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Correspondence Between Roger J. Traynor and Ithiel de Sola Pool In Regards to National Press Council Proposed Rules of Procedure, December 5, 1972 - December 19, 1972

Roger J. Traynor

Ithiel de Sola Pool

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December 19, 1972

Professor Ithiel de Sola Pool
Department of Political Science
Massachusetts Institute of Technology
Cambridge, Massachusetts 02139

Dear Ithiel:

The very constructive suggestions in your letter of 5 December were apparently aimed at the draft of 11/17/72. Many of the points you make were covered in the draft of 12/1/72 and in the meeting of the Founding Committee on 2 December. When the new revised draft is circulated, I should appreciate having the benefit of your careful scrutiny of it.

With all good wishes,

Sincerely,

cc: M. J. Rossant

Roger J. Traynor

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MASSACHUSETTS INSTITUTE OF TECHNOLOGY
DEPARTMENT OF POLITICAL SCIENCE

CAMBRIDGE, MASSACHUSETTS 02139

December 5, 1972

Justice Roger J. Traynor
Hastings College of Law
University of California
198 McAllister Street
San Francisco, California 94102

Dear Roger:

I have made a number of nit-picking remarks on my copies of the proposed rules of procedure. Since we did not go over those point by point, may I take the liberty of forwarding them to you. I start with the rules relating to public complaints.

Paragraph 1: I would leave out the phrase "or news commentary." It is conceivable to me that one kind of case that the council may ultimately wish to deal with is that of the confusion of hard news and news commentary. Suppose a story quotes someone but derogates him as not to be trusted. The paper may argue that their judgment of reliability is editorial judgment, and indeed it is, but when does it cease being fair reporting to mix in such commentary with the news. We would then, in a sense, be examining news commentary, at least as to its appropriateness.

Indeed, I would replace the phrase "editorial comment" or "news commentary" by the phrase "editorial judgment," which is a broader conception. Whether or not to include a story as newsworthy is editorial judgment, though it is not either editorial comment or news commentary.

In the same paragraph, three lines from the bottom, editorial comments should not be mentioned since the council will not concern itself with them, whether or not they are re-distributed.

Paragraph 2: Subcommittees are usually conceived of as consisting of members of the parent committee. I think we have in mind the possibility of the Grievance Committee setting up special committees which may consist in whole or in part of either its members or of other individuals.

Paragraphs 6, 17, 18, 19: 6 implies that the Grievance Committee will notify a complainant if his case will not be heard. 17 requires the Grievance Committee to transmit that decision to the council and gives the council an opportunity to concur or disagree. It is then the council which notifies the complainant. I prefer the procedure in Paragraph 17, but in any case they should be consistent.

Paragraph 9: I assume the phrase "allegedly inadequate response" refers to it being inadequate in the judgment of the complainant.

Paragraph 10: I like the words in brackets.

Paragraph 14: "The Grievance Committee shall decide each case on the basis of the evidence before it" implies an obligation to decide the case. The rest of the sentence (in my opinion, wisely) implies that they may also decline to decide a case on the basis of the evidence or lack of evidence before it. In short, it is up to the committee to decide whether they have enough evidence to decide the case.

Paragraph 19: The last line, "The committee shall keep a transcript of its hearings," to me means a written transcript. I would think that in most instances a tape recording would be enough. That could be transcribed when desired. Why not say transcript or recording.

Paragraph 21: For the record, I wish to reaffirm my view that filming a witness against his wishes is a violation of privacy and should not be permitted. On that, however, I have been out-voted.

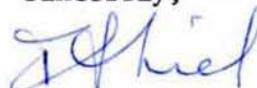
Many of these same comments come up again in the rules concerning media complaints. I have a few other points.

Paragraph 1: The Committee on Freedom of the Press is concerned with something somewhat broader than freedom of news reporting of the national major print and electronic news organizations; I think we should use the standard phrase "freedom of the press." I believe the council would feel itself justified, for example, in rising to the defense of a medium which was being penalized by the government for its exercise of editorial comment, even if there were no interference with freedom of its news reporting.

Paragraph 7: Does not apply here. The grievance by the medium may well be that a court or administrative regulatory body has embarked upon improper proceedings or indeed that some administrative proceeding continues indefinitely to hover over a medium. In the case of complaints against a medium we are asking the complainant to sign a waiver saying that he will not take legal action against the medium. In the case of a complaint by the medium, the requirement of a waiver would constitute a promise by the medium not to defend itself against threatening legal action. These are two entirely different situations. No waiver is required in this situation.

I would expect that most of the proceedings of the Freedom of the Press Committee will be in the form of reports. The option of the Committee to proceed in that way should be stated clearly at the beginning. It should also be made clear that the Committee can initiate a report-writing activity on its own.

Sincerely,



Ithiel de Sola Pool