

The News Council: an alternative to libel

BY TOM PATTERSON

The Minnesota News Council is not a court and its hearings are not intended to serve as discovery for subsequent court action or, in the case of the electronic media, complaints to the FCC. To protect the newspapers and broadcasters who voluntarily cooperate in News Council hearings, complainants must first sign a waiver, by which they agree not to bring court or administrative action in the same complaint.

Lawyers and journalists can argue convincingly from any side of an issue, so there's no shortage of debate about the waiver.

One criticism says the council and its waiver just protect the media by keeping its mistakes and misdeeds out of court. In his syndicated column, William F. Buckley, Jr., in suggesting that a properly respected National News Council might have heard the Westmoreland and Sharon cases, says, "But — listen to this — before the council would agree to look at the complaint, the plaintiff had to agree that whatever the council decided, he would waive a libel action."

The Minnesota News Council receives plenty of complaints from aggrieved parties who are willing to sign away the right to court action for the possibility that the News Council will agree with them and publicly criticize the offending medium.

Some in the media ranks argue that the waiver probably wouldn't "stand up" in

court. We can't prove beyond a doubt that it would be upheld, because it hasn't been tested in court. But Buckley sounds as though he believes it would be held valid, and we think so, too.

The Twin Cities law firm of Doherty, Rumble & Butler donated a study of the waiver question to the council and attorney Patrick Garry wrote, "In general we have concluded that a properly executed waiver form bars a subsequent court action brought by the complainant and involving a claim based on the same subject matter as the claim heard by the council."

The opinion points out the requirements for a valid waiver: 1). That a person knowingly relinquishes a right; 2). That it be voluntary; and 3). That the person must intend to waive the right. The opinion further cites U.S. and Minnesota court cases to demonstrate that "a person may waive any right, constitutional or statutory, except as limited by public policy." (And it states that the News Council's waiver "does not offend any public policy").

So when a complainant challenges your own remedies or answers to a complaint, say, "I'll see you at the News Council," instead of "I'll see you in court." That would, if nothing else, save all concerned heaps of money. □

Westy saw the light too late

Editor's note: Ned Schnurman, a key staffer of the now-defunct National News Council, wrote the following letter to *The New York Times*, which loathes the very idea of news councils:

There is a remarkable irony to General William C. Westmoreland's remarks before the National Press Club in which he called for "something like a national news council" as an alternative to libel actions such as his own (news story, March 16).

There was a National News Council in existence when the dispute between General Westmoreland and CBS arose, but he did not choose to avail himself of its services. Instead, he filed his suit, creating the kind of showdown he now says he would like to see avoided in the future. Had the general gone to the National News Council, it would have been just the kind of case that would have kept that group from going under last year for lack of public or news recognition.

Two nagging questions remain, though. The News Council required that complainants forfeit their right to take court action before it would hear a complaint, in order not to be used as a discovery device. Would General Westmoreland have agreed to do that? And would CBS have cooperated with this voluntary group? Many in journalism, including you (*The Times*) refused to cooperate with the News Council on the ground that its work was an intrusion into their editorial processes.

We are still a long way from real progress in keeping journalistic disputes out of the hands of libel lawyers and the courts. □



Tom Patterson has been executive director of the Minnesota News Council for a year. He's a University of Minnesota journalism graduate and got his start as a reporter and photographer for *The Albert Lea Tribune*. He has had a long career in public relations, advertising and fund-raising.

Other past members of the News Council, starting with the original 20, and their affiliations at the time:

Jim Bormann, community affairs director for WCCO Radio;
Leon F. Cook, director of resources development for the American Indian Federation;
Earl D. Craig, Jr., professor in Afro-American studies at the University of Minnesota and chairman of the Minneapolis Urban Coalition;
Phil Duff, editor-publisher of the *Red Wing Republican Eagle*;
J. Edward Gerald, professor of journalism at the University of Minnesota;
Bettie Gibson, staff writer for the *Rochester Post-Bulletin*;
Bower Hawthorne, vice president for public affairs for the *Minneapolis Star and Tribune*;
James L. Hetland, Jr., vice president for urban development for First National Bank of Minneapolis;
Kenneth V. Hickman, editor of the *Grand Rapids Herald-Review*;
Lowell D. "Tip" Mills, editor and co-publisher of the *Hutchinson Leader*;

Malcolm Moos, president of the University of Minnesota;
Cecil E. Newman, editor and publisher of *Minneapolis Spokesman*;
Justice C. Donald Peterson, Minnesota Supreme Court;
Jerry Ringhofer, editor of the *Owatonna People's Press*;
Gordon Rosenmeier, attorney at law and former state senator from Little Falls;
Bob Shaw, manager, Minnesota Newspaper Association;
Bernie Shellum, staff writer for the *Minneapolis Tribune*;
Warren R. Spannaus, attorney general of Minnesota;
Gordon Spielman, editor of the *Union Advocate*; and
Mrs. William W. Whiting of Owatonna, an official of the League of Women Voters.

Others who have served on the Council are:

Wallace W. Allen, former associate editor of the *Star and Tribune*;
Douglas Amdahl, Minnesota Supreme Court Chief Justice;
Oscar Anderson, president emeritus of Augsburg College;
Mary T. Carlson, then associate publisher of the *Waconia Patriot*;

Donald P. Egert, vice president of Tri-State Broadcasting Group;
John R. Finnegan, executive editor of the *St. Paul Dispatch and Pioneer Press*;
Nancy Fushan, producer/reporter for Minnesota Public Radio;
Paul C. Hedberg, president of the Hedberg Broadcasting Group;
Deborah Howell, executive editor of the *St. Paul Dispatch and Pioneer Press*;
William Kling, president of Minnesota Public Radio;
Michael Kramer, then manager of the Minnesota Newspaper Association;
Terry McCollough, general manager of the *Brainerd Daily Dispatch*;
James Miles, business consultant;
Robert Provost, director of the Minnesota Insurance Information Center;
Frank Rodriguez, state representative;
Rod Searle, state representative; and
Gary Stevens, president of Doubleday Broadcasting Company.