grocery and Gasoline Games,** 'The FTC regulates contests and advertising that is broadcast. Grocery stores and gasoline stations were required to include in ads exact number of prizes in each category, odds, geographic area covered, number of outlets participating and termination date of game. Remember, to keep from being a lottery-no consideration. FTC has agreed to exempt marketers and users of games-of-chance promotions from the necessity of disclosing full prize and odds in broadcast advertising. FTC also no longer requires TV to disclose both

aurally and visually. Other businesses were not regulated as were grocery stores and gasoline stations,' FTC, 16 CFR 419 (1983)

560. **Approval of Application Withdrawal Payment if Not Frivolous,** (see 452); 'FCC approved withdrawal of competing application settlement agreement, under recently amended §311(c)(3) of Communications Act where circumstantial evidence suggested original application was not mere sham directed toward achieving a profitable settlement,' Cedar Creek Radio, 53 RR 2d 745; Rule Amendments, 53 RR 2d 823 (1983)

561. **Sales Rep Firm Obtains Damages for Breach of Contract,** 'The Katz Agency acting as the exclusive national advertising representative for a broadcast station was ruled entitled to damages for breach of contract. The station was sold without notice to Katz, and the new owner cancelled their contract without giving a required one year's notice,' Katz v. Evening News, 705 F. 2d 20, 53 RR 2d 815 (1983)

562. **Not Selling Ads to Competitors May Violate Antitrust,** 'The FCC's statutory mandate does not require it to enforce the antitrust laws directly, but they must deny licenses if violation occurs and may consider potential violation. Exercising that authority, the FCC admonished a TV station which had refused to sell advertising to a local FM station where that TV station had previously sold time to other FM stations in that market including its own. The TV station was held to have discriminated in an improper attempt to influence or penalize the other licensee and by refusing to permit it to advertise over their TV station had attempted to gain a competitive advantage for its own FM station,' Midwest Communication, 53 RR 2d 993 (1983)

563. **Accusation in Political Ad Not Personal Attack,** 'FCC ruled that a paid ad in which a U.S. Congressman was described as fiscally irresponsible was not a personal attack, particularly since the Congressman was given an opportunity to purchase equal time for a response,' Hon. Les AuCoin, 53 RR 2d 1024 (1983)

564. **Filming US Currency for Ads Not Banned Totally,** 'The filming of U.S. currency and obligations for advertising purposes is a criminal offense according to 18 USC 474, 504. Filming may be done for the purposes of philatelic, educational, historical or newsworthy purposes. The Supreme Ct. upheld a ruling that barring magazines from doing so constituted overbroad subject matter regulation that interfered unduly with protected speech. The government may restrict the size and color of reproduction and if in larger or smaller sizes than actual bills or coinage. Also, the government cannot regulate the reproduction according to purpose, such as advertising,' Regan v. Time, Inc., 539 F. Supp. 1371 (1982); 52 LW 5084 (1984)

565. **Teletext Authorized with No Content Regulation,** 'TV stations are authorized to transmit teletext with service and technical regulations given only in general terms. Not subject to content controls as read rather than watched and FCC determines not subject to Must-Carry Rules (see 497), which would allow cable systems to strip the signal prior to their carriage. Public TV may lease subcarrier for such use,' 53 RR 2d 1309 (1983); 57 RR 2d 842 (1985)

566. **News Slanting Requires Extrinsic Evidence,** 'The FCC has stated that it will look into charges of rigging and slanting the news only if there is extrinsic evidence, in writing or otherwise, from insiders or persons who have direct personal knowledge of an intentional attempt to falsify the news, (see 101). Of concern would be orders from the broadcaster, its top management, or its news management to falsify the news. No such evidence was presented in this complaint,' Salazer, 54 RR 2d 731 (1983)

567. **FCC Refuses Pacifica Indecency Decision Precedent,** 'A complaint by Decency in Broadcasting alleging that obscene, indecent and profane material had been broadcast over WFBQ-FM was deemed to warrant no action. The FCC noted §326 prevents censorship by the FCC. It was also felt that the information provided failed to meet the judicial standards of

obscenity and indecency (see 348) and that Pacifica precedent does not require the FCC to intervene in every case where words similar or identical are broadcast. The staff concluded that the language was not profane and any sanction would not be judicially upheld,' Decency in Broadcasting, 53 RR 2d 1370 (1983)

568. **FTC Orders Misleading Ads Cease,** 'Orders American Home Products to cease Anacin spots as unfair or deceptive as cannot claim has unique pain-killing formula, is medically proven or established as superior in effectiveness, causes less frequent side effects, or has more active ingredients. Failed to reveal it contained aspirin. Ct. found order justified by the potential health danger, past record, and wide dissemination in advertising,' American Home Products v. FTC, 695 F. 2d 681 (3rd Cir. 1983)

569. **CBS Wins Galloway Libel Suit,** '60 Minutes alleged a medical insurance fraud. The issue was whether Dan Rather and his producer had acted with reckless disregard for the truth by not checking information sufficiently and, whether the interviews were staged. Galloway was required to show by clear and convincing evidence that there were serious doubts about the truth of the statements to the level of reckless disregard. The jury determined that even though the report was not truthful, CBS did not have serious doubts,' 55 RR 2d 573 (1984)

570. **Word 'Deserted' is Defamatory,** 'KMGH-TV aired a report on a bomb squad injured officer which stated his wife and five children had 'deserted' him since his accident. His wife alleged that 'deserted' was defamatory. The Ct. held for the wife, if it is not the result of jury bias, prejudice or passion. Opinion can be determined by cautionary phrasing used, such as 'in my opinion' or from context of statement. In this case, a reasonable person could have believed that the reporter had inside information or that the statement was fact. The reporter, who relied upon an interview with the husband, should have known likely to be a one-sided view and other sources should have been consulted. The word 'deserted' in a marital

relationship is emotional, derogatory and obviously pejorative,' Burns v. McGraw-Hill Broadcasting, 659 P. 2d 1351 (Colo. 1983)

571. **Fair Privilege to Show Innocent Person Being Arrested,** 'WPVI-TV showed a videotape of an alleged bank robber in handcuffs, and reported he would be charged with bank robbery. His name was not mentioned. He was soon released and brought a libel action. Ct. granted summary judgment for the station in that it was privileged as a fair report. The story was substantially accurate and station later correctly gave names of men who were formally charged with the crime. The matter was of legitimate public interest so soon after the incident took place and was constitutionally protected,' Williams v. WCAU-TV, 555 F. Supp. 198 (E.D. Pa. 1983) (see 362)

572. **Privilege Not to Disclose Source,** 'New York has a shield law protecting journalist from having to disclose information gained in newsgathering. There is a requirement that the reporter must get the story with the understanding of confidentiality, but if not so obtained, stated Ct., the 1st Amendment provides an independent basis,' Wilkins v. Kalla, 459 NYS 2d 985 (NY Cnty 1983); Grand Jury Investigation, 460 NYS 2d 227 (Co. Ct. 1983); People v. Bova, 460 NYS 2d 230 (Kings Co. Sup. 1983)

573. **Subpoena for Out-takes,** 'CBS's KMOX-TV received subpoena for all tapes of conversations between reporter and individuals interviewed on story about illegal placement of video poker games. CBS claimed disclosure would interfere with its ability to collect the news and its editorial process, (see 354 and 439). Ct. ruled that since Missouri does not have a shield law and request was for grand jury which were secret proceedings; there was no potential for harm. CBS had not claimed confidentiality as reporter had not promised secrecy,' CBS v. Campbell, 645 SW 2d 30 (Mo. App. 1982)

574. **Networks Granted Access to Trial & Evidence Tapes,** 'Ct. rules that between access and fair trial concerns there is a strong presumption that access should be allowed. Only if a

substantial probability that there will be harm to the right of fair trial can this presumption be overcome, (see 328 and 444),' U.S. v. Mouzin, 559 F. Supp. 463 (CD Ca. 1983); and Ct., hearing an emergency appeal, removed a restraining order prohibiting CBS from broadcasting the John DeLorean tapes. The Ct. felt there was no reason to impose prior restraint on the 1st Amendment rights of the broadcaster when it was not clear that publicity would affect potential jury selection and the tapes were not lurid or inflammatory (see 444),' CBS, Inc. v. US Dist. Ct., 729 F. 2d 1174, 55 RR 2d 1557 (9th Cir. 1984)

