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Don't Be Co-opted by the Folks Who Brought Us Vietnam, Grenada, and the Iranian Rescue Fiasco

BY HARVEY L. ZUCKMAN

After much negotiation with the American Newspaper Publishers Association and the American Society of Newspaper Editors, the Pentagon recently announced press pool arrangements for the coverage of future military operations and ground rules for release of information during such operations. As announced by the Pentagon the basic principle is to be the maximum release of information possible.

But let's refrain from dancing in the streets—at least until the next Grenada-type operation commences. The Pentagon's "ground rules" contain more booby traps for the press and the public than the entire Vietnam War. Call it what you will, there is licensing and censorship in these "ground rules." Only accredited journalists may report on military operations and they may report only "releasable information," with releasable information defined and provided by—you guessed it—the Pentagon. Accreditation is lost if the ground rules are violated.

The releasable information list does not include estimates of enemy strength (the issue at the center of the *Westmoreland* case) and the "information not releasable" list prohibits, for instance, reporting cancelled operations. In other words, the American people are not to be told of such things as Iranian hostage rescue fiascos. After all, look at the political fallout on the Carter administration from that inept military operation.

And isn't that what the reporterless Grenada operation, the Sidle Commission, and the new accreditation and release of information ground rules are all about? Lieutenant General Daniel O. Graham may have stated it best when he said from the witness stand in the *Westmoreland*-CBS trial, "My view has never changed that militarily we won [the Vietnam War]

Major elements of the press establishment have acquiesced in these restrictive and antidemocratic rules. And that's a pity.

but politically it was lost" because of the impact of the news media on the public. Make no mistake, the press has few if any friends at the Pentagon because of the skeptical approach taken by journalists in reporting military operations in Vietnam. As UPI reported, the admiral in charge of the Grenada invasion candidly stated that journalists were barred from that operation because many of his fellow officers harbored a strong dislike of the media.

If I were a cynical fellow, I might even conclude that journalists were totally barred from Grenada in order to make the new ground rules look good to elements of the American press establishment. But then my more rational self takes control and I realize that the Pentagon planners are simply incapable of such Machiavellian cunning.

The fact remains that major elements of the press establishment did acquiesce in these restrictive and antidemocratic rules. And that's a pity. If the press had played by these ground rules during the Vietnam conflict, this nation might still be looking for the "light at the end of the tunnel" and wasting its precious young men and material wealth in search of elusive military victory.

Since we live in a democratic society, where hard, not compromised, information is the necessary coin of the realm, I much prefer the

position taken by James Madison to that taken by the Defense Department, ANPA, and ASNE. Madison wrote, "A popular government, without popular information, or the means of acquiring it, is but a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: and a people who mean to be their own governors, must arm themselves with the power which knowledge gives."

Only a press free to report all the news, including that of the government's military operations (though obviously not information that jeopardizes lives and immediate or future military actions), can provide the people with the Madisonian power to stop unwise wars.

I can only hope that individual journalists and news organizations will ignore the Pentagon's heavy-handed attempt to restrict the flow of information to the American public and exhibit the same enterprise in getting out the news during the next armed conflict that they displayed in Vietnam.



Harvey L. Zuckman is director of the Institute for Communications Law Studies of the Catholic University School of Law. He is also editor of Communications Lawyer and wants it made abundantly clear that his views are not those of the Institute, the Catholic University of America, or the ABA Forum Committee on Communications Law.

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Upcoming Programs from the Forum Committee on Communications Law

See page 20 for registration form.

Friday, March 29, 1985

**Hyatt Regency Washington
Washington, D.C.**

*Current Issues in
Content Regulation*

9:00-9:15 a.m.

Welcome and Opening Remarks

9:15-9:45 a.m.

Keynote Address

by Commissioner Dennis Patrick

9:45-11:00 a.m.

The Fairness Doctrine

The basics of the doctrine; *League* case, footnote 12; Syracuse decision; repeal proceeding.

—Thomas Rogers, Counsel, House Telecommunications Subcommittee

—Daniel Brenner, Administrative Assistant to FCC Chairman

Mark Fowler

—Howard Monderer, Executive Vice President and General Manager, NBC

—Craig R. Smith, President, Freedom of Expression Foundation

—Andrew Schwartzman, Media Access Project

11:00-11:15 a.m.

