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## Press Council Funded

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Justice Traynor: In your new capacity you might be interested in this, which I wrote as a retired newspaper editor. Have also taken the liberty of asking Oxford University Press to send you my "Communication Is Power" when it is published Feb. 1. It has a chapter on press councils.

**Herbert Brucker**

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## Press council funded

More than half a century ago, in 1916, Sweden set up a Court of Honor to monitor its press. Wars and generations passed, and Britain set up an even more ambitious Press Council in 1952. Other countries, a dozen or so, have done the same. But the United States has consistently slapped down the idea, ever since it was first proposed in 1947.

Now we are to have a press council anyway. This thanks neither to the press nor the government — which under the First Amendment is (or should be) forbidden to set up a guardian over the press that serves as guardian of everyone else. We owe the forth-coming press council to an independent foundation, the Twentieth Century Fund.

First the Fund set up a task force of lay and journalistic students of the problem. Recently that group unanimously recommended a press council. So now it is to be formed, with \$400,000 a year in foundation money behind it.

This private and unofficial council is likely to get an angry reception from the print and broadcast media whose performance it is to study. Prominent among spokesmen for the press is the American Society of Newspaper Editors. And while some ASNE members have urged some kind of press council, the majority fear and resist it. Just recently some 700 members of the society voted once again, 3-1, against anything of the kind.

What this majority resists is the possibility that a press council may become, or at least open the door to, some policeman who will tell the press what it may say or do, and what it may not say or do. And in fact anything like that would end the free press — free to be wrong as well as right — upon which all we are is built.

To proponents of a council this view misses the point. In the first place, under the First Amendment there never can be

any policeman of the press. And anyway, the idea is not to gang up on any editor, and force him to change his views or his ways. Rather it is to recognize that all human institutions, the press included, are run by fallible human beings. Therefore why not set up a group of some stature, a group with no ax to grind one way or another, to evaluate complaints of error?

Freedom has always distinguished between speech and action. A press council, in a free society, must have every right to speak but none whatever to act. The only influence it can possibly have must lie in the believability, the justice and moral credibility, of what it says. The only sanction it can have is the individual editor's willingness to listen. He remains as free to go his own way as ever.

There is another side to it: the new press council will be a two-edged sword. It will entertain complaints brought not only by the public against the press, but by the press itself against government or any other would-be oppressor.

Here, for example, is what the retiring chairman of Britain's council said, after its first five years:

"My view, after much experience, is that many of the would-be reformers of the press are in need of the curbs they propose for others, since they themselves are guilty of the offenses they allege — wild exaggeration, distortion of the truth, and the unproved assumption that they speak for the nation."

It could be, indeed, that the press council that a majority of our editors and publishers now reject will be the defender and friend of the press, more than its critic. To wit:

— Vice President Agnew has been assigned a new and more dignified role than that of hatchet man to attack tv and the press, a task he performed with gusto beginning in 1968. But there are many signs that the administration, while muting its hostility for the election, is at war with the press.

— The Supreme Court recently issued a new judicial code that broadens the Justice Department's right to classify information. This is a notorious way to hide facts or situations, embarrassing or ominous, that government wants to hide from a supposedly self-governing people.

— Last June the Supreme Court refused to admit an unqualified right for reporters, under the First Amendment, to keep their sources confidential — and thereby bring into the open information the public ought to have. Under this decision reporters are now being jailed for what amounts to a refusal to become assistants to a prosecutor on a fishing expedition.

— Most ominous of all remains the Court's decision on the Pentagon papers. With two more negative votes — which President Nixon promises to give us as soon as he can — the New York Times and other papers would have been prevented from printing the papers, and thus laying before the public essential facts about the decisions that got us snarled in Vietnam.

By the mere fact of entertaining the case at all the Court held up publication for nearly three weeks. This was the first prior restraint upon publication, by a government based on Anglo-Saxon law, since before Blackstone in the 18th century. Even more frightening is the implication of the fact that the Court heard the case. This means that, while this time publication was in the end allowed, there might — despite the First Amendment — be times when the government has the right to muzzle the press.

Along with all this goes the fact that our media are already in the public's doghouse. Now comes a press council, to be both ombudsman of the public as against the press, and defender of the press against government and public alike. Surely this must help our journalism perform its function as a mirror of society that serves the whole of society, rather than any one political, economic, or social fragment of it.