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Minnesota News Council: Principles, Precedent, and Moral Authority

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This study addresses the Minnesota News Council's moral authority—that is, its ability to serve as a referent for the ethical or moral choices of others—and how its authority might be affected by perceptions of its legitimacy. After analyzing all of the Council's 125 written determinations, we argue that the Council's legitimacy and authority could be enlarged by clearer statements of ethical principles, explicit expressions of standards of conduct, and more consistent references to past determinations.

The Minnesota News Council (MNC) is an extraordinary experiment. As one of the nation's only extrajudicial bodies created to resolve public complaints against the news media, the Council not only stands largely alone, but it also stands in the crosshairs of many journalists who view it as an affront to their constitutionally rooted autonomy. Since its founding in 1970, the Council, which is comprised of 12 public and 12 media members, has been buffeted by criticism from both journalists and nonjournalists. Public critics argue the Council is dominated by its media members who discredit complaints and coddle press respondents. They say the Council's processes are too slow and labor-intensive, and they say the Council's decisions are

not well publicized by the news media, denying complainants the public affirmation they seek (Hermanson, 1990).

Media critics of the Council are even more pointed. They say the Council is biased against them and possessed by a desire to publicly humiliate the news media (Hermanson, 1990). They say the Council lacks procedural integrity and acts more like a "kangaroo court," as media owner Stanley Hubbard (1997) described it. They say the Council's members have too little knowledge and training to equitably and consistently resolve complaints against the news media, and even if they were properly equipped to do so, it would not justify the kinds of audacious intrusions on editorial judgments that the Council imposes (Shaw, 1981). According to New York Times Executive Editor, Joseph Lelyveld, news councils are nothing more than glorified town meetings. "But it's not even a town," Lelyveld said. "Talk about elitism! Who gets on these things, and the people who sit there, how hard do they work at it?" (Jenkins, 1997, p. 39). Detroit broadcast station manager John Lansing (1997) echoed Lelyveld, summarizing the thoughts of many news council critics: "It's the job of journalists to cover journalism." This idea goes to the heart of the news council debate.

Does the public have any justifiable role in defining journalism ethics? Robert Shaw, who spearheaded the establishment of the MNC, addressed this question directly in 1980. "The public has a right to be there," he said. "Ethics affects the recipients of ethical behavior, the patients, the clients and the readers as well as it affects the practitioners. The public members have a legitimate right to sit at the table when professional ethics is discussed" (Hermanson, 1990, p. 184). Whether the MNC can serve as a useful vehicle for defining journalism ethics is a question this study addresses.

Despite persistent assaults from critics, the MNC has won the support of many Minnesotans, including most of the Twin Cities' key media leaders who participate in the complaints process—some even serving on the Council—and whose organizations provide financial support for the organization.² The Council has also found a significant ally in "60 Minutes" correspondent Mike Wallace, who produced a feature on the Council in 1996 and launched a campaign to revive

interest in news councils, encouraging others to follow Minnesota's lead.³ Most importantly, despite the criticism it has generated, the MNC has survived, which is something many other councils have failed to do. Foremost among these is the National News Council, which operated from 1973 to 1984. It resolved 227 public complaints against national media organizations and also issued several reports addressing issues of media ethics and press freedom. Although it survived for 11 years, it never had the consistent support of major news organizations and its actions were not widely followed by the public (Brogan, 1985).

The increasing interest in news councils is no doubt driven by traditional journalists' recognition that their declining public credibility is too well documented and too precipitous to go unaddressed. Recent public surveys reveal widespread antipathy toward journalists, their ethics, and their tactics, as well as a sense of exclusion from meaningful public discourse (Freedom Forum, 1997; Gallup Poll, 1996; "Media Credibility Shrinking," 1996; "News Junkies/News Critics," 1997; "Political Institutions," 1997). When combined with regular reports of declining circulation and lost rating points, these surveys provide powerful incentives for journalists to embrace new and creative ways of restoring public trust.