Coffee Break

11:15-12:30 p.m.

Obscenity and the Electronic Media
Dial-a-Porn; *Carlin* decision; Cable porn legislation.

—Brenda Lee Fox, General Counsel, NCTA

—Jack Smith, General Counsel, FCC

—Rep. Thomas J. Bliley, Jr. (R.-Va.)

—Jonathan L. Rosner, New York, New York

12:30-2:00 p.m.

Lunch

Speaker to be Announced

2:00-3:30 p.m.

Alcoholic Beverage Advertising

The current debate. Oklahoma and Mississippi decisions.

—John B. Summers, Executive Vice President and General Manager, NAB

—Donald B. Shea, President, U.S. Brewers Association

—Manya Ungar, Vice-President for Legislative Activity, National PTA

—George Hacker, SMART

—John F. Sturm, Director, Government Affairs, CBS

3:30-3:45 p.m.

Coffee Break

3:45-5:15 p.m.

Exit Polling

The impact on the electoral process.

Proposals to prohibit predictions prior to polls closing.

—Prof. William C. Adams, Department of Public Relations, George Washington University

—Curtis E. Gans, Director, Committee for the Study of the American Electorate

See page 20 for registration form and hotel reservations form.

Saturday, April 13, 1985

**Dunes Hotel
Las Vegas, Nevada**

*Representing Your
Local Broadcaster:
A Practical Workshop
for Lawyers*

Jointly sponsored with the
National Association of
Broadcasters

8:30-9:00 a.m.

Registration

9:00-9:15 a.m.

Introduction

Richard E. Wiley, Wiley & Rein, Washington, D.C.

9:15-10:30 a.m.

Complying with FCC Regulation

Robert A. Beizer, Moderator, Schnader, Harrison, Segal & Lewis, Washington, D.C.

John C. Quale, Wiley & Rein, Washington, D.C.

Charles J. Sennett, Tribune Company, Chicago, Illinois

10:45 a.m.-12:00 noon

Content Regulation

Erwin G. Krasnow, Moderator, Verner, Liipfert, Bernhard & McPherson, Washington, D.C.

Richard R. Zaragoza, Fisher, Wayland, Cooper & Leader, Washington, D.C.

Michael D. Berg, Senior Associate General Counsel, National Association of Broadcasters, Washington, D.C.

12:00-1:30 p.m.

Luncheon

All panelists will be available for informal discussion and questions over lunch.

1:45-3:00 p.m.

Buying and Selling a Station

R. Clark Wadlow, Moderator, Schnader, Harrison, Segal & Lewis, Washington, D.C.

Victor E. Ferrall, Jr., Crowell & Moring, Washington, D.C.

Peter D. O'Connell, Pierson, Ball & Dowd, Washington, D.C.

3:15-4:45 p.m.

Technical and Regulatory Developments and Trends

Henry L. Baumann, Moderator, Senior Vice-President and General Counsel, National Association of Broadcasters, Washington, D.C.

James C. McKinney, Chief, Mass Media Bureau, Federal Communications Commission, Washington, D.C.

John Abel, Senior Vice-President for Research and Planning, National Association of Broadcasters, Washington, D.C.

5:00-6:00 p.m.

Cocktails, cash bar.

A Cornucopia of Cable Law

BY MICHAEL S. SCHOOLER

Cable Television Law: A Video Communications Practice Guide

By C. Ferris, F. Lloyd,
and T. Casey.

New York: Matthew Bender.
1983. 3 vol. \$210.

There are two kinds of treatises that are, in different ways, useful contributions to the study and practice of an area of law. One is the treatise that anticipates an emerging body of law, charts the legal issues that will define this new area, and then resolves these issues in a manner that will, if adopted, purportedly bring rationality and wisdom to the field. The new treatise on cable television law by Ferris, Lloyd, and Casey is of the other type. It is a treatise that attempts to summarize legal developments in an established area in which the legal questions have thus far been asked and answered without the assistance of any unifying treatise or scholarly theory.