575. **Sponsorship Means Editorial Control for ID Purposes,** 'The FCC requires licensees to identify sponsors of paid advertising, commercial or political, at the time the ads are run. Licensees are under an obligation to make reasonably diligent inquiries to learn the true sponsor when they have reason to suppose it may be someone other than the apparent sponsor. In a paid political campaign for a proposition requiring separate smoking and nonsmoking areas a group asked the FCC to order broadcasters to display 'paid for by the Tobacco Industry'. Ct. agreed with FCC that licensees, in this case, had excercised reasonable diligence as tobacco industry, although supplying the funds, did not have editorial control over ads. A more stringent duty to investigate would create administrative and constitutional difficulties (see 140),' Loveday v. FCC, 707 F. 2d 1443; 53 RR 2d 1452; 55 RR 2d 1086 (DC Cir. 1983)

576. **Noncompetition Clause Not Upheld,** 'Ct. refused to uphold newscaster contract where employee was restrained from any type of on-air work and restricted from the market area of the station. Too overbroad and denied employee ability to make a living, and the term market was too vague as a geographic designation,' (see 402) Capitol Cities v. Sheehan, CV-83-0218242-S (New Haven Dist. Ct. 1983)

577. **Cable Franchise Denial Does Not Violate Antitrust,** 'In a case distinguished from City of Boulder (see 458), Ct. held that the State of Kentucky had granted cities the authority to issue franchises, while Colorado had a neutral position. Thus, Kentucky cities immune from antitrust law as state action,'

Hopkinsville Cable v. Pennyroyal Cablevision, 562 F. Supp. 543, 54 RR 2d 385 (WD Kentucky 1982)

578. **Miami Ordinance Preventing Indecent Material Over Cable Ruled UnConstitutional,** '(see 490); Indecent speech is not obscenity, therefore this ordinance was overbroad and facially defective. The city argued that FCC v. Pacifica (see 348) allowed such control, but Ct. ruled that Miami law did not regard time of day or other variables and that Pacifica only covered broadcasting, not cable. The enforcement procedures in the law also created a high risk of arbitrary or capricious governmental action,' Cruz v. Ferre; HBO v. Ferre, 571 F. Supp. 125, 54 RR 2d 1541 (SD Fla. 1983); affirmed, 57 RR 2d 1452 (CA 11th 1985)

579. **Libel Dependent on Whether Public Figure or Official,** 'A theatre manager held a news conference in which statements were made about the part-owner's finances. A TV station covered the conference and shortly thereafter a bank called in a loan, repossessed equipment and the theatre closed. Action was brought against station that by implying financial affairs not in order had placed owner in false light and violation of protection against publication of private information. Ct. ruled part-owner was not a public figure or an individual of fame or notoriety. The theatre closing was not an issue of public controversy as to statements about personal finances so no actual malice need be proven,' Bichler v. Union Bank, 715 F. 2d 1059 (6th Cir. 1983);

'However, a TV station broadcast charges of sexual harassment against a college financial aid officer. Ct. held he was a public official as college was state-supported, used federal money for scholarships and the charges bore directly upon fitness and qualifications to hold his position,' Van Dyke v. KUTV, 663 P. 2d 52 (Utah 1983);

'A talk show host and callers made remarks concerning a state senator who leased a building to a committee upon which he served. The Ct. ruled that disparaging remarks, were opinions and as he was a public official no action results,' Hawkins v. Oden, 459 A. 2d 481 (R.I. 1983);

'An investigation of a police officer is reported on TV; later resolved for the officer. The Ct. rules that this is not defamation as he is a public figure by virtue of his duties which are governmental and highly charged with the public interest,' Pierce v. Pacific & Southern, 303 SE 2d 316 (Ga. App. 1983)

580. **Misappropriation to Use Look-Alike Model,** 'Ads which used real personalities and some look-alike models was challenged by Jacqueline Kennedy Onassis as unauthorized misappropriation for trade purposes under Sections 50 and 51 of NY Civil Rights Law. Enjoined as deceptive by confusing identification and is commercial exploitation of a person who did not authorize or consent to endorsing the product. The model argued that she could not be prevented from using her own face. Ct. agreed, in part, that she may continue to capitalize as long as not deceptive or confusing and if not in commercial ads. She may appear on TV in dramatic works, but not pass herself off for what she is not. Mrs. Onassis has not forfeited her right of privacy even though public figure and does not become subject to commercial exploitation. If model identifies herself, or is used in accurate manner to recreate event, is in satire or parody than no false implication can be reached,' Onassis v. Christian Dior, 472 NYS 2d 254(1984);

Woody Allen settlement out-of-court requires look-alikes not to use Allen's name and disclose as celebrity look-alike.

581. **Liquidated Damages for Termination of Employment,** 'Contract between sports director and station called for either party to terminate agreement voluntarily by payment of six months salary. Memo was given to employee listing tasks to be performed within next 30 days. Employee responded that he considered memo a constructive discharge as duties were new and more burdensome without an increase in compensation. Employee then sued for six months salary as liquidated damages. Ct. upheld jury that 30 day requirement was a substantial contract change and was designed to make employee resign. Station required to pay $17,996 salary,' Sanders v. May Broadcasting, 336 NW 2d 92 (Neb. Sup. Ct. 1983)

582. **Union Allowed to Respond to Political Ads,** 'The W. Virginia Coal Assn. ran ads on the W. Virginia University Sports Network in 1982 which dealt with political issues and in 1983 the United Mine Workers requested free time to present rebuttal. This was denied, as was union effort to obtain paid time, as no time was available. The Ct. held that the university had a constitutional duty to present the union view if such ads were to run again. Access to broadcast facilities is under jurisdiction of the FCC based on Fairness Doctrine, but networks are not regulated directly, only as licensees, so Ct. applied Fairness analysis. The W. Virginia Constitution was also a basis for the decision. The sale of ads by a state entity allows for content review in limited contexts and listeners might construe the ads as views of the university. A right to reply would not violate the network's independent editorial judgment as only a conduit for advertisers views and therefore no free speech interests (see 222). The Ct. ruled that the network is obligated to present contrasting views on controversial issues, using reasonableness and good faith to determine appropriate spokesperson, an appropriate fee (or free), and an appropriate amount of time to insure reasonable balance,' United Mine Workers v. Parsons, 305 SE 2d 343 (W. Va. 1983)

583. **Misrepresentation in Terms of Employment,** 'Christine Craft charged sex discrimination, Equal Pay Violation and Fraud against KMBC. Ct. dismissed sex discrimination and equal pay claims as actions taken were not the result of a general aminus toward women or Craft in particular, and pay was attributable to several other factors other than sex. After winning an award in excess of that requested, Ct. struck down on basis that jury probably influenced by excessive publicity and retrial ordered with venue shifted. New trial held fraud and misrepresentation,' Craft v. Metromedia, 572 F. Supp. 868 (WD Mo. 1983)

584. **Fairness Doctrine Reasonableness,** 'The Democratic National Committee requested FCC order response time to pro-Reagan ads sponsored by Republican National Committee. To prove that CBS and NBC did not provide reasonable coverage of conflicting viewpoints a survey was taken which showed that

views favorable to the administration received twice as much airtime on news shows and when the RNC ads were added the program imbalance was three-to-one. The FCC held that this disparity did not warrant an investigation. The Ct. of App. held that broadcasters are required only to program with reasonable good faith and the FCC standard of reasonableness is a lenient one. Licensees have wide discretion in determining how to fulfill their fairness obligations and may choose to present opposing viewpoints in any one of a number of programming modes. The Ct. noted that fairness doctrine complaints may arise from ads if audience disparity were shown, however, to prevent the chilling effect that the fairness doctrine may have there is a formidable barrier in proof,' DNC v. FCC, 717 F 2d 1471, 54 RR 2d 941 (DC Cir. 1983)

