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Maurice Rosenberg's Comments on the Report of The Twentieth Century Fund Task Force for a National Press Council, Addressed to Murray J. Rossant

Maurice Rosenberg

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Mr. M. J. Rossant  
The Twentieth Century Fund  
41 East 70th Street  
New York, N. Y. 10021  

Dear Murray:

Your letter of September 29th brought the good news that you have retained Bill Cary for the draft of the charter, that Benno Schmidt will pitch in as well, and that you and Alfred Balk are making progress on the preamble.

I was also glad to learn that you have been in touch with Lord Devlin. I am heartily in favor of your inviting him to look over the draft that is being prepared and to attend the meeting in San Francisco, if, of course, you are also, after you have talked with him.

I found the Bickel and Ringler letters most interesting. Bickel's suggestion regarding public hearings and meetings requires careful consideration. Ringler's suggestion number 2 reinforces the point we emphasized at our Saturday session. I am also inclined to agree with his suggestion number 3 and particularly with your postscript as to two standing committees, I also agree with the second sentence of Ringler's suggestion number 1. The first sentence of that suggestion, however, presents a question the Founding Committee must consider at the outset. I would favor the Committee's adopting a charter with a provision that it was subject to amendment by the Council. My concern is to get the Council set up without unnecessary delay. I believe that with the help of the draft Bill Cary is working on, the Committee can provide us with a charter for the Council to start working under. I would not object, however, to the Committee's simply suggesting a charter for the Council to adopt. In that event I should hope that the proposed charter would be in such good shape that its adoption by the Council would not require very much further deliberation.

Since I hope to keep you advised as to my whereabouts at all times, may I remind you that I shall be at a meeting of the Colorado Judicial Conference in Colorado Springs from October 9th until the morning of October 12th. I can be reached there at the Antlers Plaza.

With all good wishes,

Sincerely,

Roger J. Traynor
Chief Justice Roger Traynor  
2643 Piedmont Avenue  
Berkeley, California 94704  

Dear Roger:  

I was most pleased with our Saturday session and its aftermath. It seems to me that we have paved the way for the important next steps in the establishment of the press (media) council.

In the last few days we have been working on the "pious" preamble here at the Fund, and we have got Alfred Balk to try his hand on it as well. In addition, I have retained, at Herb Wechsler's suggestion, none other than Bill Cary for the draft of the charter; Benno Schmidt will pitch in as well.

I have also been in touch with Lord Devlin and hope to hear from him shortly. What do you think of inviting him to look over the draft that is being prepared and perhaps inviting him to the meeting in San Francisco? I'd like your views on that.

I enclose two letters that I am sure you will find of interest. One is from Alexander Bickel and the other from Paul Ringler, who represented the Johnson Foundation and was formerly editor of the Milwaukee Journal.

Many members of the Task Force have been in touch to express their delight at your participation in the meeting last Friday. I hope you found it useful and instructive, and I am glad that it somehow managed to get over the problem of Fred Friendly and the Ford Foundation. I have been in touch with him and I am confident that we can count on his cooperation.

After meeting Mrs. Traynor, I can appreciate what you meant when you said she is a partner. It was a most enjoyable afternoon and I send my best to you both.

Sincerely,

M. J. Rossant
September 26, 1972

Dear Mr. Rossant:

Thank you so much for the copy of Lon Fuller's book. I am very glad to have it, and you were kind to send it.

Here are some comments on the draft Notes to be appended to your Report, that you enclosed. Almost everything I have to say concerns the issue of Confidentiality.

On the first page in line 8 from the bottom, Justice Stewart's opinion in Caldwell should be referred to as a dissent or an opinion, not a decision. The latter term is reserved for what the majority did.

I think it is right that the Council ought generally not receive information in confidence, but I would qualify the recommendation that it hold public hearings and meetings more than the first paragraph on Page 2 qualifies it. There is a mediating, conciliating aspect to the Council's role, and it may often require privacy, at least at some stage of a case.

I would add at the end of Page 2, after the last sentence of the last paragraph, a sentence something as follows: "Yet, as noted above, the Council may be able in some cases to reach a decision despite the reporter's refusal to reveal a confidential source."

I think the general approach is the right one, suggesting that everyone concerned believes in the qualified privilege that Justice Stewart, unfortunately in dissent, accepted, but that the consequences of the privilege problem for the work of a Council such as proposed cannot now be foreseen fully or in detail. Hence much will have to remain to be worked out in common-law fashion by the Council itself. No one need have anything in particular to fear, since the Council has no subpoena power, and everyone therefore retains at least the privilege to decide for himself, as cases arise, whether to insist on the privilege. This is the equivalent of everyone's opportunity to decide when called before a grand jury whether to prefer jail to disclosure, except that the Council won't be able to jail anybody, and the dilemma will therefore be much less painful. Indeed, there will hardly be a dilemma at all between yielding to coercion and being faithful to conscience. In cases before the Council, conscience can have it all its
own way. In some instances conscience may not find revelation of a source distasteful, and in some it may even dictate disclosure. Some unpopularity may attach to non-disclosure, but that is, of course, unavoidable. The reporter and his employer run this risk always, whenever there is criticism, whether or not a Council exists--as for example in the Whitney North Seymour case.

Only one more comment provoked by the section on Council Membership. And perhaps comment is the wrong word. Caution is more like it. I would think it ill-advised to make the Council too big. I take it, though I did not mention this at Aspen, and do not remember hearing it mentioned, that most people are satisfied with the membership of fifteen. My own view would be that that is too large for really intensive collegial deliberation. I should have thought a membership of no more than nine would have been preferable.

I hope all this is of some use.

Sincerely,

Alexander M. Bickel

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

I found Friday's meeting informative and exciting, although the whirlwind journey left me breathless. Thanks for allowing me to participate.

Herewith is our schedule for the next month. In case of urgency, you can put the staff of the International Press Institute in Zurich on my trail. Address, Munstergasse 9. Telephone 61 34 48 38. Telex 56 101 IPI CH. Cable, Interpress.

The Press Council project seems to be moving on schedule. I was most impressed by the concern and dedication of the founding fathers. Justice Trainor (sp.) seems the best possible leader.

May I give you my thoughts, as briefly as possible, on three key matters:

1. The Working Committee should not write a Constitution or detailed rules for the Council. Let the Council do this if it so desires. Let the Working Committee offer a general state of history and purpose, explain Foundation interest and financing, outline the structure of the proposed body and nominate its membership.

2. I would hope that the final document of the Working Committee would strongly emphasize that the primary purpose of the Council will be to preserve the freedom of the press as pledged in the Constitution — not for the media or its members — but for the American people. Let it make clear the conviction that without press freedom many of the nation's other cherished freedoms would be in peril.

   My concern here is that all concerned know from the start that this Council has a much higher goal than receiving complaints against the press and trying to do something about them. Dedicated to a better and more responsible press — Yes! But dedicated to that as a necessary means of preserving press freedom, the keystone to the other precious freedoms.

3. I personally favor a 7-7 membership division between public and media members, with the chairman, always a public representative, holding the balance. I think this is only fair. I also suggest that it will help to win the media acceptance and cooperation so necessary to the success of this most worthy project.

   All best wishes for continued success in your mission. Anytime I can help just let me know.

   Cordially,

   Paul Ringler

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