The treatise contains no novel legal approaches to cable television issues. And, because it is more descriptive than prescriptive, lawyers will not often cite it to support a legal argument. But what is new about these three volumes is that they set forth, in one place, the legal history and the issues that currently define cable law.

Established cable law practitioners will already be aware of the general legal principles and issues described in the treatise, and they should have already gathered, in one place or another, most of the relevant cases and authorities that annotate the treatise, as well as the statutes, regulations, and forms that comprise its appendix. Nevertheless, the new treatise will almost certainly be a time-saver, to the extent that it puts the useful material at the lawyer's fingertips—and at the fingertips of others in his office who may not share his accumulated

knowledge of cable law. For the lawyer who does only occasional cable work, the treatise is even more useful because it provides material that he probably would not otherwise have available.

The treatise is, of course, no substitute either for the expertise of the established cable practitioner or for independent research on specific issues. In covering the waterfront of issues involving not only cable but also other new video competitors, it provides useful and suggestive—but not exhaustive—analysis. Moreover, in such a rapidly evolving area of the law, unanticipated developments will inevitably make some of the treatise's pronouncements inaccurate. For example, shortly after publication of the treatise, the Supreme Court handed down its important decision in *Capital Cities Cable, Inc. v. Crisp*, 104 S. Ct. 2694 (1984), confirming that the Federal Communications Commission had much broader jurisdiction to regulate cable—and to preempt state and local cable regulation—than one would have thought from reading the treatise's section on "FCC Jurisdiction over Cable Television." Then, in October 1984, Congress enacted the Cable Communications Policy Act of 1984, which established a new, comprehensive framework for federal and state regulation of cable television.

While such developments would rapidly render a hardbound treatise obsolete, the authors have minimized the problem by going the loose-leaf route, with two updates—including a review of the new act—already in print. Therefore, if used correctly, the treatise can be invaluable to cable operators and general practitioners for years to come. It will provide them with a knowledge of the basics of cable law that will enable them to ask the right questions and better understand the answers when they consult their cable lawyers on specific problems.

Let's not lose sight of the significance of these volumes. There has never before been a useful treatise in this field. Merely by organizing the material and making it available in a single package, the authors have provided an important service to practitioners at all levels of expertise. *Cable Law* makes some of the shared wisdom of the cable cognoscenti available to those who are not specialists, and it does for the cable experts the filing and organizing job that they may have and should have—but probably have not—already done.

Michael S. Schooler is associate general counsel of the National Cable Television Association.

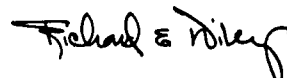
CHAIRMAN

Continued from page 2

the New Video Marketplace" conference, which will be presented for the third time in New York on February 22. A seminar on "Content Regulation" of broadcasting also has been planned for March 29 in Washington. In addition, a breakfast open to all committee members is held each year at the ABA Annual Meeting.

Future conferences will focus on the First Amendment and business,

the AT&T divestiture and its aftermath, and perhaps the expanding libel law area. We seek your input and advice concerning other appropriate topics and locations. I hope you will write me, Norman Nelson or other board members with any suggestions on how we can make this committee's activity more responsive to the needs and interests of our widespread membership.



Richard E. Wiley

**Registration Form
Current Issues in
Content Regulation
March 29, 1985**

Please mail directly to:
Forum Committee on Communications
Law

American Bar Association
750 North Lake Shore Drive
Chicago, Illinois 60611

Please register me for the program, Current
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Washington, D.C., on March 29, 1985.

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**Registration Form
Representing Your
Local Broadcaster
April 13, 1985**

Please mail directly to:
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Please register me for Representing Your
Local Broadcaster: A Practical Workshop for
Lawyers, to be held April 13, 1985, in Las
Vegas, Nevada.

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Hotel Reservations Form

Please mail to:
Hilda Jannesson
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1771 N Street, N.W.
Washington, D.C. 20036

Reservation for the Dunes Hotel, Las Vegas,
Nevada, for the ABA/NAB workshop,
Representing Your Local Broadcaster.

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Date _____ Time _____

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Please circle one:

Single \$65 Double \$65

The deadline for hotel room reservations is
March 8, 1985.



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