585. **State Political Ad Law Preempted by Federal Law,** 'State law attempted to prescribe rates that radio and TV could charge for political spots; required lowest unit charge regardless of time of year. This, Ct. ruled, went beyond requirements of §315 and therefore intrudes upon federal government. Law stood as potential obstacle to the goal of the federal statute which has underlying reasoning that campaign periods should be shortened and excessive campaign spending should be curbed,' KVUE v. Moore, 709 F. 2d 922, 54 RR 2d 224 (5th Cir. 1983); affirmed 52 LW 3679 (Sup. Ct. 1983)

586. **FCC Allows Station-Sponsored Political Debates,** 'FCC decided that nothing in §315 suggests that debates between political candidates are not on-the-spot news coverage and the former policy (see 303) requiring that broadcast debates between political candidates must be sponsored by a third party not connected with the licensee is eliminated,' Henry Geller, 54 RR 2d 1246 (1983) affirmed;

'Thus, minor party candidates were excluded from debates televised by the major networks which was not in violation of the Fairness Doctrine, 1st Amendment nor equal opportunities as exempt,' Sonia Johnson, 56 RR 2d 1533 (1984)

587. **Fleeting Appearance of Candidates in Ads Not Use,** 'Previously the FCC had ruled that a group shot which contained

some people who later became political candidates did not constitute use and was not subject to §315. The Fairness Branch has ruled that ads for Time magazine, consisting of individual shots of candidates for periods no longer than two or three seconds were fleeting uses which would not give rise to equal opportunity obligations, 'Time, Inc., 55 RR 2d 581 (1984)

588. **News Documentary Appearance Not Use,** 'The appearance of an announced Presidential candidate during a news documentary for one minute and twenty seconds, where no political comment was made, did not cause an equal opportunity obligation as news documentary is exempt,' Avery Productions, 55 RR 2d 646 (1984)

589. **Regularly Scheduled News Program Exempt from Equal Opportunities,** 'A new weekly news show to premiere during the Presidential primary is not subject to equal opportunities. Policy had been that must have been regularly scheduled news show before campaign before exempt status acquired,' CBS, Inc., 55 RR 2d 864 (1984)

590. **Renewal Expectancy of FCC Upheld,** 'Where an FM station's public affairs programs were almost entirely duplicated from its AM sister station, but listener's perceived the programming to be independently produced, the Ct. upheld the FCC in renewing the license,' Victor v. FCC, 722 F. 2d 756, 54 RR 2d 1429 (DC App. 1983)

591. **Character Qualifications Not Affected by Drug Use,** 'In the absence of a finding of guilty by a court the FCC will not consider drug use in licensee qualifications. Even if the record shows a guilty verdict the FCC would attempt to forecast whether this would affect broadcast operations,' Alan K. Levin, 55 RR 2d 981 (1984)

592. **Short-Form License Renewal Form Approved,** 'Prior to 1952 the Communications Act dictated extensive procedures for granting and renewing licenses. In 1952 an amendment substituted the lengthy review with the 'public interest, convenience and necessity' standard. This and Congress's

failure to include programming in a list of suggested renewal application questions convinced the Ct. that there was no mandate to inquire into programming. Postcard short-form license renewal form which contains no program related questions, with long-form renewal applications sent at random to a small (5%) percentage of radio and TV renewal applicants, does not render the FCC incapable of weighting the public interest in renewal activities. The intent of the FCC's action is to reduce regulatory burdens. The Ct. noted that the renewal form is not the only source of information to determine public interest; as there is monitoring, random station inspections and public response,' Black Citizens for a Fair Media v. FCC, 719 F. 2d 407, 54 RR 2d 1151 (DC Cir. 1983)

593. **Grenada Invasion Raises Retransmission Question,** 'When the US invaded the small island of Grenada no newspeople were allowed to cover. In desperation networks and various stations rebroadcast amateur transmissions of what was occurring. There is an FCC regulation preventing the rebroadcast of CB radio by broadcast stations. After consideration, and an initial denial of permission, the FCC determined that no prior authorization was required to air monitored amateur transmissions, but broadcasters must advise the FCC of date and nature of such rebroadcasts,' 54 RR 2d 1145 (1983)

594. **Cable TV Must-Carry Rules Continued,** 'Petition by Ted Turner to eliminate must-carry rule for cable systems is denied by the FCC. The FCC noted that the growth in subscribers and in channel capacity have made mandatory carriage of local signals less burdensome,' Cable TV Mandatory Signal Carriage Rule, 55 RR 2d 1365 (1984)

595. **Call Letter Rule 73:3550 Eliminated,** 'The FCC determined that it would no longer assign call letters. If a dispute arises the FCC recommended that local courts be sought under the law of unfair competition. The FCC also should not be an arbiter of good taste in choice of call signs when local communities could enforce. Also, prohibition from using call

letters of initials of former or current Presidents is eliminated,' Call Letters, 54 RR 2d 1493 (1983);

'A Fed. Dist. Ct. ruled the likelihood of confusion between radio call letters WMEE and WMCZ warranted the issuance of a preliminery injunction on behalf of WMEE. The Ct. found phonetically similar; similarity in targeted audience; overlapping service area; lack of close attention by audience in selecting stations; strength of WMEE's mark in market through long-term use; funds spent to promote call letters; status of station as number one in market and evidence of some intent to trade on the goodwill and reputation of competitor. Pending issuance of new call letters must use disclaimer, "Not to be confused with WMEE, FM-97," Pathfinder v. Midwest, 593 F. Supp. 281 (ND Ind. 1984)

596. **Violation of Anti-eavesdropping Regulations and Federal Wiretap Statute FCC Matter,** 'Ct. of Appeals upholds dismissal of action alleging that ABC did surreptitious audio and video taping of an interview in violation of regulations and statute. FCC has primary jurisdiction over its own rules and Wiretap statute not in effect unless facts shown that ABC intended to use in a manner injurious to the plaintiff,' Boddie v. ABC, Inc., 731 F. 2d 333, 55 RR 2d 1145 (6th Cir., 1984)

597. **NonCommercial Stations Donor ID Rules Liberalized,** 'Public broadcast stations are authorized by FCC to include in their underwriting announcements the brand, trade names of products, listing of products and services, promotional logos of donors. Rules governing interruption of regular programming for underwriting and donor acknowledgments are limited to regular schedule, but not to fund-raising activities that suspend or alter normal programming. Public broadcasters are still not permitted to substantially alter or suspend regular programming to raise funds for any entity other than the station itself,' Noncommercial Educational Broadcasting, 55 RR 2d 1190 (1984) (see 509)

598. **Issues/Problem Requirement Changed,** 'Stations were required to list ten problems or issues (see 442) on which they

would devote substantial programming now may go beyond the maximum. Must now prepare such lists on a quarterly basis rather than annually for inclusion in the public file. Licensees are relieved of the obligation to provide a description and explanation of the means by which they have determined the issue to be of concern to their community as methodology was not the FCC's concern. Licensees may be asked upon renewal what percentage of such programming they have aired,' Deregulation of Radio, 55 RR 2d 1401; Deregulation of Commercial Television, 56 RR 2d 1005; Public Broadcasting, 56 RR 2d 1157 (1984)

599. **Multiple Ownership Rules Amended,** 'The FCC struck minor ownership rules 73:35, 73:240 and 73:636 and incorporated these provisions into a single rule to affect all broadcast stations, new 73:3555. This rule allows 5% ownership, up from 1%, in widely or closely held corporations; retains the passive investor exception which allows up to 10% stock ownership and other rather technical provisions.

