

3-1974

Correspondence Between Ned Schnurman and Roger J. Traynor, 1974 March 11 - 1974 March 14

Ned Schnurman

The National News Council, Inc.

Roger J. Traynor

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14 March 1974

Mr. Ned Schnurman
The National News Council
One Lincoln Plaza
New York, N.Y. 10023

Dear Ned:

I received today your letter of 11 March, which notes that the enclosures it covered did not include the "lengthier remarks" which, I assume, amplify or supplement the letter you enclosed.

It would be inappropriate for me to initiate a phone call to Professor Cox as a follow-up to your letter of 25 February to him. Any such communication, whether by phone or letter, requires the most painstaking reflection in relation to the objectives and procedures of the Council.

A communication such as you propose should wait upon the judgment of the Council and its new chairman, and I would suppose that they would want to consider in some depth not only any proposed tenor and substance of such a communication, but also its advisability.

I believe it would be extremely unwise meanwhile to initiate such a communication as you propose at such short notice and upon inadequate deliberation.

Sincerely,

Roger J. Traynor

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Sincerely,

Roger J. Traynor

The National News Council

ONE LINCOLN PLAZA
NEW YORK, N.Y. 10023

(212) 595-9411

ROGER J. TRAYNOR, Chairman
WILLIAM B. ARTHUR, Executive Director
NED SCHNURMAN, Associate Director

March 11, 1974

Justice Roger J. Traynor
2643 Piedmont Avenue
Berkeley, Calif. 94704

Dear Roger:

Enclosed is the Archibald Cox material I spoke to you about today. I included his letter to the reporter as part of the packet, but did not include his lengthier remarks made before a law group at Harvard two years ago. Also enclosed is the reporter's column supporting a National News Council examination of Cox's remarks.

As Bill and I see it, you might want to invite Professor Cox to appear informally before the Council on March 25 for two reasons, the first being to clarify and enlarge on his earlier remarks, and the second being to provide the Council with some expert and firsthand observations on a subject that has been of prime importance to it during these first months of its existence. Professor Cox's telephone number is (617) 495-3133.

Also enclosed for your information are President Nixon's comments in the area of campaign reform which affect the free press.

Best regards,



Ned Schnurman

Enclosures

February 25, 1974

Professor Archibald Cox
Harvard Law School
International Legal Studies
Room 331
Cambridge, Mass. 02138

Dear Professor Cox:

The brief news stories the other day in which you were quoted as commenting that some segments of the press regard themselves as "the fourth branch of government," and that you had "misgivings" about the way the media covered Watergate are of interest to the National News Council.

As you may be aware, the National News Council, a non-partisan organization established last year as the first national media council in the U.S., has been examining charges made by PresidenttNixon of "outrageous, vicious, and distorted" reporting by the television networks.

The broad subject of the investigation of this administration and the coverage of that investigation has been one that has occupied our Chairman, Roger Traynor, and the Council, for much of the young life of the organization.

We would, therefore, be interested in any enlargement or clarification of those comments which were quoted that you would care to make to assist us in our examination of the topic.

Quoting those news stories further, it is clear to us that you were not complaining about media coverage which you received as Special Prosecutor or in the days

immediately thereafter. However, because media coverage of your dismissal is an apparent source of great discontent in White House circles, your comments on the matter would be especially helpful.

Thank you for your consideration of this request.

Sincerely,

Ned Schnurman

Enclosure

P.S. For your possible information, we are enclosing a copy of our news source on this matter. Interestingly, it appeared differently in 2 editions of the Times and then was dropped entirely from the final edition on February 19.

*N.Y. Times
2/19/74*

L+ 23

**COX HAS 'MISGIVINGS'
ON MEDIA COVERAGE**

CONCORD, N. H., Feb. 18 (UPI)—Archibald Cox, the former Watergate special prosecutor, said today that part of the press regarded itself as "the fourth branch of government" and that he had "quite a few misgivings" about the way the media covered Watergate.

"The media certainly is turning gradually to a more active role in shaping the course of events through their news columns and commentaries as well as on their editorial pages," Mr. Cox told students and faculty at St. Paul's School, from which he was graduated in 1930.

"It isn't true of smaller papers around the country, but I think it's true of The Washington Post, The New York Times, Newsweek and a number of big papers, and I rather think it seems to be true of some of the network presentations," he said.

But Mr. Cox concluded by saying, "I have no grounds to complain about the way the media has treated me. Indeed, they've treated me better than I deserved."

