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Don’t be Co-opted by the Folks who Brought us Vietnam, Grenada, and the Iranian Rescue Fiasco

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The Catholic University of America, Columbus School of Law

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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 reporter-less Grenada operation, the Sible 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] 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 Prologue to 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.
**CURRENT BIBLIOGRAPHY**

For material published from April 1984 to January 1985. Compiled by the research staff of the Catholic University School of Law Library in cooperation with the editors of the Media Law Reporter of the Bureau of National Affairs.

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<td>Broadcast Deregulation</td>
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### SELECTED ARTICLES

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[b](6) may be the exemption that swallows the rule. 17 Ind. L. Rev. 555 (1984).


Letting the right hand know what the left hand’s doing: the clash of the FTC’s false advertising and antitrust policies. By R.F. Schechter. 64 B. U. L. Rev. 265 (1984).


National security information disclosure under the FOIA: the need for effective judicial enforcement. 25 B. C. L. Rev. 611 (1984).


The proposed repeal of the financial interest and syndication rules: network domination or public interest representation? [symposium]. "The syndication and financial interest rules: is it a ‘prime time’ for change?" By R.M. Osher; and "Stay tuned for new technology: the paradoxes of the proposed financial interest and syndication rules." By E.B. Glovinsky. 6 Comm/Ent No. 3. (1984).


Time, place, or manner restrictions on commercial speech, 52 Geo. Wash. L. Rev. 127 (1984).

VCR home recordings and Title 17: does Congress have the answer to Sony Corporation v. Universal City Studios, Inc.? By M.C. Diedring. 35 Syracuse L. Rev. 793 (1984).
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
—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

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

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.
### 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 Issues in Content Regulation, to be held in Washington, D.C., on March 29, 1985.

Name ________________________________
Firm ________________________________
Address ________________________________
City ______________________ State ______ Zip ______
Telephone ____________________________

**REGISTRATION FEE:**
- $125 Forum Committee on Communications Law member
- $150 Nonmember, when two or more nonmembers from the same firm register
- $175 Nonmember of the Forum Committee on Communications Law
- $35 Law student at

Please make your check payable to the American Bar Association.

### Registration Form

**Representing Your Local Broadcaster**  
April 13, 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 Representing Your Local Broadcaster: A Practical Workshop for Lawyers, to be held April 13, 1985, in Las Vegas, Nevada.

Name ________________________________
Firm ________________________________
Address ________________________________
City ______________________ State ______ Zip ______
Telephone ____________________________

**REGISTRATION FEE:**
- $120 Forum Committee on Communications Law member
- $120 NAB Associate Member
- $120 Sponsored by NAB Member
- $150 Individual not qualifying for above categories
- $30 Law student at

Please make your check payable to the American Bar Association and enclose it with completed form.

### Hotel Reservations Form

Please mail to:  
Hilda Jannesson  
National Association of Broadcasters  
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.

Name ________________________________
Firm ________________________________
Address ________________________________
City ______________________ State ______ Zip ______
Telephone ____________________________

Arrival Day __________ Date ______ Time ______
Departure Date __________

Please circle one:  
Single $65  Double $65

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

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