The FCC also did away with the prohibition of anyone owning, operating or controlling three commercial stations where any two were located within 100 miles of the third, and where primary service overlapped. The increase in media outlets made it highly unlikely, the FCC stated, that any single owner would be able to exercise undue sway over public opinion and broadcasters could take advantage of increased operating efficiencies from regional group ownership,' Regional Concentration of Control, 55 RR 2d 1389, 55 RR 2d 1465 (1984);

'Also revised was the number of stations which can be owned by majority active ownership (see 55) which had been 7 AM, 7 FM, and 7 TV (of which 2 had to be UHF). Entities may now own 12 AM's, 12 FM's and 12 to 14 TV's as of April 2, 1985. The TV ownership is restricted to cover no more than 25% of the nation's television homes. UHF-TV's are assessed at only half of their market's TV homes to encourage UHF purchases. Group owners who buy into stations more than half owned by minorities are able to own up to 14 TV stations and are permitted to reach 30% of nation's TV households, as long as two stations are controlled by minorities. The networks now

own stations that reach about 20% of the national audience and will not likely increase ownership,' 57 RR 2d 966 (1985)

600. **FCC Eliminates Content and Program Regulations and Policies,**

(1) Elimination of policies on use of distorted ratings information, misleading or inaccurate signal coverage maps and other misleading promotional materials. Complaints should be taken to Federal Trade Commission and FCC will consider upon license renewal (see 299 and 520); Unnecessary Broadcast Regulation, 94 FCC 2d 619, 54 RR 2d 705 (1983);

(2) Removed policies relating to alcoholic beverage advertising. 73:4015 said, in effect, that alcoholic beverage ads raised serious public issue questions even in states where legal and were against the public interest where illegal (see 34);

(3) Astrology material had been of some concern, but with NAB Code defunct (see 247 and 492) FCC might now be construed to have stronger interest. Therefore, FCC eliminated policy 73:4030 (see 15 and 26);

(4) Concern had been expressed by FCC over foreign language programming supervision requiring knowledge on part of licensee as to material being broadcast. Policy statement 73:4105 eliminated (see 81, 90 and 396);

(5) The policy against broadcasts which might produce harassing or threatening telephone calls is eliminated as Personal Attack Rule, Fairness Doctrine would control;

(6) Any Music Service Program Contract that unduly restricted licensees independent programming judgment caused rule 73:4145, which spelled out elements of such a contract that were impermissible. This has been eliminated;

(7) Repetitious broadcast of a single record or tape had raised questions as to basic qualifications (see 181), but has been left to discretion of licensee;

(8) Policy which had prohibited affiliated network stations from using off-network and feature films which had been on the network within past two years has been eliminated as part of the prime-time access rule (see 282);

(9) Call-in polls had to be clearly noted as to their nature and their scientific basis or lack thereof. This has been eliminated;

(10) Sound effects which might confuse drivers and be a hazard (see 226) are now left to the discretion of the licensee; Underbrush Broadcast Policies, 54 RR 2d 1043 (1983)

(11) The FCC also removed the requirement for TV stations to have 5% local programming; 5% local news; 10% public affairs programming and also removed any limitations on commercial time sold;

(12) The FCC removed policies concerning the broadcast of horse racing information and advertising. The absence of evidence of abuses, changes in attitude of the public and governmental authorities toward gambling, the administrative costs, and censorship concerns were reasoning, 56 RR 2d 976 (1984), (see 92, 185);

(13) The 1966 Policy Statement (6 RR 2d 671) cautioning against carrying contests and promotions adversely affecting the public interest, including contests resulting in disruption of traffic, telephone service or public safety, is eliminated as existing civil remedies can be used, 57 RR 2d 939 (1985), (see 214,288)

The only remaining nonstatutory obligation of a licensee will be a discussion of issues of local community concern (see 190, 426, 598),' 6/27/84

601. **FCC Approves Television Stereo Sound Standards,** 'Unlike its AM Stereo decision (see 494), the FCC selected a system standard for Television Stereo Sound. The TV aural baseband may also be used for other services such as multi-language sound and other purposes. On Aug. 7, 1984, noncommercial WTTW Chicago became first station to regularly use stereo sound,' TV Aural Baseband Transmission, 55 RR 2d 1642 (1984)

602. **Airing of X-Rated Political Commercials Violation of Criminal Code,** 'The FCC Staff issued a memorandum that §1464, U.S. Criminal Code prohibits the broadcast of obscene or indecent material and it is unreasonable to exempt broadcasters from criminal prosecutions by allowing them, even in political ads, to broadcast obscenities. The spirit of the law is to promote public access to political debate, not to break criminal laws. This statement resulted from the announced

plans of Hustler Magazine publisher Larry Flynt to run for the Presidency and include X-rated film clips in his political commercials,' 1/6/84 FCC

603. **M.A.S.H. Syndication Terms Dispute,** 'Station WSAZ contracted with Twentieth-Century-Fox in 1977 to broadcast 119 episodes of M.A.S.H. for four years, with an option to purchase additional episodes at same price if produced. The West Virginia Supreme Ct. ruled that the contract was ambiguous because of a conflict between a paragraph permitting purchase of all episodes and another paragraph which specified a limit of 168 episodes. The case was remanded to determine the number of episodes agreed upon,' Lee Enterprises v. Twentieth-Century-Fox, 303 SE 2d 702 (W. Va. 1983)

604. **Erasure of Programming Tapes is Breach of Contract,** 'Metromedia contracted with April Enterprises to produce "Winchell Mahoney Time" with either able to syndicate for 50% profit split. Renegotiated contract subsequently gave Metro exclusive syndication rights and Metro relinquished right to erase video tapes of shows. April offered to purchase video tapes and Metro countered by offering to buy exclusive rights or would erase the tapes. Subsequently, April discovered that Metro had erased the tapes and brought action. Ct. ruled that the erasure clause was limited under the first contract and was not present in later contracts. April will be subject to a statute of limitations based on the time April discovered, or should have discovered, the erasure and whether they exercised due diligence in discovering the erasure and bringing the action,' April v. KTTV, 195 Cal. Rptr. 421 (Cal. App. 1983)

605. **Common Law Copyright Protection Lost Through Prior Publication,** 'Under 1909 Copyright Act any prior publication of work without formal copyright registration could put work into public domain. Memphis ad writer H. Jackson Brown composed jingle for new car dealership and sold to two other dealers. An employee of the last dealer to obtain the jingle bought a dealership, substituted his name and used the jingle. After Brown learned of this use he registered his work as of April 1980 and brought an action for infringement. The Ct.

ruled Brown's jingle had entered the public domain prior to the Copyright Act of 1978 as its use was neither limited in purpose nor limited to a definitely selected group,' Brown v. Tabb, 714 F. 2d 1088 (11th Cir. 1983)

606. **Format Change Results in Syndicated Programming Breach of Contract,** 'WXEZ changed from beautiful music syndicated taped format to top forty. Contract with Stereo Radio Productions for beautiful music format tapes was for three years. Ct. determined New York law applied as contract executed, Stereo located and tapes made in New York. Fixed damages at amount music syndication company would have received under the contract less the amount they would have had to spend to perform. Since Stereo only saved $100 per month total breach was for $25,792,' Schulke Radio v. Midwestern Broadcasting, 453 NE 2d 683 (Ohio 1983)

607. **No Duty to Allow TV Show Access to Prison Inmate,** 'Convicted murderer Arnay contacted TV show, "Lie Detector", which administers polygraph exams and shows results on show. Offered to prove innocence. Producers requested permission to enter prison to tape examination and spent $30,000 to prepare. Permission was denied and petition filed. Ct. ruled that no affirmative duty even if show was news program as inmate's right of access is qualified, not content-based discrimination, and producer has no right of visitation,' Arney v. Director, Kansas State Penitentiary, 671 P. 2d 559 (Kans. 1983)

608. **Opinion Not Defamation,** 'Police officer impounded talk show host's car for various violations. Host then verbally abused and ridiculed the officer on the air which brought an action for defamation. The Ct. found since the host had disclosed nondefamatory facts upon which the opinion was based not actionable,' Fleming v. Benzaquin, 454 NE 2d 95 (Mass. 1983)

609. **Possession of Cable Equipment Not Proof of Theft,** 'A sergeant found a stolen unauthorized cable converter on the Police Chief's TV set at residence. Ct. declared Ohio statute

which presumed possession is prima facie evidence of intent to commit theft unconstitutional. Simply having device does not prove theft of service occurred,' State v. Scott, 455 NE 2d 1363 (Ohio App. 1983)

610. **Cereal Advertising to Children May Be Deceptive in California,** 'In 1977 a class action suit was brought alleging fraudulent, misleading and deceptive advertising by General Foods, two ad agencies and a supermarket chain. The TV ads stated that children who eat 'candy breakfasts' are 'bigger, stronger, more energetic, happier, more invulnerable and braver'. The ads also noted that sugared cereals are grain products that are healthful and nutritious. The California Supreme Ct. held that causes of action for injunctive relief and restitution under state's unfair competition and false advertising laws had been made but denied other elements of the suit. The case will now either be tried or settled out of court,' Committee on Children's TV v. General Foods, 197 Cal. Rptr. 783 (Cal. 1983)

