Broadcast Journalism

News chiefs want law affirming First Amendment for radio-TV

They send legal brief contending that freedom applies equally to print and broadcast press

The Radio and Television News Directors Association has offered its suggestion to Congress in connection with the rewrite of the Communications Act of 1934 that is now under way: Write a law that assures broadcast journalism the same First Amendment protection that is now enjoyed by the printed press.

RTNDA, in a position paper submitted last week to members of the Senate and House Communications Subcommittees, noted that the recent trend of the law is toward equal treatment of the print and electronic press under the First Amendment. But it said, "regardless of how fast the Supreme Court moves toward this result, the Congress has the responsibility, in reconsidering the Communications Act, to decide for itself whether the First Amendment requires nonregulation of program content by the government."

And RTNDA suggested that Congress take its lead on the matter from Representative Lionel Van Deerlin (D-Calif.), chairman of the House Communications Subcommittee, who called for the Communications Act rewrite. He is on record as stating: "If a broadcaster doesn't have the same, precise protection as the print journalist, he has no protection at all."

RTNDA's paper, prepared by J. Laurent Scharff, of the Washington law firm of Person, Ball & Dowd, the association's counsel, tracked what it said was a growing body of court opinion supporting the view that radio and television stations and networks "are journalistic enterprises" and that, "as such, they are part of the 'press' of this nation."

RTNDA recalled that back in 1969 the Supreme Court, in the Red Lion case, upheld the FCC's right-of-reply rules and the fairness doctrine, on which they are based. The court cited spectrum scarcity and broadcasters' role as public trustee in support of the holding; it also said that it is the public's right to receive "suitable access to social, political, esthetic, moral and other ideas and experiences that is crucial here."

But five years later, in 1974, the Supreme Court took a contrary view in a case involving the Miami Herald that, RTNDA noted, "raised almost identical issues." Arguments broadcasters had used to oppose the fairness doctrine in 1969 were echoed in the reasons the court advanced for rejecting arguments defending a state law requiring newspapers to afford a right of reply to political candidates they attack.

Oddly, however, the court did not mention broadcasting in its opinion or attempt to reconcile it with Red Lion. RTNDA contends the two decisions "are in hopeless conflict."

A shift in the Supreme Court's attitude toward broadcasting was discerned by broadcast attorneys in 1973, in a case involving the question of whether broadcasters could be required to sell time for announcements on controversial issues. The U.S. Court of Appeals in Washington said they could. But the Supreme Court said no, that broadcasters must be allowed journalistic discretion. Chief Justice Warren E. Burger wrote: "For better or worse, editing is what editors are for, and editing is selection and choice of material."

What's more, as RTNDA noted, three justices referred to "the role of the licensee as a journalistic 'free agent'" who is "only broadly accountable to public interest standards." And two justices took the position that broadcasters are as entitled to First Amendment protection from fairness and access claims as are newspapers. One of those justices, Potter Stewart, had voted to affirm the fairness doctrine in 1969. The other, William O. Douglas, had not participated in the Red Lion decision.

Then, two years ago, the Supreme Court, in a case involving Cox Broadcasting Corp., overturned a state law which, the court said, infringed upon the First Amendment right of a broadcast station to report information disclosed in a criminal