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VII. PRESS COUNCILS—A LOOK TOWARDS THE FUTURE

HON. C. DONALD PETERSON*

I will limit myself today to a discussion of what a press council is, what *our* press council is, how we came into being, and what some of our activities are.

Today we have been talking largely about freedom of the press, and we have also talked about the concept of the responsibility of the press. It is no accident that a free and responsible press did, on its own initiative, instigate a press council. The Minnesota Press Council was formed at the invitation of the Minnesota Newspaper Association. Noting the increasing criticism of the press, the news media wanted to engage their critics with a credible, independent mechanism to meet, consider, and separate the valid from the invalid complaints about press performance.¹

No one on the press council, however, has any reservations about the vitality and the importance of the first amendment protections of a free press. This amendment is not only first in number, but first in importance. Jefferson said that if he had to choose between a society without a government and a society without a free press, he would choose that which had the free press. Many of us in public life realize that although we may have been annoyed at being criticized by the press, we need the media. We know that a free society cannot exist without a vigorous press, even though news items are not always totally accurate or may misrepresent editorial opinion as fact.

Unlike the British Press Council, which was brought into being under the pressure of royal commissions created by the Parliament, the Minnesota Press Council was founded by the Minnesota Newspaper Association to provide greater service to the reading public. The Minnesota Press Council is composed of 20 members, 10 of whom are drawn

* Justice of the Supreme Court of Minnesota; chairman of the Minnesota Press Council. The Minnesota Press Council is the first major American experiment with press councils, which initially were developed in England some 20 years ago. This council was formed in 1972 at the invitation of the Minnesota Newspaper Association.

1. Panelist John Ritter—co-author of the article Ritter and Leibowitz, *Press Councils: The Answer to Our First Amendment Dilemma*, 1974 DUKE L.J. 845, professor of law at the University of Miami School of Law, and a graduate of Northwestern and Yale Universities—claimed at the Media Law Conference that the motivating rationale for the Minnesota Press Council and the National News Council, and the reason that press councils are desired, is the public distrust of the news and broadcast media. He further commented that an analysis of the public distrust will reveal that a bitter feeling exists among the public towards the person who tells them the truth; nobody wants to hear that his government officials are corrupt. The public mind distrusts the newspapers in part because the truth is revealed. Newsmen recognize this situation, but claim they are only performing their job to report the facts and simply dismiss a lot of this distrust.

Professor Ritter suggested, however, that public distrust of the press is bred not only by telling the truth. The American spirit distrusts power in any institution, especially when the power is very influential. The public distrust of the press is really public distrust of the power that is unchecked. They see the first amendment as an almost absolute bar to controlling the power of the press, and they feel a need for some checks and balances.

from the public. The public members of the Council, ironically, have often been less critical of the press than the professional members.

The original public members of our Minnesota Press Council, in addition to myself, included the state attorney general, the president of the University of Minnesota and a professor of law in its Law School, a professor in the School of Journalism, himself an outstanding authority on press councils, a former president of the state League of Women Voters, the director of communication for the area's largest radio station, a leading figure in the state's dominant political party, and the leader of the state Senate. The press members were drawn from those members of the Goals and Ethics Committee of the Minnesota Newspaper Association who conceived the press council. There have been subsequent changes in both the public and press membership, most notably to include non-management newspaper personnel and greater minority representation.

Although the initial group was appointed by the Minnesota Newspaper Association, our first act was to declare our independence from that body, even to the point of paying our own expenses. We drew a council constitution and have since been incorporated. Our charter initially provides for the preservation of the freedom of the press. The determinations we make are advisory opinions—an educational tool wholly without government sanction or any sanctions of our own. Our decision-making process has served to inform the public about the importance of the first amendment and the practical problems of the press. And to maintain the character of the press in accordance with the highest professional standards, we are creating, on a case-by-case basis, standards for press performance.

The standard our council has adopted to determine whether the newspaper has acted responsibly is stricter than the *New York Times Co. v. Sullivan*² test for actionable libel. For our council, a material or serious departure from the standards of reporting for responsible newspapers is sufficient to lead to action on a complaint against a newspaper. Ours are ethical, rather than legal, judgments.

Practical problems arose which required further standards to consider complaints about the conduct of the Minnesota press, including its advertising. Also required were standards to review, on a continuing basis, the performance of the Minnesota press regarding matters in the general public interest, and standards to assist the Minnesota press in the fulfillment of its responsibility to perform in the public interest.