It is unsettled whether news councils can, in fact, fortify the news media's credibility. It is also unsettled whether news councils can provide, through the accretion of case-by-case determinations, a body of principles that journalists can and will reference as authoritative ethical statements. This study addresses these questions, if indirectly, by starting with the following assumptions:

- News councils cannot improve the public standing of journalists, and their decisions cannot have ethical force, unless those councils are perceived as having moral authority in the eyes of both journalists and the public. Moral authority is defined here as the ability to direct or substantially influence the decisions of others by serving as a referent for their moral or ethical choices.
- News councils cannot have moral authority unless both journalists and the public accept their legitimacy—that is, they must believe the Council serves a productive purpose, acts

within the boundaries of the power conferred upon it, acts in a way that advances the purposes for which it was established, and follows its own publicly communicated procedures.

To the extent that the Council fails in any of these areas, its legitimacy will be undermined. To assess the legitimacy of the MNC, one should examine the types of cases it chooses to hear, the methods it uses to resolve complaints, the strictness with which it follows its established rules, the frequency with which it favors complainants versus respondents, the biases revealed in its public pronouncements, and so on. The focus of this study is on several other questions one might consider when making this assessment. These are divided into two related categories:

Principles:

1. Does the Council apply ethical principles in the resolution of cases? Does it communicate those principles in its written determinations?⁴
2. Does the Council define those principles?
3. Is there congruity among the principles cited?
4. Is there consistency in the sources of ethical principles cited by the Council?

Precedent:

5. Does the Council refer to its previous determinations in making rulings?
6. Does it follow its own decisions? Does it view them as binding, merely informative, or as inconsequential?
7. Does the Council reference any other sources of precedent—National News Council rulings or court cases? How much weight does it give those sources?

These questions are important determinants of whether the MNC is likely to be perceived as legitimate and whether it can therefore possess the moral authority necessary to be useful. A fuller explanation of these questions and what they aim to uncover is presented next.

Conceptual Framework

The broad question to which this study is addressed is whether the MNC is viable, not only as a mechanism for mediating disputes between the press and the public but as a crucible for discussions of ethics and as a vehicle for the expression of journalistic and social values. To the extent that the MNC fails to effectively serve any or all of those functions, its usefulness is diminished, as is its appeal as a model for other communities. The Council's success in serving these functions also could affect the extent to which journalists are willing to accept public contributions to the ethical standards of their profession. The MNC is one of the few models of this kind of cooperative interaction, so there is considerable interest in the Council's success or failure, above and beyond its mere survival.

An assumption of this research is that the MNC was intended to have, and its members expect it to have, some moral authority—that is, its purpose is to provide, directly or indirectly, ethical guidance for journalists. Some might argue that, in fact, the Council was not designed to serve as a voice of ethical or moral authority, or as a designer of standards, but merely as a tool for the resolution of disputes. Everything about the Council, from its structure to the statements of its leaders, suggests otherwise. If it did not seek to possess some moral authority, why would it produce written determinations of its rulings, and why would those determinations explain not only who won and who lost, but why? Surely they do this, at least in part, with the expectation or hope of affecting the professional decisions of those who read Council determinations. The pursuit of moral authority is even more apparent in the words of former Council executive director Tom Patterson, who wrote in 1980, "The end product of a Council proceeding is a publicized, advisory opinion, which on a case-by-case basis creates a body of professional standards for journalists" (Peterson, 1980, p. 971). So, even though the Council does not make sweeping ethical proclamations, its leaders expect that the gradual accumulation of Council decisions, and the rationales underlying them, will provide a map for ethical behavior.