611. **Libel Action Against ABC Dismissed,** 'In 1979 an attorney for ABC charged that top network executives and 'Charlie's Angels' producers Spelling-Goldberg had defrauded Robert Wagner and Natalie Wood of their profit participation by inflating expenses. ABC interviewed George Reeves, Senior VP of ABC on 'World News Tonight'. He sued his own company for libel, claiming that the excerpt used did not reflect his denial of the charges. The Ct. granted summary judgment for ABC on grounds the story was fair and true, the facts were undisputed, it was a matter of law and did not have to go to a jury, and the average viewer would conclude charges were refuted from the context. Ct. held that report was protected by California's statutory absolute privilege law for a fair and true report of judicial or other public official proceedings,' Reeves v. ABC, 719 F. 2d 602 (2d Cir. 1983)

612. **'Opry' not Trademark Protected,** 'WSM requested injunction against 'Country Shindig Opry' for trademark violation. WSM used in 1927 for Barn Dance radio show, and registered 'Grand Ole Opry' in 1950. The word 'Opry' itself

was registered in1982. The Ct. ruled that term was generic, no consumer confusion between two marks, not distinctive, and used before 1927. No injunction was granted,' WSM v. Hilton, 724 F. 2d 1320 (8th Cir. 1984)

613. **Olympic Symbol Protected,** 'The US Olympic Committee obtained a permanent injunction against the unauthorized commercial use within the US of the five-ring Olympic symbol under the Amateur Sports Act of 1978 which gives trademark protection. This law does not require confusion, just unauthorized use,' US Olympic Committee v. Intelicense Corp. (2d Cir. 1984); US Olympic Committee v. Union Sport Apparel, 220 US PQ 526 (ED Va. 1983)

614. **State Cable Access Requirements Constitutional,** 'Federal District Ct. in Rhode Island followed Tenth Circuit and equated cable with TV in approving state law requiring institutional/industrial network and dedication of channels for public access. Cable requires right-of-way, is monopolistic and therefore must abide by government regulations. DC and Eighth Circuit have rejected scarcity argument, but Tenth has recognized. Regulation was content neutral as all individuals had access to channels on first-come first-served basis. Rules did limit cable operators' editorial control but had substantial government purpose and only minimally interfered with free expression. Requirement to serve all religious institutions and parochial schools served valid secular purpose by promoting broad public access. Reasonable fees could be charged,' Berkshire Cablevision v. Burke, 571 F. Supp. 976 (DRI 1983)

615. **Not Libel to Film Arrest,** 'Two men were arrested at a shopping mall when police responded to a robbery call. A report on the TV evening news was based upon information from the police scanner, a store clerk, and 'no comment' from the police with footage of the arrest. No names were used. The men were later released when officers decided no crime had been committed. A jury found damages, but the Ct. reversed and remanded. The Ct. noted that an award of punitive damages can only be made where proven that the story was broadcast with actual malice. Also, information as to the station's

financial condition tainted award of compensatory damages,' KARK-TV v. Simon, 656 SW 2d 702 (Ark. 1983)

616. **Ohio Libel Standard is Ordinary Negligence,** 'WCPO-TV broadcast two news broadcasts linking a supper club with gambling and organized crime following a raid on the club. The station was sued for libel and claimed the broadcasts were based on the police report. However, the club officer testified that no one from the station ever contacted him to verify the facts. Later the club's cook was indicted, but the case was dismissed and no other charges were brought. The Ohio Supreme Ct. applied the ordinary negligence standard--whether the station acted reasonably in attempting to discover the truth or falsity or defamatory nature of the publication--and did not accept station's argument that it was privileged to publish government reports without liability, because the broadcasts contained information not in the official records,' Embers Supper Club v. Scripps-Howard, 457 NE 2d 1164 (Ohio 1984)

617. **Contestant Appearance Restrictions Valid,** 'Martin Fine appeared from 1978 to 1982 on numerous game shows and won $11,000+. In 1982 he applied to become a contestant on 'Joker's Wild' but was disqualified for his previous game show appearances. NBC limits contestants to three game shows a lifetime; ABC to once in the past 12 months or twice within the past five years; and CBS to one show in the past 12 months or two shows in a lifetime. Barry and Enright, producers of 'Joker's Wild' limits to one show within 12 months or two shows in past 10 years. Fine, a law student, sued. Ct. held that Fine had standing to pursue claim, but could not prove that limitations were group boycott which is a per se violation of §1 of the Sherman Act. There was no concerted effort at a single market level and the Ct. noted the restrictions were developed partially in response to the 1950's quiz scandals; to prevent familiarity with selection and taping procedures, and the restrictions were not identical and were adopted at different times,' Fine v. Barry and Enright Productions, 731 F. 2d 1394 (9th Cir. 1984)

618. **Copyrighted News Protected Against Monitoring Service Sale,** 'TV News Clips sold copies of news items to those mentioned for $35 per clip. WXIA-TV sued for copyright infringement. Ct. noted station had registered pretaped version of feature and later completed broadcast. News Clips tape was a total reproduction of a particular feature and did not qualify for 1st Amendment or Fair Use as not satire, parody or comment. The Ct. refused an injunction as systematic copying and sales could represent a 'modest social benefit' given the station destroyed its tapes a week after broadcast. Damages were fixed at $35 as no actual damage to station,' Pacific & Southern v. Duncan, 572 F. Supp. 1186, 56 RR 2d 1620 (CA 11th 1984)

619. **Protecting Ancillary Rights Derived from TV Show,** 'Held that Warner Bros. was entitled to a permanent injunction restraining Gay Toys from marketing look-alike "General Lee" car featured on "The Dukes of Hazzard" TV show. Since consumers wanted the toy, in part, because of the identification with the series this was sufficient to establish a secondary meaning even though Warner is not a manufacturer of toy cars and in the absence of a showing that consumers thought Gay Toys cars were sponsored or authorized by Warner. The toys flag emblem, numerals and color functioned as identification. However, the Ct. refused an injunction for Mattel's 'Master of the Universe' figures against 'War Lord' figurines. Mattel claimed the torso had been copied, but the Ct. noted this was an unprotectible idea of a superhuman muscleman crouched in a traditional fighting pose. Mattel had to prove the figures had secondary meaning and since Mattel was selling all they could produce they had not demonstrated an illegal trading upon Mattel's success,' Warner Bros. v. Gay Toys, 724 F. 2d 327 (2d Cir. 1983); Mattel v. Azrak-Hamway, 724 F. 2d 357 (2d Cir. 1983)

620. **Cable Trade Show Organizer May Sue HBO-Showtime,** 'Crimpers Promotions organized a 1981 cable TV trade show to put suppliers of cable programming and cable operators together. The show failed when only 57 out of an expected 350 suppliers took booth space and only 200 out of an expected 5000

people attended. Crimpers claimed HBO-Showtime contacted independent producers and cable operators to discourage their attendance and sued for violation of Sec's. 1 & 2 of the Sherman Antitrust Act. HBO-Showtime claimed Crimpers did not have standing to sue, but the Fed. Ct. of Appeals upheld the District Ct. holding that Crimpers faced barriers created by HBO-Showtime in their alleged monopolization of the business of purchasing and assembling programming from producers and selling it to cable operators. The injury was the precisely intended consequence of the boycott and Crimpers was the most logical party to sue. The case will either be tried to settled,' Crimpers Promotions v. Home Box Office, 724 F. 2d 290 (2d Cir. 1983)

621. **Fair Report Privilege Not Libel or Trespass,** 'CBS' WCAU-TV broadcast a report on Ct. proceeding involving property and filmed on the property as tenants showed deficiencies. Ct. ruled in directed verdict that story was covered by the fair report privilege in Pa. common law as a report on a judicial proceeding. Owner was given opportunity to prove story went beyond privilege by being unfair or inaccurate, but Ct. ruled no evidence was deliberately distorted or sensational. The Ct. also held that since tenant had given permission to reporter to enter the premises this was a complete defense against the trespass action,' Lal v. CBS, 551 F. Supp. 356 (ED Pa. 1982); 726 F. 2d 97 (3rd Cir. 1984)

