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Fred W. Friendly
The Ford Foundation

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October 19, 1972

The Honorable Roger Traynor
Dear Judge Traynor:

It was very good to talk to you on the phone today, and I am looking forward to continuing the dialogue in the near future.

The attached letter speaks for itself and I hope it puts into proper perspective the content of our brief conversation. I am also enclosing a recent article of mine in the Columbia Journalism Review concerning the Caldwell case and the so-called shield laws. I would be very interested in your reaction, and the entire subject is one I would like to discuss with you when next we meet.

Cordially,

Fred W. Friendly

encls.
October 19, 1972

Dear Murray:

Earlier today I wrote you a five-page reaction and critique of your draft of the charter and by-laws of your proposed National Media Council. After rereading my draft I became very uneasy about inserting myself, much less the Foundation, in the very delicate making of a constitution in which you and your colleagues are so deeply engaged.

What my critique addressed itself to was not just the small type of the charter, but its tone and content. It appears to be something drafted by lawyers; indeed, if it is Bill Cary, he is one of the most skilled legal draftsmen in the nation. But it seems to lack some of the flesh and vitality and heart of what the media council seeks to accomplish. It has the sound of a quasi-judicial panel, is long on what the council will police and short on the First Amendment right which it is intended to protect. It does address itself to some of the questions of my letter to you of September 5, such as membership of the panel and how it elects its successors, but I could find little that answers the substantive reservations raised in points 1, 4, 5, 6 and 7. In my draft today I found myself going into considerable detail again on such questions, but then decided that it would be either repeating my earlier points or prejudging what you are currently working on. Meanwhile, many of the issues remain unresolved, and this is why it is difficult for me, and perhaps a bit unfair to Judge Traynor, to you and your other colleagues, to respond to the charter draft. It would put me in the position of helping to carpenter the structure of an institution which this Foundation wishes to reserve judgment pending the resolution of some major substantive questions.

I do not mean that as an individual I am unwilling to be responsive to your appeal for assistance. I continue to be available to talk in general terms on such matters as how would the media council cope with a complaint on the recent investigative reports by The Washington Post and the Los Angeles Times on the so-called "Watergate" bugging. Would either of these newspapers be willing to share their minutes and sources without assurances that they would be safe from grand jury or other subpoenas? If the council gives such assurances, how can it guarantee such protection? We are all witnessing the unhappy confrontation going on between
the Attica Commission of Robert McKay and the Attorney General's office in Albany. A dialogue on that level is something that I, as an individual, am quite willing to pursue whenever your task force summons me. (The October 27-28 date is inconvenient because of a birthday in my family, as I told you.)

I shared some of this philosophy with Judge Traynor just a few minutes ago. I had called him as you suggested, to make a date with him on Sunday afternoon on the backstretch of my excursion to Los Angeles. It was a most pleasant and useful conversation, and without presuming to speak for the Judge, I think he shares my concern that to bring me into the charter deliberations at this point in time might not be too helpful. The Judge's thought was that perhaps after the meeting of your working party and after his thoughts have jelled, it might be possible for him and you and me to get together either in San Francisco or New York. That kind of a meeting, after your structure has taken its more concrete form, might be more useful for all of us.

I am sure you understand my position and I wish you well in your deliberations. I expect we will be talking again after your trip to the coast, and I am, of course, available to talk about a more complete document when it is available.

Cordially,

Fred W. Friendly

Mr. Murray J. Rossant
Director
The Twentieth Century Fund
41 East 70 Street
New York, New York 10021
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