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Letter to Roger J. Traynor Regarding the First Ammendment

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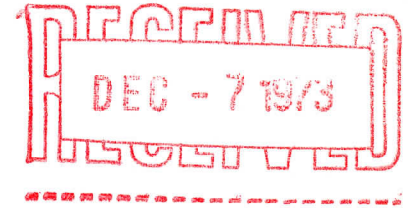
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THE UNIVERSITY OF CHICAGO

THE LAW SCHOOL

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December 5, 1973



Roger Traynor, Chairman
The National News Council
One Lincoln Plaza
New York, New York 10023

Dear Roger:

I am ashamed to say that I just now got around to reading your speech on access. I think you did a swell job, compressing a complicated major new development into a brief and accessible presentation. So far as I can tell, I don't think I disagree with anything you said and I was particularly delighted with your neat point about compulsory access to the Government Printing Office.

I thought seriously about the problem two years or so ago but have not been on top of it recently. I should be reaching that part of my book this summer and will have a few critical analyses for you at that time!

In the interim, I have just the following, not very helpful, observations:

(1) There remains a marked difference between the constitutionality of legislation specifically creating access on the one hand and a direct constitutional right of access without legislation on the other.

(2) There are major functional differences between different types of access claims to advertising space, to a right of reply, to a letters-to-the-editor column, and, finally, to direct conclusions on the editorial page. Therefore, talk about a right of access, as Barron tends to, is dangerously ambiguous unless its parameters are specified.

(3) I am sure you are correct that the Florida case tends to put back together in the same boat the broadcaster and the written press. It would be better for us all, I think, if the press regarded the broadcasters as really engaged in the same business.

(4) I have a deep hunch that the First Amendment must in the end depend on some notion of publisher atoms, that is, some irreducible autonomous publishing unit.

(5) Finally, in many ways I still find the most helpful judicial discussion in the old antitrust case, Associated Press v. United States.

I am sorry to be missing your meeting next week. I look forward to future meetings. Our love and warmest Christmas greetings to Madeleine and yourself.

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Yours,
Harry
Harry Kalven, Jr.

HKjr/mns