622. **CBS Upheld in Libel and Invasion of Privacy Suit,** 'CBS aired a report that an owner of vocational schools in Texas had defrauded the federal government and students. He sued for libel and invasion of privacy. The Ct. upheld CBS in that guilty verdicts won by federal and state governments confirmed truth. The Ct. applied federal standards of collateral estoppel to determine if the judicial proceedings against the owner were identical to the issue at stake in the libel suit; if the issue had been actually litigated; and whether the issue had been a critical and necessary part of the previous judgment,' Wehling v. CBS, 721 F. 2d 506 (5th Cir. 1983)

623. **ASCAP 1950 Consent Decree Stands,** 'A per-program music license is for a particular program with a fee based on the percentage of revenue of that particular show only. A blanket music license is for all programs broadcast during a year or more with the fee a percentage of revenues earned by all programs during that period, (see 353). Broadcasters with blanket licenses do not need to purchase per-program licenses. ABC asked ASCAP for a per-program license quote. ASCAP felt that ABC would then drop its blanket license. ABC had a blanket license with BMI and it appeared that they would use BMI music and deliberately encourage producers to avoid ASCAP music which might cause composers and publishers to switch from ASCAP to BMI licensing. ASCAP resisted giving a quote. Under the 1950 Consent Decree a music user is allowed to petition Fed. District Ct. in New York to judicially fix a reasonable fee if dissatisfied. ABC petitioned the Ct. to fix a reasonable per-program license fee. ASCAP countered with a motion to modify the Consent Decree to relieve ASCAP of the obligation to issue per-program licenses to TV networks holding blanket licenses from their competitor, BMI.

The Ct. denied ASCAP's request on the assumption that networks would take a blanket license from one performing rights society but not both, provided per-program licenses were available. Therefore, this would foster fierce competition to sell blanket licenses which is the purpose of antitrust laws and Consent Decrees. BMI does not have to provide for judicial ratesetting in its Consent Decree, but must price per-program and blanket licenses so there is a realistic choice between them. The Ct. noted that ASCAP could renew its motion if it appeared more probable the consequences which were feared would occur,' United States v. ASCAP, 586 F. Supp. 727 (SDNY 1984)

624. **Copyright Protection for Compilation TV Show,** 'Apple Barrel Productions obtained rights to a TV program of children performing country music. After a dispute with the developer some parents withdrew their children and started their own program. Ct. ruled that the show could be considered a compilation, assembling preexisting materials, selected in such a way as to result in an original work of authorship if viewed in its

entirety rather than individual elements of script, design and format. Apple Barrel was denied an injunction as, ironically, the argument that the first show to get to the market would have an advantage was applied for its competitor as well. Therefore, without an injunction each show should have an equal chance to succeed in the television marketplace,' Apple Barrel v. Beard, 730 F. 2d 384 (5th Cir. 1984)

625. **Network Syndication and Financial Interest Rules,** 'The FCC tentatively eliminated the rules (see 229) which prohibited network entry into the independent production and syndication markets since 1970. The revised rules would have applied only to prime time entertainment series and only to domestic distribution of such series for non-network exhibition. To reduce the possibility of warehousing, a TV network would have been required, within six months of the completion of a series' network distribution to transfer its rights relating to syndication to an unaffiliated syndicator. It would also be required to transfer all syndication rights no later than the fifth year of the series' network run. Passive financial interests could have been maintained by networks. This change would have run into some conflict with consent decrees (see 264) which would expire, in part, by 1991,' Syndication and Financial Interest Rules (Tentative Decision), 54 RR 2d 457 (1983);

'Congressional hearings were held after considerable pressure from syndicators, producers and stations not to eliminate rules. Chairman Fowler stated, '...we believe that Congress should permit us to reach a final decision--under the public interest standard by which we are governed--and to conclude this proceeding without further delay.' However, an effort to achieve a compromise on the rule changes between the networks and Hollywood producers fell through and therefore no action is likely in the forseeable future,' (11/2/83, 1984)

626. **Cannot Use Trademark of Competitor in TV Ad,** 'Big Bite Burger used a TV ad in which it parodied popular promotional characters used by larger competitors. Wendy's obtained injunction as ad tended to create false impression that Wendy's affiliated with Big Bite and created likelihood of confusion. Survey's showed small group confused which

translated into significant portion of fast food market,' Wendy's v. Big Bite, 576 F. Supp. 816 (ED Ohio 1983)

627. **Cable Communications Policy Act of 1984,** 'A number of important cases were decided, or pending when Congress passed a national policy for cable television after long negotiations between the National League of Cities and the National Cable Television Association. The Act affirmed the authority of municipalities to award exclusive franchises to cable operators, and to require operators to provide educational, public and government access channels. However, the statute limits the franchise fee that municipalities may obtain to 5% of gross annual revenues and ends local regulation of basic cable rates in two years. Regulation of other than basic services was preempted. Law bans co-located cable-broadcast TV cross-ownerships and prevents telephone companies from entering cable business in their home towns unless rural areas not likely to be served, see 58 RR 2d 1 (1985). Law also prohibits treatment of cable as common carrier. Procedures for renewing cable franchises are also set forth. There is no ban on newspaper ownership,' Cable Communications Policy Act of 1984; effective: 12/29/84)

'One of the many conflicts the Cable Act clarifies was faced by Cox Cable in New Orleans. They had agreed to offer 31 channels as a basic tier for $7.95 monthly. Cox subsequently filed in Fed. District Ct. seeking to enjoin the city from preventing it from restructuring the basic offering into two tiers, charging a total of $10.95. The Ct. then enjoined Cox. Cox then announced a basic for $7.95 with a second tier at $3.00. However, this transformed the basic service from 31 channels to 11 channels for the same price. The Ct. ruled that the city was entitled to regulate retiering as an element of rate regulation and the case was remanded to state court,' Cox Cable v. New Orleans, 594 F. Supp. 1452 (ED La. 1984);

'The above decision was protested to by the FCC which stated the Ct. had misread the FCC's earlier announcement prior to passage of the Cable Act that it had preempted regulation of rates for non-basic subscriber services (any channels other than the mandatory must-carry signals) so as to encourage the development of innovative and diverse programming services

and therefore it would allow retiering of services. Thus cable companies were allowed to add, delete or realign their services so long as the basic service contained all the must-carry signals mandated by the FCC,' In re Community Cable TV, Inc., 54 RR 2d 1351 (1983); 56 RR 2d 735 (1984); 57 RR 2d 1226 (1985)

628. **Communications Act Amendment Permits Limited 'Backyard' Satellite Reception,** 'Congress amended §605 of the Communications Act, (now renumbered as §705) to allow owners of backyard satellite dishes to receive unscrambled TV signals. Program suppliers must choose between negotiating agreements with representatives of the backyard dish industry to receive compensation for signal use or scramble their signals. There are severe penalties for unauthorized reception of scrambled signals through the use of 'blackboxes' for commercial or private gain. Copyright holders may bring civil actions seeking injunctive relief to restrain violation of the statute with damages of up to $50,000 for willful violation,' Cable Communications Policy Act of 1984;

'A motel owner intercepted, exhibited and retransmitted from his satellite dish and after the proverbial law book was thrown at him was found to have willfully misappropriated audiovisual works, for commercial advantage, in violation of §605 and 705(a) of the Communications Act. This violation was not exempted as a use of the general public and was not private home viewing as defined in §705(c)(4). It also violated the Copyright Act (§501) and infringed the tradename and marks of HBO in violation of §1125(a) of the Lanham Act. $40,000 fine assessed,' ESPN v. Edinburg Community Hotel (SD Tex., 1985)

629. **License Application Protected by Copyright,** 'A radio station proposing to move to another city obtained an impoundment order against a potential competing applicant which had copied their application documents. Such documents are routinely filed with the FCC and made available for public inspection. Five months after filing the identical engineering report was filed by the competing applicant. WHAZ brought suit for copyright infringement, unfair competition, and fraudulent and corrupt practices,' WPOW v. MRLJ, 584 F. Supp. 132, 55 RR 2d 934 (DDC 1984)

