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Repealed: Indigenous fight for an independent press

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Repealed: Indigenous fight for an independent press

The decades-long story of press freedom in the Muscogee (Creek) Nation

The Burrito

“It was a fucking fiasco.” — Angel Ellis

Everyone remembers the breakfast burrito.

Mvskoke Media reporter Angel Ellis sat at her desk on the first floor of their office on McKinley Street. Situated in the heart of the Muscogee (Creek) Nation in Okmulgee, OK, she was doing what she did most mornings — sipping on her coffee and skimming her emails for anything important from the last 24 hours. After eight years on the job, Ellis’ inbox was crammed with newsletters, leads and alerts related to her Native American tribe.

Around 8:30 a.m. two things happened. Her senior editor, Sterling Cospers, left the newsroom to heat up a leftover breakfast burrito while Ellis opened an email that would change everything. It was an

announcement for an emergency council meeting from the National Council, the tribe's legislative body that drafts and votes on laws.

After a minute of staring at the email, the panic set in. "Are we getting repealed?" she yelled to a colleague.

The vote for the emergency meeting would repeal the tribe's first and only free press act. It was scheduled for 6:30 p.m. that day in November 2018, giving them ten hours to prepare.

Immediately she wrangled together radio, broadcast and print staff members, but they needed Cospo and his burrito back in the office to make the most headway in combating the meeting.

With an audio recorder in hand, she called each representative. No one answered.

"I dialed up the National Council reps and asked if they were going to vote for this," Ellis said. "It was a fucking fiasco."

When Cospo returned with his burrito a few minutes later, he went into crisis mode. He spent the day in meetings and on the phone with lawyers, supporters and journalists. He wanted them to join him at the emergency meeting and put a stop to the repeal.

Cospo had worked at Mvskoke Media for nearly six years. He never worked anywhere else in journalism. He went from reporter to

manager and editorial board member. He fought for the Free Press Act three years earlier. He was going to give it his all.

But there was no lobbying his way out of this. Ellis and he both knew that the Muscogee (Creek) Nation of Oklahoma's national legislative council would repeal the act.

Cosper knew ever since he covered a blockbuster story about sexual harassment allegations that the government would retaliate one day. That day had finally arrived.

How one US Supreme Court ruling allows for Indigenous censorship

Indigenous journalists in the US like Cosper are often at odds with the tribal governments they cover. Many newsrooms are under the thumb of governments that hold the purse and editorial strings, putting freedom of speech and a free press at risk of censorship. This conflict of interest allows government officials to censor critical coverage, threaten budget cuts and salaries or harass and fire reporters for doing their jobs.

Freedom of speech and press is not hindered in all of the 574 federally recognized tribes in the US, but many of these tribal governments, like the Muscogee (Creek) Nation, can restrict newsrooms because of the Supreme Court's ruling in Santa Clara Pueblo v. Martinez in 1978, said attorney and former journalist Kevin Kemper.

The decision diminished the ability of an individual tribal member to bring a case to the federal court for an alleged violation of the Indian Civil Rights Act of 1968. This includes freedom of speech and press issues like those that Cospers experienced at Mvskoke Media.

The ICRA includes much of the US Bill of Rights and requires that tribal governments must enforce the act, but there are no federal enforcement provisions, Kemper said. Coupled with the Pueblo v. Martinez ruling, politicians can get away with ignoring certain rights that should be guaranteed.

Taking cases to federal court is made more difficult because tribal judiciaries are sometimes under the authority of the tribe's executive branch. In these cases, the principal chief can replace and appoint judges who are loyal to the appointer, according to Kemper.

The 1934 Indian Reorganization Act allowed Indigenous nations the ability to create constitutions. Even though the ICRA states that tribes cannot restrict freedom of speech, Kemper found that only 270 of the 574 tribes include such constitutional guarantees. However, this is up from a count of 64 tribes in 1998.

“There has been decades and decades of mistrust and bad feelings that have developed about media and how media does its job...” — Bryan Pollard, executive director of NAJA

To protect against censorship, journalism advocate groups like Native American Journalists Association encourage tribal governments to adopt freedom of press legislation, but because there are no tribal constitutional provisions and the judicial process is limited, these laws can easily be revoked, Bryan Pollard said, associate director at NAJA.

“A majority of federally recognized tribes protect free speech and free press in their constitution,” Pollard said. “But a much smaller number have developed the statutory protections to protect speech and press.”