The second assumption of this study is that if the Council is to have any moral authority, it must be perceived by its constituents—

journalists and the public—as having legitimacy. Legitimacy is something sought by all power-wielding institutions. It is the stamp of approval that justifies the exercise of power. It is, in a sense, the consent of the governed. With governments, legitimacy is established through, for example, the preservation of popular sovereignty, representative government, limited (enumerated) government powers, due process, and civil rights. Institutions within governments also seek legitimacy. The courts, which news councils emulate in many respects, seek legitimacy in a number of ways: They are independent. They follow a set of procedures involving the presentation of evidence, the acceptability of jurors, and the openness of the trial process. They build consistency and stability into the law by following the doctrine of *stare decisis*, which obligates courts to give considerable—though not complete—deference to prior judicial interpretations, and, most importantly, courts have limited powers. Generally, federal courts can only hear cases that either raise a substantial question of federal law or that involve disputes between residents of different states. By operating within a clearly demarcated scope of authority, courts enhance their legitimacy among those affected by their exertions of power. Organizations lose legitimacy when they exceed the scope of their authority. They also lose legitimacy if they fail to utilize the authority they have been given. A court that is too deferential and does not exercise its discretion to hear cases can lose the public's faith in its ability and willingness to effect justice.

In addition to these more obvious influences on legitimacy, there are more subtle factors as well, several of which are addressed by the research questions posed earlier. The first set of questions (1-4) involve the extent to which the MNC bases its decisions on ethical principles and whether it articulates, explains, and reliably applies those principles. If members of the Council expect the public to take their decisions seriously and expect journalists to adjust their behavior accordingly, its decisions must be built on something more stable and universal than the impulsive reactions of the present members. There must be some attempt to identify transcendent values. Without some consistency among the principles invoked by the Council in reaching its decisions, without some substantive threads connecting their proclamations of right and wrong, there will be challenges to its legitimacy.

The second set of questions (5-7) address the extent to which the Council values its own decisions and gives weight to its past determinations in deciding present ones. If the Council ignores its earlier decisions, rejects their authority, or makes no effort to intelligently link them, it instructs journalists and the public to be equally dismissive. If there are no rules that transcend the most immediate cases, and if there is no acknowledgement of those who have already grappled with the same problems, the Council cannot help but be perceived as hopelessly situationalist.

This study seeks answers to these questions by analyzing the full text of each of the Council's 125 written determinations. Before presenting the results, the next section briefly reviews the history, structure, and evolution of the MNC, looking in particular at what Council members and others have said about principles and precedent and about the Council's broader mission.

The MNC: Defining its Mission

The Minnesota Press Council was founded by the Minnesota Newspaper Association in 1970, and began holding public hearings on complaints the following year. Its name was changed to the Minnesota News Council in 1979, after it began considering complaints against broadcasters. In the past three decades, the Council has published 125 determinations on complaints involving Minnesota newspapers, TV stations, and radio broadcasters. It receives between 80 and 120 complaints annually, but only 8% are presented before the full Council for a formal determination (Franklin, 2000). In addition to providing a public forum to resolve complaints, the Council publishes a newsletter, produces a monthly cable television show on media ethics, and offers mock hearings, educational programs, and both private and public forums.

The MNC is the oldest council in the country, and certainly the most active, although councils also exist in Honolulu, south Florida, and Washington state. Previous local efforts in Delaware, Colorado, and Illinois were unsuccessful. The National and Minnesota councils adopted procedures for resolving complaints that mirror those used by courts. These include written complaints, preliminary screenings,

formal hearings, rules of evidence, examination of witnesses, written decisions, and dissents. Although neither the Council's by-laws nor procedures require, or even encourage, members to consider previous cases in making decisions, there are some references to case law and precedent in articles, correspondence, and other writings of Council members. There are also various references made to professional ethics and standards, although neither council ever drafted a formal ethics code or set of guidelines. The minutes of a 1971 Council meeting taken by J. Edward Gerald (1980), secretary of the grievance committee, stated the grievance process would be "on a case-by-case basis" with no mention of any formal code or guidelines ever being formulated or published.