630. **Chiropractor Not Libeled for 'Cashing in On Cancer',** 'A series purported to reveal medical quackery specifically referred to and pictured Chiropractor Spelson with statements 'really borders on the criminal', 'cancer con artists' and 'unscrupulous charlatans victimizing cancer patients.' Ct. declared material was incapable of defamatory construction as expression of opinion and commentary; facts were presented for viewer's evaluation; criticism of acts only--not personal; and matter of vital public interest. CBS was entitled to hold the view that treatments were contrary to the beliefs of medical and chiropractic thought and were therefore worthless or even dangerous,' Spelson v. CBS, 581 F. Supp. 1195 (ND Ill. 1984)

631. **Cities Awards of Cable Franchises Antitrust Violation,** 'The usual practice in awarding a cable franchise is to evaluate competing companies and give to the most qualified applicant. In Houston the major told five local companies who had applied to divide franchise areas among each other. After a plan had been prepared Affiliated Capital applied. The company was told to work out an agreement with the five other entities which they chose not to do. They then filed an antitrust action when the city approved the franchise package of the five companies. A jury found the city of Houston, the mayor, and Gulf Coast TV had participating in a conspiracy in unreasonable restraint of trade and awarded $2.1 million to Affiliated. The Ct. overruled the jury notwithstanding the verdict and the case was appealed. The Fed. Ct. of Appeals reinstated the jury verdict against Gulf Coast. The Ct. held these Houston business entities agreed to divide the city between themselves and excluded others with devastating competitive impact. No legitimate city purpose overrode the public interest in competition. The mayor was found to have qualified immunity in that he had not violated a clearly established law,' Affiliated Capital v. City of Houston, 735 F. 2d 1555 (5th Cir. 1984);

'TCI served Jefferson City, MO. Central Telecomm was awarded franchise. TCI allegedly contacted city consultant and threatened to cut off service and withhold franchise payments. The franchise was then awarded to TCI with the mayor casting the deciding vote. The city claimed it was immune from

antitrust liability because its actions were authorized by the State. The Ct. held that such an exemption is only applicable to the extent the city (not itself a sovereign) acted from a clear and express state policy. No such policy was found. Dismissal of 12 of 14 counts refused and case will go forward or be settled,' Central v. City of Jefferson City, MO, 589 F. Supp. 85 (WD Miss. 1984)

632. **Fair Report Privilege in Defamation Suit Upheld,** 'In 1978 ABC News obtained copies of General Services Administration documents from a confidential source (see 325). These documents discussed serious deficiencies in the performance of a security company, Exelon, along with unconfirmed suspicions that the company's president had links to organized crime. Despite the GSA reports contract was renewed. ABC broadcast a story based primarily on these documents. ABC asserted it had broadcast a fair and accurate report of governmental action and was protected by constitutional or common law privilege. Exelon argued the documents were internal memos not for public disclosure. The Ct. ruled that ABC was protected by the fair report privilege for if it had waited until the GSA made an official finding the report would never have aired for the GSA had failed to deal with serious unresolved allegations of misconduct. It had been made clear by ABC that the documents contained only charges and allegations which had not been proven. Summary judgment granted ABC,' Salvatore J. Ingenere, & Exelon v. ABC (D. Mass 1984)

633. **Composers and Lyricists are Independent Contractors,** 'Society of Composers and Lyricists attempted to get approval from National Labor Relations Board to form a bargaining unit (union). The NLRB the 'right of control' test and did not approve. Where one for whom services are performed retains the right to control the manner and means by which the result is obtained; this is employment. Where control is reserved only as to the result sought; this is an independent contractor. Artists may decline offer to work; generally work at home; use their own equipment; choose their own hours; work concurrently for others. After work is complete studio assumes legal ownership

and even if not used composer/lyricist still receives fee,' Aaron Spelling Productions and Society of Composers and Lyricists, NLRB, 31-RC-5755 (1984)

634. **Unauthorized Distribution of Lone Ranger Radio Plays,** 'The 1909 Copyright Act did not permit owners of copyrights in scripts to copyright separately any sound recordings produced from the scripts. Since 1965, Charles Michelson has held an exclusive license in the Lone Ranger episodes for radio play. In 1979, Jim Lewis, without a license, began leasing recorded Lone Ranger episodes to radio stations. In 1982, Lone Ranger TV sued Lewis for copyright infringement and conversion. Ct. permanently enjoined Lewis from leasing or otherwise infringing the copyrights in the scripts; ordered counsel to pay $1,100 in fees; granted summary judgment for federal copyright infringment, and awarded statutory damages, attorney fees and costs. The 1976 Copyright Act protects sound recordings, but does not extend to scripts "fixed" by recording prior to 1972. The Ct. however, found that valid copyrights in the underlying scripts (see 475) gave the company the right to control derivative works which had been infringed by Lewis. Under California law, Lone Ranger TV had an intangible property interest in the performances from the time of their recording and conversion is the illegal taking of something of value. In another Lone Ranger decision, Clayton Moore's right to wear the Lone Ranger mask was reinstated after a Ct. in 1981 ruled against his public use of the device,' Lone Ranger TV v. Program Radio Corp., 740 F. 2d 718 (9th Cir. 1984)

635. **Westmoreland v. CBS,** 'General William C. Westmoreland withdrew his $120 million libel suit against CBS for the documentary 'The Uncounted Enemy: A Vietnam Deception.' The agreement between CBS and the General did not involve either a payment or retraction and no recovery of CBS's court costs estimated at several million dollars,' (1985); and,

'The Mass Media Bureau of the FCC has rejected a fairness doctrine complaint by the American Legal Foundation against the documentary. Although CBS admitted the broadcast contained breaches of its own standards of newsgathering the

FCC distinguished between mistakes which did not diminish overall accuracy and deliberate commission of mistakes or errors in judgment,' (1985)

636. **NBC Obtains Counterclaim Judgment for News-Gathering Interference,** 'Lyndon H. LaRoche, Jr., right-wing presidential candidate, unsuccessfully sued NBC for libel in connection with two broadcasts which described him as the head of a "political cult" with an anti-Semitic bias. The jury awarded $2,000 actual damages and $3 million punitive damages to NBC on it's counterclaim of business interference. Dist. Ct. upheld verdict but reduced punitive damages to $200,000 as too high in relation to actual damages,' (1985)

637. **Schlitz Beer Ad Infringes 'Theme from Shaft',** 'Schlitz applied for a one-year license to use Cream Records "Theme from Shaft" in a TV commercial. Cream quoted a price of $100,000 and Schlitz failed to take a license but used the music. The damages owed became the major issue with Cream contending its opportunity to license the music to other advertisers had been significantly decreased. Damages were $12,000 as percentage of license fee for period of time used; $5,000 as a share of Schlitz' profits during period used; and separate damages against Benton and Bowles ad agency to prevent unjust enrichment,' Cream Records v. Jos. Schlitz (9th Cir. 1985)

638. **Talent Agents Challenge AFTRA Franchise Fee,** 'The American Federation of Television and Radio Artists requires agents who represent AFTRA members be franchised by the union and pay an annual fee of $50. AFTRA members are prohibited from using agents not franchised. Talent Representatives, Inc., sued that fee was a violation of the antitrust laws. Supreme Ct. had found the franchise system protected by the statutory labor exemption, but reversed and remanded on the fee. That case was settled, but this case involves different parties. February 1983, the Screen Actors Guild settled a class action suit by agreeing to end its practice of collecting franchise fees until a determination is made in the AFTRA case. The Dist. Ct. refused a Talent Representatives

motion for summary judgment and the case will go to trial or be settled,' H.A. Artists v. Actors' Equity, 451 US 704 (1981); Talent Representatives v. AFTRA, 593 F. Supp. 576 (SDNY 1984)