Nearly half of the 456 respondents to a [2018 survey](#) of tribal media producers and consumers said that their tribal government tried to control the media with budgetary restrictions. Another half reported that government officials sought prior approval before publishing a story.

About 46 percent of media staff experienced intimidation or harassment by government officials, readers, listeners, families and friends, according to the survey.

Pollard believes many factors contribute to the lack of free press laws, but he points to one overarching theme: a deep distrust in the media.

For much of America’s history, journalism’s ranks were defined by white men who often misrepresented Indigenous communities, he said. This legacy left its mark on tribal governments who now seek a

quiet and controlled press while the Indigenous communities' reporters serve fear they will be misconstrued in a negative light.

“There has been decades and decades of mistrust and bad feelings that have developed about the media and how the media does its job that has been building in Indigenous communities, and sometimes I believe that this distrust is reflected within the tribe and toward tribal media,” Pollard said.

Native reporters often operate and are paid by funds provided by tribal governments, giving administrative officials the ability to threaten their paychecks if they run negative stories, he said. This allows politicians to control the flow of information, which can result in skewed stories that hide corruption or larger issues.

“If there’s no firewall between the editorial operation of tribal media and the political operation of the government, then you have a conflict of interest,” Pollard said. “You need to have legislation that creates that firewall and establishes in law the independence of tribal media.”

The Muscogee (Creek) Nation Council unanimously passed such a firewall in 2015 called the Free Press Act.

Three years later, the National Council easily repealed it.

The story that got too close for comfort

In December 2017, Cospers assigned his reporters a story that would change everything. National Council Rep. Dode Barnett accused the Speaker of the council, Lucian Tiger III, of alleged sexual harassment.

The story went off like any other. The reporters spoke to Barnett and government officials, but Tiger remained silent. His office never responded despite repeated emails and phone calls.

Not long after the story ran, Cospers received anonymous and off the record warnings from government employees and council representatives that some council members like Tiger wanted the Free Press Act repealed to limit Mvskoke Media's ability to cover them.

It took 10 minutes to kill a free press. That's how long it took for Tiger and his colleagues on the council to repeal the law. The vote was tight with seven voting in favor and six voting against. Some representatives weren't present, so as speaker of the council, Tiger cast the tie-breaking vote. The decision effectively merged Mvskoke Media with the government's public relations department.

Of the seven lawmakers who voted to repeal, Pete Beaver, Joyce Deere, Johnnie Greene, James Jennings and Tiger were in favor of a free press three years earlier when the law was first implemented.

“I feel like the newspaper should have more positive issues on the nation, not so many negative issues and that’s one reason I support it,” Jennings said at the meeting.

Tiger felt that Mvskoke Media didn’t meet journalism ethics and went too far in their coverage.

For the head of the executive branch, Principal Chief James Floyd, it was a matter of money. The tribe spent too much on Mvskoke Media. Repealing this bill would rein in that spending, he said during the meeting.

“Sometimes we don’t print the most flattering things, but we have always tried to be fair.” — Sterling Cospers

Cospers didn’t see it this way. A month earlier, the committee that secured Mvskoke Media’s budget passed it unanimously without question or his input.

At the same time, Cospers and his staff noticed that the government’s public relations team tried creating news stories rather than press releases. In doing so, the PR team hired duplicate staff to mirror his own newsroom, increasing overall government spending.

During the emergency council meeting, Cospers delivered his defense from a small group of newsroom reporters, staff and supporters.

“If you look out there, there has been a crisis of confidence in this government from time to time,” he told the council and Floyd at the emergency session. “Sometimes we don’t print the most flattering things, but we have always tried to be fair.”

He warned the council that there would be no official outlet for Muscogee (Creek) citizens. This gap would allow people to accuse officials and individuals without attribution or byline. It would disavow any public scrutiny of the tribal government and any laws, potentially hurting the public interest.

“I know that we have printed some stuff that some of you may have found alarming, but at least I can come like today and account for what I’ve done,” Coper said to the council.

After the meeting, Coper confronted Floyd who asked him not to print anything about the bill. Instead of arguing, Coper quit.

In the year that followed, nine others followed him out those same doors.

The creation of the Free Press Act

In the months leading up to the creation of the Free Press Act in 2015, Coper ran what he thought was just another legislation story,

but it soon became the subject of yet another attempt to censor his tribal government coverage.

The story that ran was about the former principal chief's plan to construct a \$22 million golf complex called FlyingTee at Riverwalk shopping mall in nearby Tulsa, OK. It was yet another plan in a long line of pricey projects for the tribe.

