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JAMES H. QUELLO

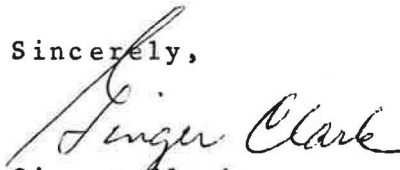
March 24, 1988

Sig Mickelson, Co-Chair
San Diego Communications Council
The Center for Communications
San Diego State University
San Diego, CA 92182

Dear Mr. Mickelson,

Enclosed is Commissioner Quello's edited manuscript chapter
which reflects his participation in the Council's conference,
"The First Amendment -- Third Century."

Sincerely,


Ginger Clark
Confidential Assistant to
Commissioner James H. Quello

Enclosure

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PRAEGER PUBLISHERS

ONE MADISON AVENUE, NEW YORK, NY 10010

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THIS is an invitation and a request for you to contribute an original entry(ies) to a proposed book tentatively entitled THE FIRST AMENDMENT: THIRD CENTURY to be edited by Sig Mickelson to be published by Praeger Publishers.

YOUR original manuscript chapter(s) should be accompanied by one copy. Both copies of your work should be sent to your editor, listed above.

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AFTER signing this agreement, please send it to your editor, listed above. Your editor will sign it and return it to Praeger Publishers. A fully signed copy will be returned to you.

AGREED TO AND ACCEPTED:

James H. Guallo
Contributor

March 23, 1968
Date

Sig Mickelson
Editor-in-Chief of proposed book

Date

For and on behalf of Praeger Publishers

By

James T. Sabin, Executive Vice President

Date

Moderator: Now we move across the town of Washington to the FCC. I have here a copy of a newspaper article, the 45th Division News, dated May 13, 1945. It tells a fascinating story. I won't go into detail. It seems that the 180th Infantry was in Munich. It was about a month after the war officially ended I think, or something like that. It was supposed to be all over, but the stubborn SS wouldn't give up. That dreaded group was at a school, and this American infantry division had to take that school. It was a bloody, bloody fight. It's interesting here. We showed them a powerhouse, reported, Major James H. Quello, Detroit. He was the commanding officer. Well there were many men killed and wounded. It was a terrible battle, but he survived, went back home, had a fine broadcasting career, was head of a great radio station, WJR, in the state of Michigan, became Vice-president of Capital cities, and then in 1974, joined the FCC. I think I can let him speak for himself. He has listened very carefully and excitedly to what transpired today and, Jim, what are your comments, after which we'll have some questions.

Quello: thank you, Herman. I was a battalion commander and it was my battalion in the 45th Infantry Division that took the SS College. And it's funny how this article came about. It was, I think, on Veteran's Day sometime ago, and I had mentioned this last battle. Well, I said, this has a special significance for me because my outfit took the SS College in Munich. Nancy Carey was then the Legal Assistant to Commissioner Washburn.

She said, well, I didn't know that until now. Well, I said, I don't use it because I can't prove it, and under the theory that "the older you are the greater you were," no one's going to believe it. So she said didn't anyone write it up? I said, I think it was written up in either The Stars and Stripes or the 45th Division paper. She did a research job and three weeks later she came to my office and had this big article in a plastic frame with ten extra copies and Herman got a copy of one of them. So, thank you, Herman. I have to say it was quite an experience and that combat experience has prepared me for the regulatory combat in my present job as FCC Commissioner. I do want to thank you, Herman, for this opportunity to speak, and also thank Lionel Van Deerlin, a very distinguished Communications Chairman. I miss him. He was great. He had a little human kindness and a great wit in conducting himself as our legislative overseer, and Herman did a very effective job for the independent TV little guy. He was the President of the Independent Television Stations. They had some major battles and Herman, in my own way, I appreciate what you accomplished and was glad I was able to help you from time to time.

But anyway, the FCC and the telecommunications explosion has been a big learning experience for me, because frankly, I don't have any particular claim to infallibility or omniscience. No one is certain how we will implement all this advanced technology. I'm looking for answers, and I have a lot more questions than I have answers. Today, a couple of things. Henry Geller, are you in the room? I want to tell Henry

that lately we've agreed on about every FCC issue except the fairness doctrine. I was going to hang this on Henry saying, well, Henry, how about that scarcity in the Red Lion case years ago? Does that scarcity still apply to proliferation that we have today? I don't think so. The other statement I made, repeated ad nauseam, is that if broadcasting had existed back in 1776, it would have been a primary beneficiary of our constitutional guarantees of freedom of the press and freedom of speech, because that constitutional guarantees weren't made for the benefit of media. They were made for the benefit of the people, of the public so that you could have news and an informed electorate free of government influence or free of government control. Now in America, you do have news free of government control, but not completely free of government influence as long as you have a government imposed fairness doctrine. I think fairness is naturally a great quality. All journalists should have it. They should search for the truth, but I don't think it has to be mandated by government. So this is the first disagreement Henry and I have had for a long time. If he's here I wanted to give him this shot.