Comment on Taxes

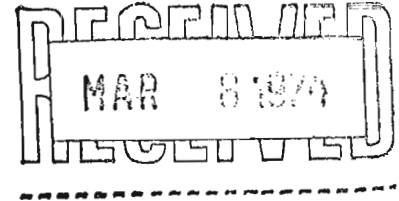
CONCORD, N. H., Feb. 18 (AP)—Mr. Cox said that President Nixon's handling of his personal taxes was "avaricious, miserable leadership and on the border line of immorality," but it was not an impeachable offense," he added.

Law School of Harvard University

Cambridge, Mass. 02138

March 4, 1974

Mr. Ned Schnurman
The National News Council
One Lincoln Plaza
New York, New York 10023



Dear Mr. Schnurman:

Thank you for yours of February 25. I understand that in accordance with our telephone conversation it looks to the future.

For what little help they may give you I enclose a talk which I delivered two years ago and also the substance of a letter written to a reporter who wrote me asking about the story out of St. Paul's School. I am afraid that neither will be much help to you.

Should I put my thoughts down in any considered way during the next few months, I shall be glad to send you a copy.

Sincerely,

Archibald Cox

AC/ld

It is good to hear from you.

Let me say first that I fully agree that the public has been well served by the press, especially during the years of the Nixon administration. Quite possibly Watergate would have died - certainly it would not have received the central attention it required - without the strenuous efforts of the press. And, if either of those things had happened, the vices of the Nixon White House might soon to have come to look small by comparison to what followed.

Although Watergate seems central in these respects, I am sure that both of us could add a good many other subjects upon which the press was the only vehicle for bringing to light the things done in secret by the government.

Nonetheless, I do have some faults to find with the press. I doubt whether they are related to my own experience in Washington. All of you were exceedingly good to me and, apart from Newsweek's irritating habit of putting in quotation marks things that no one ever said, I can recall no instance in which the reporting was in any way unfair (even Newsweek's non-quotations did convey a certain accuracy of tone.) As I told students at St. Paul's School, the press was much better to me than I deserved. Much the same was true when I was Solicitor General. I may add, that there is no group with whom it is more fun to talk than the Washington press corps, and most are as intelligent as all are bright.

My questions about the direction in which some parts of the press are moving antedate the Watergate affair; they are so unoriginal that I am sure that you have discussed them many times. Some of my concerns are expressed

in a talk I delivered about two years ago at the Boston University School of Communications. A copy is enclosed. Since then, my concern has been aroused from time to time by the screams of the press seeking special privileges when anyone questions its claim to immunity from anything and everything, by occasional instances of McCarthyism on the part of the staff of the Ervin Committee and a few newspapers in advance of the actual hearings, and by hearing a few reporters describe their jobs as to "get" the President. In perspective these are relatively minor things, but they are worth thinking about.

The AP and UPI stories growing out of my talk at St. Paul's School came out badly because two faults of the press conjoined with a fault of mine as a teacher. A member of the press was in the audience under what I understood to be a solemn promise that there would be no report of anything said, because I wished to enjoy the freedom of a classroom to express tentative ideas without thinking how they would be seen in another context. In addition, the report gave a distorted perspective; my address and all but one of the questions and answers dealt not at all with the reporting on Watergate. My fault - and it is a fault - was in concentrating upon the few questions I wished to raise in the minds of the students without realizing that my answer was so short as not to give them the broader perspective in my own mind. Quite often I find that the same thing has happened in Law School classes, and probably it is a good thing to be reminded of it.

Forgive the length of this explanation. The attention the report received got under my skin a little, and also worried me because it soon became clear that at least some men for whom I have only admiration got the impression that I had gone away from Washington sour on the press. As I said above, quite the opposite is true and it disturbs me to have those whom I would like to think of as friends get a different impression.

With warm regards and best wishes,

Sincerely,

Archibald Cox

AC/ld

Cox Outlines Case For Impeachment

By FLOYD NORRIS

Archibald Cox, former Watergate special prosecutor, returned to a hero's welcome yesterday at St. Paul's School, from which he had graduated in 1930.

Cox was critical of both President Nixon and the press for their roles in the Watergate scandal, but he carefully avoided advocating or opposing impeachment.

He did say two basic issues provided the best case for impeachment.

"One would be in terms of organizing his own irregulars, the Hunts, the Liddys," and others, Cox said, "to engage in what I would say were clearly violations of people's constitutional rights under the Fourth and Fifth Amendments."

The other issue, which Cox said was "perhaps stronger," concerned "the Duty of the President to see the laws are faithfully executed."

"It's not enough to sit back and say 'I did nothing wrong,'" Cox said.

He said Nixon had "a positive duty" in the Watergate investigation to see the laws were enforced, yet he seemed to be "cooperating more with those who were under investigation . . . than with those who were conducting the investigation."