639. **Senate Ratifies Brussels Satellite Convention,** 'A step toward world-wide cooperation in the international protection of copyrighted programming carried by satellites has been ratified. The Treaty provides that signatory nations will take adequate measures to prevent the distribution on or from its territory any program-carrying signal to any distributor for whom the satellite signal is not intended. The unauthorized interception and distribution of American programming via satellite has occurred throughout the Western Hemisphere and as more powerful satellites are launched the problem has global proportions. Efforts to develop an agreement began in the late 1960's through the United Nations. Developed in Brussels in 1974, the Convention does not apply where satellite signals are intended for direct reception by the general public or for private viewing. These 'broadcast' signals are generally already regulated under copyright or neighboring rights laws of most states. A 'fair use' provision enables an otherwise unintended distributor to carry short excerpts, for informational purposes, of a satellite-conveyed program reporting on current events, or to carry a program which might be used for educational or scientific research purposes in a developing country. A 'first-sale' type provision permits the distribution of derivative signals used by a distributor for whom the original emitted signals were intended. The Convention declares that it does not limit or prejudice the protection secured to authors, performers, producers of phonograms, or broadcasting organizations, under any domestic law or international agreement,' Sen. Doc. 98-52 (12/1985)

640. **Voluntary Restraints on Election Day Results Requested,** 'Congress approved a resolution calling upon the media to refrain from projecting or characterizing election results as long as polls are open and requested news media to adopt guidelines to assure that exit polls are not used before all polls have closed. The measure, which does not have the force

of law, developed from a confrontation between the right to vote and freedom of the press. There is concern that announcing results before all polls close decrease voter turnout and undermine the electoral process,' H. Con. Res. 321 (1984)

641. **Equal Employment Efforts Lacking,** 'An AM licensee which failed to communicate minority employment needs to sources of qualified minority applicants and failed to evaluate the effectiveness of its recruiting is given short-term renewal. Denial of renewal is inappropriate because sporatic hiring suggests absence of intent,' KDEN, 55 RR 2d 1311 (1984);

'Periodic EEO reports are required of a TV licensee where none of the ten persons hired in a year was a minority. Reporting conditions were also imposed on the noncommercial FM station of the University of Tulsa where no minorities were represented in full-time positions,' Tulsa, 55 RR 2d 1601 (1984);

'Texas stations whose 1980-83 license term employment of minorities was consistently below FCC guidelines and whose EEO programs revealed few techniques to increase applicant flow are subjected to EEO reporting conditions and/or short term license renewals,' Texas Broadcast Renewals, 57 RR 2d 13 (1984)

642. **Financial Certification,** 'In a TV renewal proceeding the FCC Review Board upholds the dismissal of a competing applicant who withdrew his initial certification of financial qualification and replaced it with a statement that G-d would provide him the funds necessary. The Board rejected claims that this was no more fanciful than other applicants' certification and contention that dismissal amounted to deprivation of 1st Amendment right to religious freedom,' Central Alabama Broadcasters, 55 RR 2d 1637 (1984)

643. **State May Revoke Cable Franchise to Achieve Diversity,** 'Connecticut Supreme Ct. rules that state's body which governs cable was not barred by federal preemption from revoking the franchises of a company which refused to divest itself of ownership of a statewide newspaper having significant circulation in the cable areas involved,' 56 RR 2d 639 (1984)

644. **Renewal After Ten Years,** 'Renewal of license delayed for nearly a decade was finally approved when the ALJ's denial was reversed by the Review Board. Board applied renewal expectancy because of more than minimal non-entertainment programming and substantial record of responsiveness in the most recent years (see 340) of its fourteen years of holding the license,' Intercontinental Radio, 56 RR 2d 903 (1984)

645. **Concurrent Applications May Founder on Integration,** 'A pledge by an owner to actively supervise his station is considered important. An applicant had on file two applications for TV stations. One was in Sacramento, California and the other in Orlando, Florida. In each application he claimed a high level of integration of ownership. When challenged on how he could work at both stations on two coasts applicant reported he was in process of negotiating a settlement agreement which would result in dismissing his Sacramento application. Therefore, was, in a sense, hypothetical application. ALJ dismissed Orlando application for misrepresentation on integration question. Review Board overturned as found a complete absence of intent to deceive or conceal required for disqualification. A separate concurring statement recommended that no credit be given for any integration pledge that is contingent upon the outcome of another proceeding and that any patently inconsistent integration pledges on file at the same moment be considered a disqualifying misrepresentation,' Metro Broadcasting, 57 RR 2d 440 (1984)

646. **Political Broadcast Violations,** 'FCC upholds $5,000 fine for repeatedly charging political advertisers rates in excess of lowest unit rate and for practice of requiring one candidate to pay with certified check while not requiring this of other candidates. The licensee challenged the decision on the basis that charge was filed one year after the violations, but the FCC determined that since a broadcaster is required to retain its political file for two years a complaint can be registered anytime within that period,' Alpha Broadcasting, 57 RR 2d 469 (1984)

647. **Fairness Doctrine Complaint Upheld,** 'For the first time in ten years a Fairness Doctrine complaint has been upheld by the FCC. A Syracuse TV station failed to comply with its obligation to present fair and balanced programming relating to the issue of the soundness of the public investment in a nuclear power facility. The FCC rejected the licensee's claim that the actual issue involved was 'US dependence on foreign oil and the need for electricity,' and that its coverage of that issue was sufficiently balanced. Different parties may reach different conclusions concerning the issue addressed by a broadcast, and unless the facts are so clear that reasonable people could not differ as to the issue, the licensee's characterization will govern. Nevertheless, three commercials which described the proposed nuclear plant and concluded with the line 'Nine Mile Point...a sound investment for New York's future,' could only lead reasonable people to conclude that the issue discussed was whether the plant was a sound economic investment and, therefore, an answer to the state's economic and energy problems. The FCC also ruled that this was a controversial issue of public importance as evidenced by the public debate in numerous newspaper articles, by stated concerns of public and political figures, and by the filing of 20,000 petitions opposing the plant. The FCC determined the imbalance of coverage was manifest: three ads and five minutes of news coverage; for a total of 187 minutes as against only 22 minutes of negative comment on the issue. This ratio of 9:1 was further aggravated by a frequency ratio of 13:1. The licensee was given twenty days in which to inform the FCC how it would remedy the imbalance,' Syracuse Peace Council, 57 RR 2d 519 (1984);

'However, the FCC had upheld a TV station's broadcast of 300 spots asserting the construction of a nuclear power plant was necessary and beneficial. In this instance the Nuclear Regulatory Commission had issued a construction permit prior to the airing of the spots and therefore this was no longer a controversial issue of public importance,' Yes to Stop Callaway Committee, 56 RR 2d 989 (1984)

648. **Religious 'Fair Break' Doctrine Reexamined,** 'The Review Board renews Pillar of Fire, the licensee for more than 50 years of WAWZ-FM. The station's religious format was the

focus of much of the Board's attention. Rejected were challenges to the renewal based on alleged violation of the 'fair break doctrine' by the fundamentalist licensee. This doctrine does not require a religious-oriented station to present any particular cleric, variety of cleric or spokesperson for any particular religious viewpoint but merely requires that no licensed religious group appropriate and monopolize a frequency or convert it to its own private purpose by transforming that frequency into an exclusive extension of its own church (see 32). The Board found that variegated views, religious and secular were broadcast, including views which were undoubtedly anathema. The Board's decision was not unanimous as one member noted that the licensee broadcast no programs directed to Jewish people other than to persuade them to become Christians, and that Pillar of Fire could cite no religious programs that reflected a religious philosophy other than a Christian philosophy (see 58) and presented no Catholic views,' Pillar of Fire, 57 RR 2d 601 (1984)

649. **FCC Gives FM Every Possible Break,** 'An applicant filed for an FM station in 1970. To comply with FCC rules a 300 ft. tower was required in the Fire Island National Seashore Park controlled by the Dept. of the Interior which objected on esthetic grounds. Twelve years later the channel request was renewed and objection from Interior was reaffirmed and the application again denied. The applicant then obtained an agreement from the National Park Service to renovate the national landmark Fire Island lighthouse if he could put his tower on top. This request was approved by Interior with a limitation as to tower height. However, the tower was now too short and the signal would not cover the community of license sufficiently according to FCC rules. The despondent petitioner then proposed another community nearby. However, that area did not meet the definition of a community qualifying it for an FM assignment. At this point the FCC apparently took pity and reinstated his earlier proposal, substituted its own engineering report which noted that his signal would be traveling over water to reach the necessary community and therefore could possibly be strong enough; and also recommended that a waiver be requested for either greater power or permission to operate at

less than required city-grade strength. The application was then approved,' FM Channel Assignments, 57 RR 2d 1275 (1985)

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