The other telecommunications expert is Dan Brenner. Henry Geller and Dan Brenner have two things in common, and that is, people recognize that with these bright gentlemen you can go to them and say, this is a very controversial issue. Give them either side of it and they'll develop one tremendous legal argument. That's the lawyer in them and they're very good. But with Dan, of course, we had a very trying issue for me.

I've been criticized for the FCC obscenity action and I don't know what to do about it, but it happened here in California. Some very rough language was used, very obscene, and the FCC agonized on what to do about it; but we had 20,000 complaints of obscenity on the air. The language on one radio program was probably unacceptable anywhere. What made it a little bit tough was that they had complied with our then existing limited ground rules acknowledging that a lot of kids have radios. You can't broadcast questionable indecency before 10 o'clock. So I think the FCC is moving the time up to 12, but the offensive language, I can't repeat it here without being guilty of obscenity. The only thing I can say is that we weren't plowing any new ground with our actions. We were merely enforcing an existing statute against obscenity on the air, and if you're a First Amendment man, you hesitate to do this. You think I'm really intruding on free speech, but should speech be that free? Or maybe I'm getting a little old. I grew up under different moral conditions than younger people did. I was born apparently thirty or forty years too soon. You see, I'm at the age now where I like to see X Rated and R Rated movies played backwards because I like to see people get dressed and go home. So I just want to let you know, it gives me a lot of pause, I didn't know what to do about it. Nobody could possibly accept the language that we acted on, and I know that, frankly, the whole Commission had problems with this issue. It wasn't just automatic. I did make this comment. Herman mentioned something in the army. I didn't volunteer for any of it, but I was in the army for five years and two months and overseas for thirty-three months.

So as far as that sexually-oriented overused four letter word is concerned, I've heard it and I've used it and I've done it. I just think there's someplace where it's improper and if it's used in combination with obscene words it could even be repulsive. So, as I said, this was a tough case for me, and all I will do in the future is take each case at a time, give it the best shot I can, and hope I don't have to come to the same conclusion.

But you know, getting back to the principal subject here, a lot of problems, a lot of questions. For example, how do we reconcile First Amendment rights, full First Amendment rights with the statute requirement that regulate mass media in the public interest? Is this to free broadcasters from all program content regulation? If so, what claim will broadcasters have for priority allocation of spectrum over land mobile, or for mandatory cable carriers to reach the areas they're licensed to serve if there's no public interest claim? Also, if this is the case, and there's no longer a requirement to serve the public interest, should broadcasters be assessed a significant fee for use of a valuable national spectrum? These are troublesome questions that arise. If cable service to a community is viewed as a First Amendment right as in the initial Preferred case, without need for a franchise, then why should cable have to pay a franchise fee? Why not a more reasonable, say, right of way fee? I think application of the full First Amendment print model to the electronic media impacts much more than program content. It also will affect rules that are designed to

regulate the competitive relation of the media in a balanced marketplace, and then you will have other problems. What about access? What about obscenity? What about cross-ownership? What about must carry? Questions, no easy answers.

Another question is how are local, community-oriented television stations to survive the future coming of DBS? The very foundation of the current broadcast system is localism. That's based upon Sections 307(b) of the Communications Act of 1934. Eventually, many more homes, maybe most homes, will have home satellite receivers, and it could make sense for the networks at that time, to feed their networking program directly into the home, have their advertising go directly into the home. They can bypass the affiliates. And satellite is a great nationwide distribution system, great even for international communication -- for all kinds of potential for international building of understanding and good will. It is not primarily local medium. What happens with programs coming from satellites directly into the home to the ability of local stations to provide a viable, local news and public affairs program? That's certainly a problem.

We have one further all-important development, and that is we are seeing more and more fiber optics installed. With fiber optics, of course, comes a tremendous varied capacity available to each household -- cable, broadcasting, newspapers, computer services. -- that's where your electronic journalism will be most effective. Fiber optics can do everything -- data processing right from your home. You could access data bases through

fiber optics. So, what about this? How do you reconcile the monopoly power of fiber optic phone companies with competition in an open, even marketplace? Cable broadcasting does not have that assured income from the phone monopoly to cross-subsidize a system. Can we do it through a separate phone company subsidiary? If so, how separate? What is separate? So the potential of First Amendment application to advanced communications is mind-boggling. Unfortunately, so are the solutions to the problems and I'm here to learn. I've learned a lot. I will listen attentively and thanks for having me.

Land: We have time for a couple of questions if there are any here.

Question: I represent no company or concern except myself.
[not close enough to microphone to get complete question]

Quello: I'm a guest speaker at the forum. Someone else will have to answer that.

_____: Mr. Churchill.

_____: I'd welcome public participation. I must say, just like any other conference or forum, we had to rely on the media, and there was a considerable amount of publicity and talk-show,

newspaper articles, and others, and like the media, many people look at some of it and not all of it. It was a pretty esoteric subject from a media point of view. I hope it will be better tomorrow, but we apologize, and if you'd like to become an associate member, we'd be glad to send you the information and publicize all these future conferences.

Moderator: If there are no more questions, I'd like to give Mr. Quello his gift as a token of appreciation, real appreciation, from the San Diego Communications Council.