In announcing the Minnesota Press Council in 1971, Minnesota Supreme Court Judge C. Donald Peterson said the Council could only use adverse publicity as "penalties for confirmed violations of good journalistic practice" (Hermanson, 1990, p. 54). However, how do Council members decide what good journalistic practice is? One can assume that most media members agree with the codes adopted by the American Society of Newspaper Editors and the Society of Professional Journalists. These codes are widely accepted but not very precise. They emphasize such general virtues as decency, fair play, balance, sincerity, and truthfulness. Gerald, a journalism professor and the architect of the Council's charter and rules of procedure, noted in a 1980 memo that strict adherence to a code would be too confining. "The News Council does not have an arbitrary code of ethics," he wrote.

Complaints are judged on the facts, on the context of the facts, and on the conditions prevailing at the time of the news event. The doctrine is one of prudence, fairness, and tact, not of arbitrary standards that have to be applied whether or not they fit the facts. (Gerald, 1980, #217)⁵

In a 1981 speech to the Council, Gerald said the Council had established "an ability to follow principles" and that "Cases already decided are rich sources of ethical principle and accepted journalistic practice" (Gerald, 1980, #172). That same year in an article in the *Journalism Quarterly*, Robert Schafer (1981) concluded, "The

Minnesota council has not set out comprehensive guidelines in any single area of press ethics." Yet he quotes Judge Peterson saying the Council is "developing a body of thoughtful, case-by-case essays on newspaper ethical problems—a sort of common law with respect to newspaper ethics" (pp. 355-356). A 1974 law review article was also laudatory, saying the Council "has begun to establish a body of standards for responsible press performance on issues of national importance to the news media and public . . ." (Ritter & Leibowitz, 1974, p. 854). Its authors concluded: "More importantly, the Minnesota decisions establish that a press council can use its decisional process to promulgate a set of journalistic standards" (p. 861).

Clearly, then, at least some people were persuaded the Council was not only serving as an effective arbiter of complaints but also as a conveyor of journalistic standards. Some Council members were leery of the establishment of precedents. They feared Council decisions would be used to affect cases in the judicial system, and would be used as "standards of approved conduct" (Hermanson, 1990, p. 63) against media defendants involved in law suits.

Hermanson (1990) cited an interview by James L. Hetlund, Jr., an attorney and the Council's first public member, who stressed that Council members wanted flexibility in grievance procedures because they were not "talking about legal issues but about public issues." Commenting on the discussions at Council hearings, Hetlund said some common ground did develop. "I think the opinions have improved because if you are agreed on the result, you can concentrate on the 'why' factor. The 'why' factor is important particularly if your opinions are to be used, as they are used, as precedents for standards The opinions tend to give an impression of what is acceptable journalistic conduct" (p. 186). Hetlund's comments suggested there was a conscious effort among Council members to explain their decisions clearly and fully, knowing the decisions might have an impact on media behavior. This was confirmed by Judge Peterson who suggested in an interview with Gerald that considerable work went into the drafting of opinions, because it was understood their influence could be lasting (Hermanson, 1990, p. 187).

All of this shows that, although the purpose of the Council was not to establish precedent in the legal sense in which parties are duty-bound to follow it, there was a sense, at least among some of the Council's key members, that its decisions were written not merely to expedite the resolution of immediate disputes, but to provide substantial guidance to working professionals and to provide a sturdy, but flexible, framework of ethical standards. This study looks at whether, and to what extent, the Council has in fact followed that vision.

Findings and Analysis

Principles

- 1. Does the Council apply ethical principles in the resolution of cases? Does it communicate those principles in its written determinations?*

In answering these questions, the authors examined each of the Council's written determinations and noted those statements that either referred to a code of ethics, alluded to an ethical principle or rule, or proposed such a principle or rule. The following are a few representative examples:

- "Responsible journalism mandates that in the process of informing the public . . . news reports should be fair, balanced and accurate." (#25)
- "The Council believes follow-ups should receive comparable treatment [to the original story]." (#41)
- "It is for the public to determine whether it is a good or bad opinion." (#21)

Ninety-five of the Council's 125 determinations contained at least one such statement of principle. Of the 30 determinations that contained no statements of principle, 16 were between 1980 to 1988 (between #43 and #76). Surprisingly, another 6 were among the Council's 16 most recent determinations, which suggests the Council is perhaps less focused on articulating ethical principles and standards today than in earlier periods. It is difficult to offer a blanket characterization of those determinations in which statements of

principle were not found, but it was certainly more likely in such cases to find a more cryptic analysis and, obviously, fewer statements that might provide fodder for the establishment of standards.