National Council Rep. David Nichols was against the golf complex for the start, but he didn't want word of his opposition to get out and ruin his chances of running for principal chief.

Nichols called Cosper, asking to pull the article. In exchange, Nichols would help create what would become the Free Press Act. It was a difficult decision, but Cosper said he agreed because his reporters needed the law.

"It was a political move," he said.

The government's attempt to censor news was nothing new for Cosper.

A year after he joined the outlet, the government installed a director at the top of Mvskoke Media's hierarchy who answered directly to the tribal administration. Below the director was the manager followed by the editor and reporters.

But for Cospers, what Nichols asked for was different and it paid off.

“I call it plausible deniability,” he said. Often the principal chief’s secretary called the director who passed on edits or demands to the manager and then editor.

Soon, the two worked together to pass the Free Press Act. While it wasn’t ideal, Cospers said it was the right step.

They wanted to take the basic journalism tenants from NAJA and the Society for Professional Journalists to craft the bill, instead, it pulled from existing legislation in the Cherokee, Osage and Navajo Nations.

The resulting act merged Muscogee Nation News newspaper, Native News Today television station and Mvskoke Radio plus the printing, graphic and website design teams into what is now known as Mvskoke Media.

“All news reported by Mvskoke Media shall be independent without undue influence of any political interest or interference,” the bill stated.

The law also encouraged Mvskoke Media to become financially independent by accepting advertisements, but Cospers found ads difficult to obtain and keep. Paywalls were out of the question because their circulation was too small, so they were forced to rely on tribal funds, he said.

The bill established an editorial board. As the newly minted manager, Cospers took one of the three seats followed by another newscaster, but the final seat sat empty. The principal chief never appointed anyone, but Cospers made the arrangement work.

Once the principal chief signed the bill into effect, many legal questions remained unanswered. Were the law's protections in place? If not, when would they take effect?

Floyd never answered Cospers's questions.

“I don't think that they expected us to do the tough work on them.” — Sterling Cospers.

At the same time, the 2015 tribal election was being held. It was a contentious election with plenty of stories. Political favoritism, misuse of HUD funding waivers was tied to the principal chief and a forensic audit was called to collect emails. The tribal council even called on the Carter Center to investigate the election — the center declined, according to a center spokesperson.

Each story tested the limits of the free press law.

Throughout Floyd's tenure as chief, there were crises of confidence as Cospers put it — scandals that put negative coverage on the government.

A council member was arrested for driving under the influence, health department layoffs and mismanaged HUD funding are just a few stories that no longer exist on Mvskoke Media's website but can be found in their 2016 and 2017 [archives](#).

"I don't think that they expected us to do the tough work on them," he said. "They never got their PR situation in order, and so it looked bad on them when we'd reach out and they didn't respond for comment."

With each story the Free Press Act soured in the eyes of the National Council, Cospers said.

A shackled press

"It was very shameful that I won an award for airing our dirty laundry." — Angel Ellis

Angel Ellis thought she would never return to sipping coffee and scrolling through emails at her Mvskoke Media desk when she was fired in 2010.

She wrote a corruption story about the misuse of tribal gaming funds that won her an award from NAJA, but her manager said that they couldn't spare the funds for her to attend the ceremony.

“Everybody knew I’d won this award,” Ellis said, a member of the Muscogee (Creek) nation. “It was very shameful that I won an award for airing our dirty laundry.”

When she confronted her manager, she told him that he could just tell her instead of going through her editor.

He fired her for insubordination, she said.

“He could have just told me because he had conversations with me before that people don’t like this kind of coverage and that it would be bad for me,” Ellis said.

But eventually, Ellis returned. She was rehired in 2018 after the Free Press Act was passed — just in time for its repeal.

After the tribal government repealed the law, Mvskoke Media was organized under the executive branch again. The newsroom wasn’t encouraged to be financially independent either, Ellis said.

Not long after the repeal, the tribal government passed a new free press law, but she said it was only a token bill in an attempt to repair the administration’s public image.

“The secretary began telling us, ‘Don’t publish that story, publish this one,’” Ellis said. “He edited my stories.”

As the weeks went on, Ellis documented evidence of each edited article and editorial overreach. She wanted to appear before the council to state her case — the new bill was an illusion designed to create the appearance of a free press where there wasn't one.

Ellis wouldn't appear in an executive session, she said. Executive sessions can be redacted, so there was no guarantee that what she told the council would be available to the public.

