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ABSTRACT

A study used a new attitude and behavioral scale for measuring the chilling effect--an undercurrent of fear with respect to publishing decisions--and to determine the impact, if any, of threatened or actual libel suits on community newspapers. The editors and/or publishers of all 167 newspapers in Kentucky with a circulation of less than 50,000 were surveyed by mail, with 69 completed questionnaires returned. Results indicated that almost 70% of the newspapers had been threatened at least once within the last five years, and approximately three-fifths of them carried libel insurance. These findings suggst that community newspapers are indeed chilled by libel and that even the threat of a libel suit may chill smaller newspapers. (Two tables of data are included; 46 references and one appendix containing the chilling effect scale items are attached.) (SR)

CHILLING THE MESSENGER: THE IMPACT OF LIBEL ON COMMUNITY NEWSPAPERS

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This study was designed to develop an attitude and behavioral scale for measuring the chilling effect and to determine the impact, if any, of threatened or actual libel suits on community newspapers. The editors and/or publishers of all 167 newspapers in Kentucky with a circulation of less than 50,000 were surveyed by mail. The findings, based on 69 completed questionnaires suggest that even the threat of a libel suit may chill smaller newspapers.

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Introduction

> Certainly the possibility of a lawsuit inspires a healthy fear in many of us. We exercise great caution to check and double check police records. We file and keep any notes we think could be used at a later date and take great care not to misquote and frequently double check information if the story deals with a sensitive topic. However, if we are certain of our sources and information, we print regardless of threats. If we aren't so sure, we don't print.
>
> -- Comment from a weekly newspaper publisher/editor

The publisher of this community newspaper appears to be adhering to standards that all newspapers, regardless of size, should probably adopt. Few, if any, editors would actually allow the threat of a libel suit to impede publication of an important, accurate story. At the same time, this publisher's first sentence reveals an undercurrent of fear, or a "chilling effect." Cautious, accurate reporting is not always enough to avoid a libel suit. As another publisher noted, "At this newspaper, the people who threaten to sue admit that what is printed is accurate, but they just didn't want it in the newspaper."

The cost of successfully defending a libel suit drains what are usually rather limited financial resources from a weekly or small daily newspaper. Even the possibility of having to defend a meritless suit creates a chill because of the potential costs. Publishers and editors are likely to think twice about publishing a story that may result in a suit even if they feel certain they could win the case in court. Being owned by a profitable chain and having libel insurance may not be enough to relieve the

chill. A libel suit, regardless of its merits, may mean higher insurance premiums.

One publisher summed up the dilemma small newspapers often find themselves in: "No small weekly can afford to be sued. However, no small paper can survive without properly covering its market, thus the chance." Some publishers are less willing to take that chance--they are more "chilled"--than others.

March 20 of this year marked the 25th anniversary of the most important Supreme Court decision ever rendered regarding libel--New York Times v. Sullivan. No doubt this anniversary will stimulate renewed efforts to study the impact of the case and its progeny on libel laws, but we should also reflect on whether libel laws enacted in the wake of Sullivan continue to chill our First Amendment rights.

While dozens of court decisions have shaped current libel law, few empirical studies have looked at the chilling effects on newspapers and, apparently, there has been no research dealing specifically with community newspapers, which, according to Padgett (1981, p. 4), are "primarily involved in the dissemination of local news to a largely local audience."

The purpose of the present study is to determine whether or not libel has a chilling effect on community newspapers and, in the process, to develop a scale for measuring the chilling effect. In addition, the relationship between chilling effect and selected variables is explored.

Literature Review

Any examination of libel in this country must begin with a discussion of New York Times v. Sullivan (1964), which constitutionized American libel law by requiring state libel laws to be in line with First Amendment guarantees of free speech (Smolla, 1986, p. 27). The case stemmed from a suit by a Montgomery, Alabama, city commissioner over an advertisement which he claimed defamed him. Smolla (1986) notes that the suit was one of almost a dozen by elected officials in the South against the New York Times designed to punish the paper for its coverage of the civil rights movement. An Alabama trial court found the material libelous per se and the jury awarded the commissioner, L.B. Sullivan, $500,000. The Alabama State Supreme Court affirmed the award, but the U.S. Supreme Court reversed, holding that a public official is prohibited from recovering damages for a defamatory falsehood relating to his official conduct "unless he proves that the statement was made with 'actual malice'--that is, with knowledge that it was false or with reckless disregard of whether it was false or not" (New York Times v. Sullivan, 1964, at 279-280).

In 1967 the U.S. Supreme Court extended the actual malice standard to public figures in a decision combining two separate cases (Curtis Publishing Co. v. Butts and Walker v. Associated Press). In a confusing 1971 decision, Rosenbloom v. Metromedia, a plurality of the Supreme Court held that the New York Times rule applied not only to public officials and public figures but also

to private citizens involved in matters of public interest. However, this plurality opinion did not establish a precedent and, in fact, was specifically rejected in Gertz v. Welch (1974).

What resulted from these decisions, according to Sanford (1987), was a climate in which the press "won virtually every libel lawsuit prior to trial on a motion for summary judgment"[1] (p. 3). That situation dramatically changed in the wake of the Supreme Court's decision in Gertz v. Welch in 1974, although the full impact was not felt until a few years later (Sanford, 1987).