We have not undertaken general studies or assessments of the overall performance of the press, but have limited ourselves to consideration

2. 376 U.S. 254 (1964). The United States Supreme Court held that before a public official can recover damages in a libel action against a newspaper, he must meet the first amendment requirement of a showing of "actual malice," *i.e.*, either knowledge by the newspaper that the story was false or reckless disregard of the story's veracity.

of particular complaints by the public, upon which decisions have been formulated.³

These complaints came from a good number of public officials, but there were not as many as might be expected. Although a sensitive political figure might be annoyed at some stories regarding his activities, he would normally be expected to swallow his pride rather than incur the lasting ill will of the newspaper involved. However, certain politicians may never expect to obtain the support of a particular paper and thus be willing to bring a formal action. Our first complaint involved such a situation. The Republican leader of the state house of representatives made a complaint against the statewide *Union Advocate*; he expected no political support from this labor paper and was not reticent to register a complaint.

Our most recent case involved a legislative race in one of our metropolitan counties where a small weekly newspaper is published. A candidate, running for re-election, was charged with being involved in a number of sex club get-togethers. Initially, the newspaper reported only the accusation. Subsequently, the paper published, in full, the incumbent's reply and his attack on the integrity of the informer.

This informer brought a complaint before the Minnesota Press Council when the newspaper refused to publish a reply he had prepared to be printed. He took his lengthy statement to the newspaper editor first, and when the editor declined to publish it as a news article, he offered to pay for it as an advertisement. Although the editor originally agreed to accept the advertisement for \$40, she later reneged when a lawyer told her that it was libelous. But this worried lady admitted later that if she had not received that opinion from this lawyer, she would have continued to seek counsel until she got the opinion that she wanted.

Fear of libel, therefore, was not her reason for seeking to prevent publication of this material. She had merely become tired of the issue and did not want to yield her status. We on the council criticized her editorial decision on this issue of importance and concern in the community. Here was a man who was involved in the controversy, and he was being denied an opportunity to reply which had been afforded to the other principal without censorship. We were not telling the newspaper to publish the article exactly as it had been written, but rather, to afford the informer reasonable access to reply.

The council further added that the mere labeling of material as

3. One panelist observed that some of the opinions of the Minnesota Press Council closely followed the code of ethics of the American Society of Newspaper Editors and the code of ethics of Sigma Delta Chi. Compare, e.g., AMERICAN SOCIETY OF NEWSPAPER EDITORS CODE OF ETHICS: CANON IV § 2 ("Headlines should be fully warranted by the contents of the article which they surmount.") and THE SOCIETY OF PROFESSIONAL JOURNALISTS, SIGMA DELTA CHI, CODE OF ETHICS: ACCURACY AND OBJECTIVITY § 4 (1973) ("Newspaper headlines should be fully warranted by the contents of the article they accompany."), with *Long & Erickson v. Worthington Daily Globe*, Minnesota Press Council Decision No. 5 (1973), which held that "[n]ews headlines should be . . . supported by facts within the news story."

libelous is not a sufficient reason for refusing to publish it. Similar to our position was the *New York Times* decision to reject its lawyers' advice not to publish the *Pentagon Papers*. The *Times* made the editorial judgment to publish the documents. I suppose a lawyer's function is to state frankly, from a legal standpoint, the risk involved. The decision whether to publish is left to the newspaper's journalistic judgment so long as the possible legal consequences are realized.

A press council seems to be the most practical way to attain a responsible press; governmental regulation has no place in this area.⁴

Since we have absolutely no enforcement power⁵—nor do we seek any power—our organization has enunciated the reasons for decisions in thoughtfully prepared, detailed opinions to attain a greater degree of credibility and understanding. The editorial response following our opinions has generally been favorable. At this point the council's actions have only involved a dozen cases. In not one of our cases has the adversely affected newspaper failed to publish the criticism that we have made, although in a couple of instances the newspaper has reserved the right to argue, in the editorial page, that we were wrong.

The Minnesota Press Council is experimental. It is an idea whose time has arrived. It should remain if we are concerned about the credibility and the freedom of the press which we value so highly.

4. Panelist Ray Ruester—a former broadcaster who is now the associate editor of the *Daytona Beach News Journal*—expressed fear that the formation of a press council would be a foot in the already open door to governmental control of the press. Rather than creating a solitary forum for debate about media performance and responsibility, thus eliminating debate on the issues in a government hearing room, Mr. Ruester suggested that creating a press council will only add another forum for debate which would increase public criticism of the press and so lead to governmental intervention.

Panelist Fred Cooper—the Director of Information Service for Stetson University, a former reporter for the *New Orleans Times Picayune*, the *Washington Star*, and the *Sarasota Herald Tribune*, as well as a broadcaster in the army—philosophically opposed a press council since it is, in his view, merely a substitute for good editing.

5. Panelist Reuster highlighted the impotence of press councils and went on to suggest that without enforcement power such bodies mislead the public by giving the impression that they can effectively take action on a consumer's complaint.

Panelist Ritter, however, pointed out that to claim that without police sanctions the press council is ineffective is to ignore the fact that the British Press Council has existed for 20 years without enforcement powers and all of the people involved with England's council feel that it has been very helpful.