Eventually, she wrangled together a majority of councilmembers to hold an open session in early 2019. The day she was scheduled to speak, she came back from NAJA's offices in Norman, Ok, with a documentary crew that wanted to observe the effect of a free press on the 2019 tribal election, she said.

When she stood up in front of the council, she told them and showed them everything.

“Not only have they censored us but several people in this room right now have put pressure on my editor to accept political advertising after the deadline,” she told the council.

Sitting at the table was Speaker Lucian Tiger III who cast the deciding vote to repeal press freedoms. Ellis said that she didn't name any names, but felt his eyes boring into her.

After the “confrontational” meeting, Tiger pulled her aside, “detaining” her for about two hours of questioning, she said.

Ellis characterized the conversation with Tiger as intimidating. He gave her the sense that he had the power to make things happen, she said.

During the two hours, Ellis remembers four or five people checking in on her. To her, it was a sign that she was skating on thin ice.

“Then he flipped the switch,” Ellis said. He tried to bribe her, offering her a promotion — pay raise — to become the director of Mvskoke Media so long as she promised positive coverage.

She declined, but she wasn’t fired.

Return of a free press

Soon after Ellis’ encounter with Tiger, the Muscogee (Creek) Nation began preparations for its next general election — including the next principal chief race.

Months before the election in February, Second Speaker David Hill sponsored and passed the Shield Act through the National Council. Principal Chief James Floyd signed it following months of public [backlash](#) over his part in repealing the Free Press Act.

The Shield Act guarantees Mvskoke Media's editorial independence, according to the [legislation](#). Only one representative voted against the [bill](#).

At the same time, Hill and Floyd began campaigning to be the next principal chief. It's unclear whether their decisions to support the Shield Act was politically motivated with a looming election, Ellis said.

Regardless of the motivation, she said that the act allowed her newsroom to report on the 2019 general election even though their legal protections were still limited.

The election the two politicians participated in was one of the most contentious in the tribe's history, she said.

Also on the ballot was the speaker of the council Lucian Tiger III and a former principal chief who pled guilty to one count of bribery in a federal court. The tribe's attorney general [called](#) the election "fatally flawed."

Tiger challenged the tight Sept. 21 primary elections results, [claiming](#) that the machines used to scan absentee ballots did not work properly and that some ballots were cut in half by the envelope opener used by the election board.

The tribe's Supreme Court nullified the election results stating that a seal on an absentee ballot box was damaged, indicating someone tampered with it. A new primary election was scheduled for Nov. 2.

After the new primary election and Dec. 14 General Election — and with Carter Center observers ensuring it went smoothly — Hill came out on top with 65 percent of the vote. It was a landslide, Mvskoke Media [reported](#).

“I think that [Lucian Tiger III's] involvement with repealing free press had a significant impact on the reason he didn't do so well in the election,” Ellis said.

As the election moved forward, there were two issues on the ballot for Ellis — a constitutional amendment protecting a free press and renewing the 2015 Free Press Act. The amendment was [rejected](#) earlier in 2019.

“The tribal government is really hesitant to start altering the constitution,” she said. “All the candidates said that we want a free press, but let's not mess with the language of our Constitution.”

Nearly eight months later after the contentious election, the newly elected principal chief, Hill, entered the National Council's chambers. He wore a black medical mask, a black blazer and a black tie and sat between two plexiglass walls as he signed a new law into effect.

Titled the “Independent Muscogee (Creek) Press,” it passed unanimously.

The law puts much of the first free press law back into place while ensuring press protections at the legislative level and keeping Mvskoke Media safe from government influence.

However, a motion to amend the law was approved 10–5. The amendment removed language allowing Mvskoke Media staff to pick one of their board members — a protection that was included in the 2015 law. Instead, the principal chief and the National Council would appoint the two members who would select the third seat.

For councilmembers like Joyce Deere who supported this law but voted to repeal press freedoms two years ago, the bill has been a “work in progress.”

Ellis covered the event and snapped the photo that heads the [article](#) titled “Free Press Returns to MCN.”

“I just feel like that’s a good thing and everyone’s had an input, it’s come together, and we have a good document,” she told Ellis.

But Ellis, like her former editor Sterling Cospers, is skeptical. Without a tribal constitutional amendment, the law can always be repealed without any repercussions until the next election.

Cosper is content with the law, but he believes that Muscogee (Creek)'s politicians need to prove that this wasn't another political move to gain votes.

"It's clear that the voting public wants a free press," Cosper said. "But it's not clear what the government's intentions are."