It is clear from the abundant statements of principle made by the Council that its members are concerned with more than just declaring winners and losers. In many cases, attention had clearly been paid to crafting opinions that would, at a minimum, help the participants better understand the Council's rulings. An occasional opinion went even further and proposed, in definitive language, a clear standard of conduct (e.g., #97, stating no critical letters should be published on the day of an election, and #53, stating corrections need not be on the front page). However, many of the Council's expressions of principle were much less clear, making them less useful in the establishment of standards and perhaps less compelling for journalists.

2. Does the Council define those principles?

Here, the Council's record is mixed. In many cases, it defined specific standards of conduct. Even though its explanations were typically abbreviated, its statements were worded precisely enough and the context of the case was described adequately enough that the reader could ascertain the level of conduct expected by the Council. Consider this example:

- "The Council believes that the Star and Tribune acted correctly in refusing to submit its editing of the letter to the sender for approval or disapproval. The editing function must reside with the newspaper editor." (#69)

This is a short, simple statement, but no more is needed. From these two sentences we know what happened in this case, what the Council's ruling is, and what the standard is. The statement also offers the seeds of a potentially more sweeping standard—that any sacrifices of editorial control are suspect.

In most cases in which the Council makes statements of principle, it is clear, or the reader can approximate, the standard of behavior expected. In other cases, however, it is not so simple. Often the

Council does not adopt a specific rule or standard of conduct, but instead justifies its decision by reference to a meta-rule. The meta-rules, as we define them, are the rules about the rules—broad, categorical syntheses of more discrete ethical principals. The meta-rules are appealing in their simplicity and universality, but they are ultimately unsatisfying as rationales and guides for ethical conduct. Here is an example:

- “Newspapers have an obligation to cover all sides, giving a balanced, objective report.” (#12)

Here, readers are likely to concur with the Council’s statement of principle, but may be left with no idea what standard of conduct is expected of them. The meta-rules are so encompassing that they cannot be simply applied to a new set of facts to reach an appropriate result. The meta-rules are always applicable but rarely helpful. To a great extent, the meta-rules derive from many of the existing journalistic codes of ethics— the Society of Professional Journalists’ Code and the American Society Newspaper Editors’ Statement of Principles. On four occasions, the Council cited one of these two codes directly to explain its rulings (#17, #45, #101, and #105).

What is important for the Council to consider is that in order for it to maximize its moral authority, and be perceived as legitimate, it must provide sufficient explanations for its decisions and clear rationales for its statements of principle. Without that kind of precision, they cannot expect those whom they seek to influence—working journalists—to follow the standards they seek to establish. In addition, if they do not care about establishing standards—if they are only concerned with resolving the most immediate disputes—there is no reason for journalists to pay attention in the first place.

3. Is there congruity among the principles cited?

Perhaps the greatest challenge to the legitimacy of news councils is for their rulings to be consistent. If there is disparity among their judgments and in the standards they adopt, they will lose legitimacy and their power to influence. There is no reason for the news media to monitor news council activities, or to submit to its

procedures, if its decisions are arrived at haphazardly. No organization will consent to be the subject of unprincipled exercises of power.

Although in most areas examined the Council's rulings are consistent, there are some exceptions, and because consistency is so closely linked to legitimacy, these exceptions should be highlighted.

When reviewing the Council's determinations, the authors categorized each into 18 categories.⁶ The core principles or standards articulated in the cases within each category were then read together to see if any incongruities were apparent. A couple are worth noting.

In the category of letters to the editor there were 18 cases. In several cases the Council reiterated the idea that editors must never surrender editorial control over letters to the editor, and although they have an obligation to edit them fairly, they should not allow letter-writers to exert influence over that process. However, in another case, the Council argued that a newspaper editor who made changes to a letter "should have contacted the complainant to discuss the changes" (#99).