The former special prosecutor said Nixon's handling of his personal taxes was "avaricious, miserable leadership and on the border of immorality," but was not grounds for impeachment unless "one can prove conscious fraud on the President's part."

The Constitution says a president may be impeached for "high crimes and misdemeanors." Cox said that

phrase "covers things that are not violations of the criminal statutes."

He said the offense would have to be a "major crime against the body politic."

Cox said he had no complaints about the way he had been treated by the press. "They've treated me better than I deserve," he said.

But he said he had "quite a few misgivings about the way the media has handled Watergate."

"The media is certainly turning gradually to a more active role in shaping the course of events through their news columns and commentaries as well as on their editorial pages," Cox said.

"I'd be surprised if that were true of The Concord Monitor," he said. "It isn't true of smaller papers around the country, but I think it is true of the Washington Post, the New York Times, Newsweek, and a number of big papers, and I rather think it seems to be true of some of the network presentations."

"It does seem to me that the selection of items emphasized often reflects sort of a notion that the press is the fourth branch of government and it should play a major role in government. I'm not sure that I want it that way when there are only three networks. To me, that's an awful lot of power to give to whoever runs the three networks," Cox said.

Cox said one reporter, whom he did not name, had told him that Watergate coverage had failed because Nixon had not been forced to resign. "I was really quite upset that a reporter should have thought of that as his function," Cox said.

The former special prosecutor called for public financing of elections, saying that was "one of the important things that can be done to restore confidence in government."

"If the men who are managing large enterprises make large contributions for political purposes," Cox said, "there is bound to be mistrust of the arrangement, no matter how honest both the giver is and the recipient is."

Cox was fired by Nixon in October because the special prosecutor refused to accept a "compromise" that would have allowed Nixon to defy a court order to turn over some of the

Watergate tapes. Nixon later agreed to hand over the tape.

"What forced the President' complete reversal," Cox said "was unquestionably the demonstration of the will of the country that the laws should be complied with, should bind the highest official as well as the lowest person, and it was a demonstration of their power to bring that about."

He said the eventual effect of Watergate "will depend on the conduct of the inquiry" by the House of Representatives, and said he was "very uncertain" about the outcome.

"My hunch, simply as an observer," he said, was that the final vote would "depend on how carefully the case for impeachment is developed and how well it is articulated by public leaders."

He said the "saddest thing" about Watergate did not concern the "major actors, whose wrongs seemed to me to be very clear wrongs."

Instead, he said he was saddened by "those people who made Watergate possible by cutting a sharp verbal corner here, by not reporting a wrongdoing there, and by otherwise emulating one of the three monkeys, you know, hear no evil, see no evil, and speak no evil."

He said he was not sure what he would have done if faced with some of the same decisions, although he was certain about the correct course of action.

Cox said it was "a very moving experience" to return to St. Paul's, saying the school "really shapes the course we follow."

He said government work was "exhilarating" and urged the students among the 700 persons to consider careers in public service.

The audience responded with a long standing ovation for Cox, who had dinner with school officials last night before he returned to Cambridge, Mass., where he is a professor of law at Harvard.

Cox's Arch. School

St. Paul's School

Nixon's Richard M.

... does not believe that it was in his handwriting. It is not normal procedure to accept a \$50 fine in such cases and to enter the case below the signature. Even more suspicious was the absence of the case file, containing the complete record, from the court records.

Edward Brockman, the commissioner who normally presides over the court, at first planned to hold an official court of inquiry. County

there are two other figures lurking on the fringe of the case whose roles have not been thoroughly explained. Norbert J. DeCamillis, Mr. Swope's attorney who has a Hollenbach probate commissioner has collected \$76,871 in fees over the past four years, has given an account that differs substantially from that of the arresting officer, the prosecutor and the acting judge. John Sullivan, the Hollenbach appointee as clerk whose

The new action was filed under disciplinary petitions against lawyer "convicted of a serious misdemeanor or of a felony. . . ." Mr. Taylor violated those rules. Still the bar association could clear itself of the suspicion that it has been more concerned with Mr. Taylor's unorthodoxy than with his crimes if it were as vigorous in seeking to purge itself of others guilty of similar offenses.

