12-1972

Correspondence Between Roger J. Traynor and William Rivers Regarding the Article,"How to Kill a Watchdog", 1972 December 26 - 1973 January 4

Roger J. Traynor
The National News Council, Inc.

William L. Rivers
Stanford University

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Professor Roger Traynor  
Hastings College of Law  
198 McAllister Street  
San Francisco, Calif. 94102  

Dear Professor Traynor:  

Thank you for your good letter of January 2.  

I'm enclosing a copy of Backtalk. It will give you a fairly comprehensive view of local press councils.  

I'm also attaching a report that I made to the Religion Newswriters Association in 1971. The Association Grievance Committee asked that I look into the firing of an aggressive religion reporter, Janice Law. Your council will not be looking into such matters, of course, but I thought you might find it useful to consider the degree of cooperation that was given an investigator in a particular case.  

More to the point, I think, are some of the reports by the AAUP committee which investigates firings of professors. Again, this will not be the mission of the investigating teams commissioned by the council, but some of the AAUP reports seem to me to be models of investigative reporting.  

I'm aware, of course, that your own career has brought you in touch with the kinds of investigative methods that are likely to serve you best.  

I certainly wish you well. This seems to me to be a venture that will become a landmark. At the very least, you'll be inundated by graduate students who are eager to study your work and who will publish findings at length. In fact, one of my graduate students is beginning early. For your information, I'm attaching a proposal one of my best students is making to a number of foundations to seek funds to make a two-phase study of the reactions of media spokesmen.  

All the best,  

Bill Rivers  

Bill Rivers  

BR: csn  
enclosure
January 2, 1973

Professor William L. Rivers
Department of Communication
Stanford University
Stanford, California 94305

Dear Professor Rivers:

I read with interest and enthusiasm your excellent article
How To Kill A Watchdog and found nothing misleading or inaccurate
in it. I appreciate your thoughtfulness in sending the article
on to me and should be glad to have a copy backtalk.

I hope that some time soon, when it is convenient for both
of us, I may have the pleasure of meeting you in San Francisco
or at Stanford.

Sincerely,

Roger J. Traynor
Dear Professor Traynor:

I'm attaching a copy of an article that is to appear in the February issue of The Progressive. If there are any points in it that seem to you to be misleading or inaccurate, I'd appreciate hearing about them before the article goes to press next week.

If you haven't seen a copy of Backtalk, the little I wrote with three others who operated local press councils, I'll be happy to send you a complimentary copy.

Sincerely,

William L. Rivers
IS CONGRESS WORTH SAVING?

John Gardner
David S. Broder
Mark J. Green
and others

WHOSE ENVIRONMENT?
Gaylord A. Nelson, Philip A. Hart, Henry Gibson, and others
MONITORING MEDIA

HOW TO KILL A WATCHDOG

WILLIAM L. RIVERS

What could be more predictable than the angry reaction of much of the press to the establishment of a national press council? In December, the Twentieth Century Fund, the widely respected New York foundation, announced that a consortium of foundations will finance a Council on Press Responsibility and Press Freedom that will both investigate public complaints against the principal U.S. suppliers of news and defend freedom of the press. Nine of the fourteen members of the Twentieth Century Fund Task Force who unanimously recommended establishing the Council are respected editors, publishers, and broadcasters. The Council will have no coercive power, no relationship to government. To consider this a threat to freedom is absurd, and yet the ultrsensitivity of so much of the press made acid reaction entirely predictable. Two weeks after the announcement, I had collected enough savage editorials about the Council to paper the walls of my office.

A prominent place on one wall should surely go to a cartoon that appeared in the New York Daily News, the nation's largest circulation newspaper, titled "Endangering Freedom of the Press," which pictures a black glov labeled "Meddling Monitors" looming over a reporter. The accompanying editorial, "Who Needs Them?" is written with the charm of expression for which the Daily News is so noted:

"Having presumably solved mankind's other vexing problems, the Twentieth Century Fund has bowed graciously to the wishes of its own hand-picked panel and set up shop as guardian of the nation's news media.

"... [The Council] will, in the foundation's pious words, 'promote freedom of the press' by investigating public complaints of unfairness, error, bias or prejudice and publishing their findings.