Less subtle are some of the policy shifts with respect to the use of anonymous sources, which was the subject of nine cases. In one case, the Council noted that allowing anonymous criticisms in the press is "sleazy" (#87), and in another case it wrote that the use of anonymous sources is a "breach of faith" with readers (#7). Yet in two different cases the councils said timidly "It is best to name sources whenever possible," (#42) and, "Statements attributable to identified sources are preferable" (#86). As a reporter, it would be hard to draw any sharp conclusions about what the Council expects of your attribution practices.

Despite these examples, there was substantial consistency in most categories of cases, although the number of cases in each category was too small to make sweeping conclusions. What is needed, however, is a more deliberate effort on the part of the Council to clearly articulate and define the standards of conduct it is trying to inspire. The Council has actually taken a step backward in that regard in the past few years. Its more recent written determinations are

crafted in a way that avoids unified expressions of policies or principles. Whereas most of the Council's determinations contained a discussion of the facts, the arguments of both parties, and a relatively clear statement of the opinion and reasoning of the Council, the more recent determinations try to be more democratic by summarizing the thoughts expressed at the hearing by the various members present. Instead of presenting a strong voice of the Council, the recent determinations are simply patchworks of disconnected comments from the members present and voting at Council hearings. The votes are the only collective statements left in many cases. The result is reporters are not getting clear guidance from today's Council, and unless that changes, decisional inconsistencies will surely multiply.

4. Is there consistency in the sources of ethical principles cited by the Council?

Although there is a relatively high degree of consistency in most categories of the Council's determinations, there is inconsistency in the sources of authority the Council relies on. In 17 cases, the Council uses ambiguous phrases such as, "accepted journalism standards," "proper journalistic practice," and the like to resolve issues. One example: "The *Star* article was well within the bounds of accepted journalistic standards" (#25). There are two potential problems with the use of these generic phrases. First, although there is nothing wrong with them when used to express a general endorsement or rejection of a particular editorial practice, when they are offered in lieu of a more precise definition of appropriate journalistic behavior, they only create more uncertainty. Second, the use of these phrases presents a challenge to the very existence of news councils: Are news council members supposed to simply ascertain what accepted journalistic standards are and then apply those to the cases before them? Or, are they supposed to give due consideration to those standards, but ultimately reach their conclusions based on their own senses of right and wrong? If it is the former, is there any reason for having public members on news councils? The MNC should consider these things when using these phrases, and they should clarify in the organizational philosophy what public and media members are each supposed to contribute and what personal or external sources of ethical authority they are permitted or expected to rely on.

Precedent

5. Does the Council refer to its previous determinations in making rulings?

The surprisingly simple answer to this question is no. Of all of the Council's 125 determinations, only two referred to any of the Council's earlier cases. In case #27 (1977), the Council referred to its decision in #1 (1971), quoting a full paragraph from that decision about the need of journalists to substantiate stories with facts. In case #50 (1983), the Council wrote, "As we stated in *Sternberg* (#39), the news council recognizes the right to decide what facts and quotes to include..." It did not use *Sternberg* as the basis for its decision, however. It cited the case to illustrate a principle, but not as a decision for which the Council should have shown any deference.

In addition to these direct references, the Council made indirect references to its earlier decisions on five occasions. In #23 (1976), #41 (1980), #46 (1982), #72 (1988) and #80 (1990), the Council made statements such as, "As the Council has said in the past..." or "The Council has said on several occasions..." to reinforce its position. These cases presented obvious opportunities for the Council to more effectively connect past and present decisions, but it did not.

The Council's neglect of past decisions, at least in its written determinations, is not the result of inaction by the Council's administrative staff, at least according to Executive Director Gary Gilson (personal communication, July 10, 2000). He said new Council members receive copies of all of the past written determinations. Also, for the past 4 or 5 years, the staff has sent copies of relevant prior determinations to Council members in order to prepare them to resolve current cases. Yet during that same 4-year period, none of the Council's written determinations referred to an earlier determination.