Concern over Watergate coverage merits response

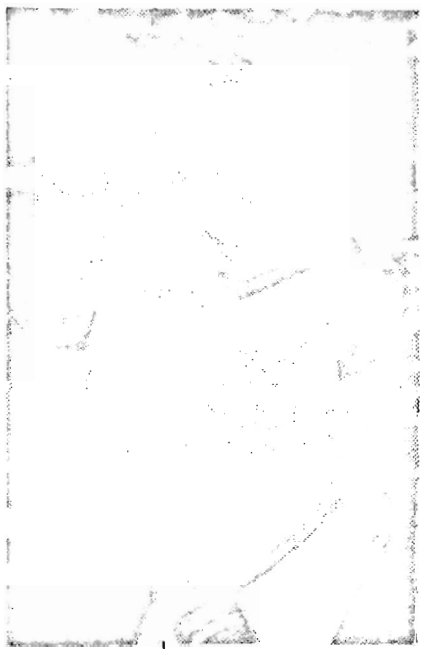
Now that former Watergate special prosecutor Archibald Cox has expressed "misgivings" about some practices by national newspapers, magazines and TV, in their coverage of Watergate machinations, his worries may not go totally unexplored.

The not quite one-year-old National News Council has written to Cox, now back at his Harvard law school post, asking for his go-ahead to pinpoint and assess the validity, or invalidity, of his specific concerns.

One such specific presumably would be a major New York Times news story, to which Prof. Cox applied the label "downright silly reporting," when I interviewed him by telephone earlier this week.

The story in question appeared Jan. 6 on Page One of The Times, and was carried also by The Courier-Journal & Louisville Times.

Its point was what was reported to be "a previously undisclosed reason" for President Nixon's abrupt firing of Cox last October. That reason, according to "well informed sources," was a White House fear that Cox, as Watergate prosecutor, would seek to have the President named as an unindicted "co-conspirator" in the Watergate scandals.



Prosecutor Archibald Cox
... called it 'silly reporting'

in all fairness

bob schulman

The Times reporter, Seymour M. Hersh (renowned for his expose of the My Lai "massacre") quoted the same unidentified sources as saying "such an approach had been discussed by Mr. Cox and his staff." Later in the same report, Cox was quoted as confirming that the worry, "the nightmare," had, indeed, been bruited about last fall, in the White House, "but I assure you there was no such thought in my mind."

Cox says he thought this would persuade Timesman Hersh that he had given the White House no frets on this score.

The Courier-Journal & Times, in their use of the story, did include an AP interview in which Cox was even more explicit, saying "no member of my staff ever made such a recommendation to me (to name Mr. Nixon as a co-conspirator). To the best of my knowledge, no member of my staff ever entertained such an idea."

In the further interests of fairness, The C-J ran another article the following day, on Page 4. Headlined "Report Denied That Nixon Feared Being Implicated," it reflected again Cox's disavowal, plus one from the White House.

But the most The New York Times would do was a follow-up story on Page 14. It was headed "Cox Item Denied by White House"—and it consigned the denial by Cox himself to the lower end of the story.

I put the question Tuesday to New York Times Managing Editor A. M. Rosenthal: why should not this be construed as an example of sustaining a news story based upon "informed sources," at the price of short-changing a trusted individual's denial?

His and other answers from The Times do not add up to evidence of "downright silly reporting." But neither do they entirely disqualify Cox's distress. Rather, they point to the need for cool, neutral assessment, in such cases where newsmen treading the narrow path of fairness still can foment dismay.

Managing Editor Rosenthal told me, "We've run thousands of Watergate stories. I certainly can't remember a

specific story in detail. I suggest you check with National Editor Dave Jones or with Seymour Hersh himself. Rose that added, "I do think it's pretty picky of Cox to try to make an issue of one story, after all that's been done."

Said National Editor Jones, "If I star by a proven, reliable reporter. After all, the heart of the story was the paranoia at the White House, not whether Mr. Cox or his staff had or hadn't discussed an approach that put the White House in an uproar."

Finally, there was reporter Hersh himself. The most impressive "sources" had, indeed, been the basis for his agreeing them as saying the idea of naming the President as a co-conspirator had been discussed by Cox and his staff. Hersh had twice talked with Cox, in developing the story.

And, said Hersh, Cox had acknowledged to him that the co-conspirator idea "may have" been discussed. Cox flat denial to the Associated Press had come after the wire service, in picking up the Times story, had omitted the notation that "no serious consideration had been given to the co-conspirator tactic."

It is well that the independently funded National News Council would not like to leave it at that—neither The New York Times story, or the basis for another of Prof. Cox's "misgivings."

Let us hope that Cox cooperate along with The New York Times and others whom Cox may name. It would be a healthy opportunity for the News Council to fulfill its monitoring role and for the national press to show does not fear a fair, savvy, public assessment of its service.

The cause of believability and fairness demands some clinical evaluation. The news business needs it as much as the American people.

A press that is battling for the people still doesn't look that good if sludged by network newsmen, and reporters described as advocacy journalism by fair-minded persons involved, are not placed in proper perspective to the overall worth of news performance.