"The latter, we assume, will carry written guarantees that this panel of Paul Prys is itself 100 per cent free of bias and prejudice.

"We don't care how much the Fund prates its virtuous intentions. This is a sneak attempt at press regulation, a bid for a role as unofficial news censor...."

The Chicago Tribune reflected in an editorial that trying to monitor the press without jeopardizing its freedom is "a little like trying to lasso a steer by mental telepathy." In Providence, Rhode Island, where editorial writers have no stockyards to lend their metaphors a comparable flavor, the Journal argued that "the rhetoric of high purpose in which the effort is being wrapped masks basic flaws." An NBC spokesman held that "the press already has too many people looking over its shoulder." Abe Rosenthal, Managing Editor of The New York Times, expressed the fear that the Council will endanger press freedom, focus attention unduly on the shortcomings of the media, and become a loudspeaker for pressure groups "skilled in the methods of political propaganda."

A few media spokesmen do favor the Council. Barry Bingham of the Louisville Courier-Journal, who was a member of the Twentieth Century Fund Task Force, has long urged newspapers to encourage local press councils to assess their performance. The Courier-Journal said of the national Council: "Up to now, a citizen or group treated unfairly by a national news organization has been almost powerless to lodge an effective complaint.... If the unfair story originated with a wire service or a network, the ill-treated person's chances of getting to those really responsible are pretty slim." If the Council lives up to its mission, the Courier-Journal held, "it will perform an essential service for us all."

Robert Chandler, former president of the national journalism fraternity Sigma Delta Chi and a member of the Task Force, has benefited from a local advisory council for his Bend, Oregon, Bulletin since 1967. He
remarked that he has become a kind of missionary for press councils. CBS News President Richard Salant, who was also a member of the Task Force, said, "There hasn't been enough independent examination of what we do. Take it out of the hands of people who have an ax to grind—put it into the hands of systematic, independent investigators."

But there is no doubt that most of the news media oppose the Council. Almost simultaneously with the announcement of the new body, the American Society of Newspaper Editors (ASNE) completed a poll of 740 of its members. The 405 editors who returned questionnaires were opposed, three to one, to ASNE itself establishing a similar council. They were opposed, four to one, to a council established by any other organization.

For all its predictability, this hostile reaction is bewildering. Where have these editors been during the past decade of rapidly deteriorating esteem for the mass media? Don't they know that a Harris Poll that surveyed public confidence in the leaders of American institutions in 1966 gave the print media a confidence vote of only twenty-nine per cent, television a confidence vote of twenty-five per cent, and advertising twenty-one per cent? Are they aware that in November, 1972, the same survey showed that the mass media had only eighteen per cent confidence, television only seventeen per cent, and advertising only twelve?

To rationalize, as many media spokesmen do, that the mass media are merely suffering from the general decline of confidence in all social institutions is nonsense. The Harris Poll surveyed attitudes toward sixteen institutions. Only organized labor and advertising ranked lower than the print media and television.

To explain away public disaffection by arguing that in troubled times messengers are blamed for the messages they bring is nonsense. The runner of old suffered when he reported that the Romans would sack the city unless it surrendered. Modern messengers are not so innocent. In gathering and reporting the news of the day, the media cut it, splice it, condense it, and shape it, usually with laudable expertise, but sometimes erroneously.

The avenue open to any newsmaker injured in this process is narrow and forbidding. He can protest—but seldom with real hope that his complaint will be heeded and his grievance redressed. Editors are quite naturally skeptical of anyone who speaks in his own cause. Made brusque by frequent encounters with the self-serving, they are right in being skeptical—and usually right in doubting that a particular complaint is justified. But when they are wrong, what then?

The Chicago Tribune editorial cited earlier is a case in point. In arguing against the Twentieth Century Fund Council, the Tribune said of a commission headed by Robert M. Hutchins, which attempted twenty-five years ago to promote a national council somewhat like the one that is now being formed:

"The Hutchins report fell flat because it seemed to assume that the press was not responsible and should not be free. It tipped its hand by calling for the establishment of a Press Council to act 'directly on the press and not through government channels' but at the same time warning that if the press didn't dance to the commission's tune, 'the power of the government will be used as a last resort to force it' to do so."