Gilson said he believes it should be standard practice for the Council to refer to past cases. He said Council members should examine precedent and when they depart from it, they should be prepared to explain why. Doing this is "an extension of the whole idea of openness" that the Council seeks to promote, he said. However

committed Gilson might be to the use of precedent the evidence suggests it is not a priority among Council members. Even if the members are privately consulting past decisions in forming their opinions for current cases, they are not making clear in their written determinations how those past determinations are relevant.

The paucity of references to its past work suggests to the news media and to the public that the Council lacks an institutional memory. What actual impact this has on its perceived legitimacy is difficult to ascertain, but it is the authors' contention that this pattern of ad hoc decision-making can only inspire distrust among the Council's constituents. Conversely, by acknowledging the linkages between past and present cases, the trust among complainants and respondents toward the Council can only expand, and the likelihood they will accept and respect the Council's rulings can only increase as well.

6. Does the Council follow its own decisions? Does it view them as binding, merely informative, or inconsequential?

With such a small number of cases, it is difficult to gauge how Council members have understood their obligations with respect to prior decisions. There is nothing in the bylaws that requires the Council to honor them or to account for them in any way in their adjudication of current cases. However, if thoughts can be inferred from actions, it seems clear that Council members have only minimal interest in the decisions of their predecessors. In a handful of cases, the Council referred, either generally or specifically, to previous cases, and in four of those cases—#27 (1977), #41 (1980), #46 (1982), #80...respect and (1990)—its past decisions were cited acknowledge [prior authoritatively and helped dispose of the current case. However, in none of rulings] those cases did the Council express any substantial deference to those earlier decisions, they were simply invoked to help reinforce the Council's conclusions. Actually, the Council has never referred to a past case that was inconsistent with its ruling in the case before it. The impression left is that the Council only considers its past work to be relevant when it is useful in buttressing a current ruling. The Council's legitimacy could be enhanced if it were better able to distinguish relevance and usefulness. There are many circumstances in which a prior case might be relevant, and should be acknowledged,

even if it does not advance the Council's current train of argument. Indeed, this is one means by which courts establish their legitimacy. They are obligated to give deference to past decisions, through the principle of *stare decisis*, and to analyze current controversies in the context of those prior decisions, even if they end up charting a new course. Of course, news councils are not courts. They must retain the flexibility to address social and industry changes and to correct the occasional mistakes of their predecessors. However, while the Council must not be bound by its prior rulings, it must respect and acknowledge them. If it does not, there is no reason for the media or the public to pay close attention to their decisions, because they have little lasting significance except to the parties involved. An institution whose work is so ephemeral cannot acquire the moral authority necessary to affect the behavior of others.

7. Does the Council reference any other sources of precedent—National News Council rulings, or court cases? What amount of weight does it appear to give those sources?

In addition to the handful of references to its earlier decisions, the Council also made one reference to a National News Council decision. In case #36/37 (1979), the MNC referred to a conflict of interest case decided by the National News Council, although it did not identify the News Council case by name. "As the National News Council has noted," the Council wrote, "such a situation [financial involvement in a community project] can damage a newspaper's credibility as it has done here." It was certainly appropriate for the Council to reference a decision of the National News Council, provided it was satisfied with the National News Council's credibility, and provided it did not view the National News Council's decisions as binding authority. This was certainly not the case in #36/37. Although the National News Council no longer exists, the issue may arise again as to whether it is appropriate for the MNC—or any other state, national, or municipal council—to refer to the decisions of other councils. Again, the only way this might undermine the credibility and legitimacy of the MNC is if it were to view the decisions of other councils as having greater authority than their own, or if the credibility of those other councils was suspect. Barring that, there is no reason to discourage these types of cross-council references.

