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The National News Council
Freedom of the Press Committee

The Freedom of the Press Committee of the National News Council met at Council Headquarters, One Lincoln Plaza, in New York City at 2:30 P.M., March 24, 1974.

Committee members present were:

Roger J. Traynor, Chairman
Irving Dilliard
Loren F. Ghiglione
Dorothy R. Height
Ralph M. Otwell
R. Peter Straus

Council advisers present were:

Harry Kalven, Jr.
Sig Mickelson
Mario Obledo
Herbert Wechsler

Others present were:

Benno C. Schmidt, Columbia Law School
William B. Arthur, Council staff
Dorothy Jenkins, Council staff

After calling the meeting to order, Chairman Traynor called upon Professor Schmidt to discuss the highlights of his preliminary draft of his report on Access to the Media.

Professor Schmidt stated that the Miami Herald case may not be as important to the Council's Access Study as had been thought originally. That case, he said, will be argued the latter half of April and probably will not be decided until the middle of June. Since that case offers several narrow grounds for decision, the Council might wish to postpone announcement of its findings until after the decision, in order that the decision could be taken into account.

Moreover, the President's recent call for enactment for federal right to reply legislation, Professor Schmidt suggested, may argue for the Council's focusing its interest on the legislative process where it can make its influence felt directly through hearings, publication of reports for Congressmen and the like.

Regarding the Access Study, the Committee felt it would be beneficial to the Council if Professor Schmidt had a chance to review comments and criticisms of his final draft before the Council issued its conclusions. However, the Committee also felt that it was important to distribute a tentative publication to a wide diversity of groups prior to the Supreme Court's decision, although postponing final publication of the Council's report to allow inclusion of comments about the Supreme Court's determination. It was the Committee's opinion that Schmidt should go to Washington and hear the last week of the argument, if possible.

Professor Schmidt then discussed various segments of his draft report. He said there are certain areas of law having a bearing on access, but they are not necessarily static. The Federal Libel Law, for example, is a case where there is no consensus as to what direction it should take. In addition, it was pointed out that at times it is almost impossible to get a libel judgment. Moreover, he said, in actual trials, the burden of pleading the truth and establishing proof was with the defendant. In a case where a network issues a defam-

atory statement, the burden falls upon the person who made that statement to prove its authenticity.

Another access problem concerns the treatment of electronic media. It was pointed out that differences in the media -- print and electronic -- should be emphasized, but that they should definitely not be overstated. Professor Kalven suggested that the basic approaches to Freedom of the Press should be applied in all media. The roles of the print and electronic media could have been reversed.

The National News Council is in favor of protecting the First Amendment values which can be applied to the electronic media. Any judicial review regarding fairness complaints should be a vigorous review. It is important to try to maintain First Amendment values within the licensing system rather than saying licensing makes the First Amendment irrelevant. The question of disposing of complaints at license renewal arose and it was pointed out that lengthening the term of licenses would dilute jurisdiction. Complaints tend to get stale the longer they wait around. It was stated that a fair application of the fairness doctrine has always plagued the media.

It was pointed out that in many cases the media is pushing the bounds of the First Amendment but it was the feeling of the Committee that rather than legislation, which would have a chilling affect, certain attitudes could be

developed within the print media to insure presentation of viewpoints of those that do not own it.

The question then arose as to whether the FOP Committee should get involved in cases of government legislation, not as a lobbyist, but as a reactor to threats against a free press. It was agreed that the Committee should react in such cases. If anyone spots such a case, the staff would consult with members and advisers and come up with a statement for public issuance.

It was suggested that NNC conduct a symposium about relationships between the government and the media since this has always been a problem.

In concluding the meeting, Judge Traynor thanked Professor Schmidt for "an excellent and thorough report." He said he was particularly impressed with the writing style. He directed Schmidt to report back to the Committee with a final draft, including suggestions made by the FOP Committee members for tentative publication prior to the Supreme Court's decision in the Miami Herald case.

The meeting was adjourned at 5:30 P.M.