To put it delicately, this is misleading—an excellent example of the cutting and splicing that gives facts a cruel twist. The Hutchins Commission actually did nothing more revolutionary than hold that the press should provide (1) a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning; (2) a forum for the exchange of comment and criticism; (3) the projection of a representative picture of the constituent groups in the society; (4) the presentation and clarification of the goals and values of the society; and (5) full access to the day's intelligence.

The Hutchins Commission recommended that a national press council be established, and it warned that "those who direct the machinery of the press have engaged from time to time in practices which the society condemns and which, if continued, it will inevitably undertake to regulate or control." I search vainly in the 133-page Commission report for any hint that "if the press didn't dance to the commission's tune, 'the power of the government will be used to force it' to do so."

The result of distortions, inaccuracies—and, yes, the irrational fears among millions of Americans that the media are awesomely powerful—is the public condemnation the Hutchins Commission foresaw and the Harris Poll depicts. Distortions and inaccuracies are not limited to the Chicago Tribune and its like, nor are the fears of the public, else Vice President Spiro Agnew would never have attacked the media. Like the Harris Poll, Agnew's success suggests how deeply many Americans are disaffected. A demagogue does not create public disaffection. He feeds on it.

Certain official actions indicate that the Hutchins Commission was correct, too, in predicting efforts to regulate the media. Officials have always sought to control, subtly or baldly, but now the depth of public disenchantment with the media has encouraged strong action. Among the many regulatory bills in Congress is a criminal code prepared by the staff of Senator John McClellan's Subcommittee on Criminal Law. Jack Landau of Newhouse National News Service found in analyzing it that Federal authorities would be given broad new powers to prosecute journalists for revealing "national security" or classified information. It authorizes criminal prosecutions against any person "who knowingly communicates or otherwise makes available to any unauthorized person classified
information.” As Landau pointed out, the litigation in the Pentagon Papers case demonstrated that the State and Defense Departments have classified millions of documents “containing newsworthy information whose publication could not pose any reasonable danger to the national security.”

Perhaps more ominously, Clay Whitehead, director of the White House Office of Telecommunications Policy, the ranking Presidential adviser on broadcasting, openly threatened in December that broadcast stations which do not, in effect, censor network news may find their licenses in jeopardy. (Networks are not directly regulated by the FCC; local stations are.) How else can one interpret the words with which Whitehead condemned what he called “ideological plugola”?

“When there are only a few sources of national news on television, as we now have,” said Whitehead, “editorial responsibility must be exercised more effectively by local broadcasters and by network management. Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks—or who acquiesce by silence—can only be considered willing participants, to be held fully accountable . . . at license renewal time. Who else but management can or should correct so-called professionals who confuse sensationalism with sense and who dispense elitist gossip in the guise of news analysis?”

Those words and the proposed legislation are threats. There is crushing reality in the number of journalists who have gone to jail in recent months—five at this writing—for refusing to disclose names or information given them by confidential sources.

In the face of all the evidence that the media are deeply in trouble, how can they rationally oppose the coming of a council that may help them recover the public confidence on which their freedom depends? They should ponder the British experience.

The British Press Council was born as the result of a threat which surfaced in 1946. The House of Commons voted to appoint a Royal Commission to investigate the finances, control, management, and ownership of the press in order “to further the free expression of opinion through the press and the greatest practicable accuracy in the presentation of news.” Significantly, the motion was moved and seconded by two journalist members of the Commons who feared that the growth of newspaper chains and the advent of big business into newspapers were inhibiting freedom of the press.

Journalism, the Commission decided, is a profession grafted to an industry, one that tries to reconcile the claims of society with the claims of commerce. The Commission recommended establishing a General Council of the Press to maintain standards of professional responsibility and integrity.

Various British press organizations discussed the council idea, and approved it in general, but as H. Phillip Levy notes in his book The Press Council, “The truth is that there was no real enthusiasm in press circles for a press council.” In November, 1952, a bill was introduced in the Commons to legislate the press council into existence. This pushed the press into action, and by February, 1953, a joint committee of press organizations had agreed on a draft constitution. Although the Royal Commission had recommended that laymen be included, the council was made up entirely of twenty-five journalists—ten from the management level, fifteen from editorial staffs. The Council was later reconstituted, reducing by five the number of professional members and taking in five lay members, including a lay chairman, Lord Devlin.