Each of the Council's decisions was also examined to identify any references to legal precedents. It was expected that the Council might on occasion invoke a legal principle to dispose of a complaint. On three occasions, the Council made reference either to a statute or legal principle. It did not refer to any court cases. On two occasions, #19 (1976) and #70 (1987), the Council referred to the law in order to establish the parameters of what journalists have a *right* to do, setting up a discussion of what they *ought* to do. This is not the type of legal reference the authors were expecting to discover; nevertheless, we believe these were appropriate and useful references that helped the Council give constituents a fuller picture of the connections between rights and responsibilities. It is the type of reference the Council should use more often in laying a foundation for its judgments.

In #6 (1972), the Council made a third reference to the law, this time to a state statute prohibiting the publication of political ads on the day of an election. In an unusual move, the Council urged the courts to consider the constitutionality of the statute, which they suggested was a violation of the First Amendment rights of the news media. This was an aggressive statement for the Council, at least in the context of a written determination, and it was not duplicated in any of the 119 subsequent cases. It is, however, consistent with the Council's mission, which is not only to resolve complaints regarding media ethics but also to promote the legal rights of the news media.

Conclusions

This study was guided by two key assumptions: first, the MNC seeks moral authority and cannot effectively serve its purposes without moral authority. Second, the MNC cannot have moral authority without being perceived as legitimate by its constituents. We argue that to the extent the MNC makes no effort to identify or articulate clear principles for its decisions, and to the extent its decisions reveal a lack of consistency or an indifference to past cases, its legitimacy will be jeopardized.

We discovered the Council does make some effort to ground its determinations in principle. Seventy-six percent of its written

determinations contained some statement of principle that served as the foundation for its ruling. We believe, however, there is no reason why every written determination should not be built on one or more statements of principle. Furthermore, the Council's statements lacked specificity. It was not clear in many cases what standard of conduct the Council expected from the news media. Saying something was "well within the bounds of accepted journalistic practice," without more, provides little guidance.

There was a high degree of consistency in the Council's rulings. However, there were a couple of notable exceptions. These inconsistencies could be easily remedied if the Council were to assess current cases in light of the existing precedents—providing rationales for their departures from previously stated standards or principles.

The Council has made almost no effort to evaluate current cases by analyzing, citing, and distinguishing earlier ones. It rarely cites its own decisions, legal principles, other news council rulings, ethics codes or guidelines, or any other source of authority. The impression left is that the Council is situationalist, which provides little comfort for potential participants in the news council process, and it suggests to the public and news media that the Council's rulings have little lasting relevance.

Although it is difficult to isolate and measure all the variables that affect the Council's legitimacy and moral authority, it is our conclusion that both could be elevated, with little effort on the part of Council members, by addressing some of the substantive and procedural problems identified in this study.

Notes

1. Ugland and Breslin are both PhD candidates in the School of Journalism and Mass Communication at the University of Minnesota. They would like to acknowledge the support and guidance of SJMC Associate Professor William Babcock.

2. According to the MNC's most current annual report, the Council currently receives funding from 54 print media companies,

including the *St. Paul Pioneer Press* and the Minneapolis Star Tribune Foundation, and 11 broadcast companies. The major Twin Cities broadcasting companies not contributing to the Council are Hubbard's ABC affiliate, KSTP, and Gannett's NBC affiliate, KARE.

3. Wallace delivered the 9th Annual Frank E. Gannett Lecture at the Freedom Forum Media Studies Center in New York City on December 4, 1996, in which he expressed his support for news councils. He followed up his speech by convening a brainstorming session of media and foundation representatives in February 1997.

4. Rulings on formal complaints heard by the full Council are recorded in the Council's written determinations, much like abbreviated court opinions. These include the names of the parties, the case number, the nature of the complaint, the media's response, the conclusions and reasoning of the Council, and the votes of individual Council members.

5. The numbered citations refer hereafter to MNC case decisions.

6. These were letters, access, advertising, political coverage, news coverage, attribution, accuracy, editorials, news releases, general applicability of laws, cooperation with law enforcement, identification of minors and crime victims, promotional spots, plagiarism, fairness, conflicts, polling, and newsgathering.

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