The complaints were varied. Some argued that if the newspapers had been open to their ideas for universal peace, the two World Wars never would have occurred; others urged the Council to investigate incidents that were decades old. But many complaints were immediate and worth investigating. A noted critic, for instance, complained that he had been invited by The Daily Sketch to write a series of reviews, but the first one had been twisted by the editors to give another view, though the critic’s by-line had remained on the article. The Press Council censured the Sketch—and it and other papers printed the Council’s statement.

Others complained about the extravagant attention the newspapers gave to the Kinsey Report, a study of sex mores. The Council issued a widely publicized statement holding that “this Council, while defending the right of the Press in the contemporary world to deal in an adult manner with matters of sex, is deeply concerned by the unwholesome exploitation of sex by certain newspapers and periodicals.”

The British Press Council praised newspapers for such actions as the publicity given to studies showing a relationship between tobacco and lung cancer, and attacked them for individual and collective violations of good taste. The most frequent complaints received by the Council were for invasion of privacy, violations of good taste, and emphasis on sex.

Any citizen may complain. Many complaints are rejected because the aggrieved person has not first sought redress from the editor of the paper. The Council also will not consider a complaint if legal action is filed or threatened, until proceedings have been concluded or abandoned.

An aggrieved person who fails to receive satisfaction from an editor must state his complaint in a letter to the Council and enclose copies of any correspondence with the editor and a copy of the newspaper of the relevant date. He is asked also to give the names and addresses of any witnesses.

The Council informs the editor and invites his response. Then the Complaints Committee investigates, usually drawing its conclusions from written statements. On occasion, however, the parties concerned are asked to appear before the Council. A complete dossier on the matter is then prepared for each member of the
Council and sent to him before the next meeting. Only the Council members attend the decision-making meeting. On a few occasions, the Council has reversed the recommendations of the Complaints Committee.

Finally, the Council releases a summary of the facts and its decision. Although the editor is held responsible for anything appearing in his paper, individual journalists are sometimes blamed as well. The Council issues two kinds of judgments when it finds a newspaper at fault: admonition or, in serious cases, censure. In one three-year period, there were only two recorded cases in which offending newspapers failed to publish Council statements critical of their conduct.

When the Twentieth Century Fund convened its Task Force nearly two years ago to study the feasibility of a U.S. council, most of the members were doubtful that anything like the British model could work here. Because of the relatively small size of Great Britain, the London press is, in large effect, the national press. But the vastness and diversity of the United States, and the number of publications and broadcasting stations, make it impractical, the Task Force decided, to establish a national council on the British model.

I argued in these pages (The Progressive, September, 1971) that a national council could be established in the United States and could cope with the flood of complaints as the British Press Council did in its earliest days, rejecting nonsense out of hand and focusing first on pivotal cases. The Task Force found a better way. Salant of CBS News suggested that a U.S. council could limit its focus to the “wholesalers” of news, such major national suppliers as the networks and the Associated Press and United Press International, which supply news and features to ninety-nine per cent of U.S. dailies and to most radio and television stations. This proved to be the key.

The Task Force Report proposed that “an independent and private national news council be established to receive, to examine, and to report on complaints concerning the accuracy and fairness of news reporting in the United States, as well as to initiate studies and report on issues involving the freedom of the press. The council shall limit its investigations to the principal national suppliers of news—the major wire services, the largest 'supplemental' news services, the national weekly news magazines, national newspaper syndicates, national daily newspapers, and the nationwide broadcasting networks.”

The more detailed recommendations of the Task Force were adopted by the Twentieth Century Fund and other foundations which are supporting the Council on Press Responsibility and Press Freedom and which will provide its estimated budget of $400,000 a year. The plan is for the Council to receive, examine, and report on complaints concerning the accuracy and fairness of news coverage (not editorials) and report on issues involving freedom of the press. The fifteen-member Council is to be made up of nine public members, one of whom will be the chairman, and six journalist members from the publications and broadcast fields, excluding those affiliated with the principal suppliers of news. A subcommittee will meet eight to twelve times a year to screen complaints. Individuals and organizations with grievances must first try to resolve them with the media organization involved and must waive the right to legal action before the Council will initiate action.

Routine work will be handled by a permanent staff operating under the Council. Teams of outside experts may be retained to investigate complaints. The Council may initiate inquiries into government actions that threaten freedom of the press, appoint fact-finding task forces, and issue reports and press releases. That is the limit of Council decisions and actions. It has no enforcement powers.

Roger Traynor, the highly respected former Chief Justice of California, was appointed Council chairman and head of the founding committee that will select the rest of the Council and employ a staff. The Council is expected to begin operations shortly.

Instead of arousing opposition and indictment, this Council should excite fervent support among the media. Even as they have become larger institutions, the media have become more distant from their audiences. In treading on individuals and clashing with government, they are at least seemingly more arrogant.
“There is crushing reality in the number of journalists who have gone to jail in recent months . . . for refusing to disclose names or information given them by confidential sources.”

and inhuman. As Douglass Cater, an authority on journalism, has remarked, “How the news is managed has been kept in dark mystery even as the press strives to throw the fierce light of publicity on decision-making elsewhere. It would be refreshing for the public to know that the collecting, processing, and distributing of news requires judgments all along the line. Human judgments.”

Unfortunately, too many media spokesmen echo the point made by Elmer Lower, president of ABC News: “At a time when newsmen are going to jail for practicing their craft, the appointment of yet another self-appointed monitoring organization is an unnecessary irony.” The fact that newsmen are going to jail is one of the best reasons for establishing this Council. A public that fears or distrusts the media does not protest when they are brought to heel by government. The fearful applaud. Moreover, a council that calls the media to account, as this one plans to do, can also speak forcefully for the media. When the American Society of Newspaper Editors speaks for freedom of the press, a wounded and skeptical public suspects self-interest. When a council that has demonstrated its concern for the public interest speaks for freedom of the press, its words are far more likely to be heeded.

The Council on Press Responsibility and Press Freedom, I believe, will become such a force, if the media do not kill it in infancy. This they can do quite simply, first by refusing to respond to investigative inquiries, second by ignoring its findings. The Council is like most other organizations in depending upon the media to give it a strong voice, unlike most others in depending upon the media for existence.

To ask that the media support a council that investigates the media themselves may seem to be asking too much. But better than any other institutions of the American society, the media should know the value of a watchdog. If they do not, they should consider the changing attitudes of British editors to the British Press Council.

Professor Donald E. Brown of Arizona State University reported in 1971 that the scoffing, disdain, and contempt that were so common among editors during the early years of the Press Council have almost disappeared. “Antipathy has been replaced by respect and by a realization that the Council’s accomplishments have considerably outweighed its shortcomings,” Brown wrote. A prime example is Hugh Cudlipp, who was long the editor of the Daily Mirror, the splashy tabloid that has the largest circulation in Britain. Cudlipp wrote a book in 1962 that carried eight references to the Council, all critical. Now the chairman of the International Publishing Corporation, Cudlipp asserts that he and his huge company are “totally in favor of the Press Council.” The hard-hitting Daily Express snapped in an editorial in 1949, “The proposal for a Press Council is the futile outcome of a phony agitation.” But after the Council had been operating for several years, the Express held: “It is proper that the watchdogs should themselves have watchdogs.”

Citing a study that showed that by 1967, eighty-six per cent of the British editors were favorable, Brown wrote that his observations and interviews indicated that the percentage has increased since then. In fact, the major flaw most editors see in the British Press Council is that it does not assess the performance of radio and television as well as newspapers. Late in 1971, the British Broadcasting Corporation (BBC) set up a commission to review complaints from those who thought they were unfairly treated on radio or television.

The British journalists’ applause is not the result of their being treated favorably by the Council. Of the 446 complaints adjudicated during the past six years, the Council upheld the readers and criticized the newspapers in 247 cases. Although the Council has no legal power, it has succeeded because it has used wisely a weapon the press has learned to respect: publicity.

Given a proper chance, the U.S. Council on Press Responsibility and Press Freedom will earn not only the respect of the media but their gratitude as well. The media are facing a mounting campaign of repression and harassment by a hostile government. Their greatest potential ally in resisting this pressure is the public, but a public that expresses only eighteen per cent confidence in the media does not promise much support. An independent council that would help the media keep their own house in order could go far to restore public confidence and give the media the ally they need to combat government repression.