In Gertz the Court rejected the subject-matter test set forth in Rosenbloom and established a standard based on the plaintiff's status. The Court ruled that public officials and public figures in libel actions would still have to prove actual malice to recover any damages, but it left the states relatively free to enact legislation to protect private citizens from libel while specifying that libel suits brought by private citizens but involving issues of public concern must require at least proof of negligence. In other words, the Court reaffirmed its prohibition against strict liability libel laws. Gertz also enunciated rules regarding damages, forbidding recovery of presumed or punitive damages without a showing of knowledge of falsity or reckless disregard for the truth (actual malice). The Court in Gertz also distinguished statements of fact from statements of opinion and held that opinions are privileged: "Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the

conscience of judges and juries but on the competition of other ideas" (at 339-340).

In Gertz the justices offered no useful guidance on awarding damages against the press (Dill, 1986).

> Allowing compensation for embarrassment, humiliation, and suffering has invited juries to spend in accordance with their sympathies. Allowing punitive damages, uncontrolled but for a nebulous caveat that they be reasonably related tc the harm and not excessive, has invited vengeful, crippling punishment of the press. (Dill, 1986, p. 27)

In the wake of Gertz, juries have made multimillion dollar awards in libel suits. Judgments have included $4.5 million against the San Francisco Examiner, $1.6 million against the National Enquirer, $9.2 million against the Alton (Ill.) Telegraph, $4.5 against the Philadelphia Inquirer, and $3.5 million against the El Paso Times (Hughes, 1985; Massing, 1985). A federal trial court in Las Vegas in 1986 awarded entertainer Wayne Newton $22.3 million in a suit against NBC involving a 1980 broadcast which linked Newton with an organized crime figure. In January 1989, the judge reduced the award to $6 million; NBC has appealed.

Chances are high that media defendants will prevail on appeal. Franklin (1980, 1981) found that plaintiffs win on appeal only 5 percent of the time. Bezanson, Cranberg and Soloski (1987) examined virtually all of the defamation suits settled between 1974 and 1984 and found that plaintiffs prevailed in 11 percent of suits against media defendants. Public figure plaintiffs prevailed in 10 percent of cases, while private plaintiffs won in 14 percent of all cases settled (p. 121).

Despite the odds that media defendants will win, large libel awards have had a chilling effect on media (Smolla, 1986; Hughes, 1985; Bull, 1987; Massing, 1985; Stein, 1987). According to Smolla, "...the mere threat that one of these huge awards will make it through the legal maze untouched hangs like a litigation time bomb over writers, publishers, and broadcasters of every variety from Penthouse to the New York Times" (1986, p. 6). To find out if a chill existed, Massing interviewed more than 150 reporters, editors and media lawyers at news organizations ranging from small weeklies to media giants. He concluded, "A chill has indeed set in" (1985, p. 31).

Two empirical studies have dealt with the effect of libel cases on editors and reporters. Anderson and Murdock (1981) sent a mail questionnaire to 150 managing editors nationwide. One hundred three responses were received, with 58.3 percent of them from newspapers with a circulation of 50,000 or more and 41.7 percent from newspapers with less than 50,000 circulation. Although 82.5 percent of the editors said they were not "less aggressive" when deciding to print potentially libelous passages, 74 percent agreed they were "increasingly careful" when editing the stories (p. 527). Statistically significant differences were found between the two circulation categories. Approximately 77% of the editors of the smaller circulation papers disagreed with the statement that their newspapers would be "less aggressive" in deciding whether to print potentially libelous material, compared to 88% of the larger circulation papers. Anderson and Murdock

(1981) concluded that the study somewhat confirms a concern that editors who work for smaller circulation papers that can less afford costly, extended litigation might opt for "safer journalism" (p. 528).

Sixty-eight percent of the editors said their newspaper had been sued during the five years prior to the 1980 study. Most of those suits (85.5%) were for libel. About 86% of the larger circulation papers had been sued, compared to about 41% of the smaller circulation papers (p. 528).

A study of 80 persons attending an Investigative Reporters and Editors convention in 1983 suggested that libel has begun to affect the way journalists do their jobs (Labunski and Pavlik, 1985, p. 19). Eighty percent of those surveyed said there was at their organization at least a moderate level of concern about being sued for libel. Half of these said the concern was at "a very high level." Asked to react to a statement indicating stories were not being covered that ought to be covered, almost two thirds of those answering agreed at least in part. One fifth indicated there had been at least one occasion in which their readers or viewers were not informed about something important because the reporter or his/her organization was worried about being sued. Over half reported the concern at their organization about being sued for libel had affected decisions to cover certain stories or the manner in which they were presented. Almost 10% worked for organizations which had lost at least one libel suit, while over 25% reported libel suits pending against

their organization (p. 15-16). (While this study has problems with validity because respondents were self-selected, it does raise questions which should be addressed in exploring the effects of libel on community newspapers.)

Libel suits are directed not only against major media outlets but also against smaller, community newspapers. A survey of 175 editors conductd by the Iowa Law Review reported the rate of libel suits per newspaper based on circulation categories. Of the 391 suits reported between 1975 and 1985, 157 were filed against 33 newspapers with circulations over 50,000 and 234 were filed against 142 newspapers with less than 50,000 circulation.

(Table 1 About Here)

Smaller media may not have the resources to defend a libel suit. To small media outlets without great assets, "The threat of a huge libel judgment can be psychologically chilling; they must defend libel actions under the peril of bankruptcy or shutdown if they lose" (Smolla, 1986, p. 74). The case of the Alton Telegraph provides a chilling lesson: "however painful a successful libel action may be to CBS or the National Enquirer, it can be fatal to a small media outlet" (p. 74).

The Alton Telegraph in Alton, Ill., was faced with a $9.2 million award because of an unpublished memo written by two of its reporters. The memo, sent to a U.S. Justice Department investigator, outlined the reporters' suspicions that a local builder, James C. Green, was receiving laundered Chicago Mafia money in the form of loans. Green sued after bank inspectors

forced the savings and loan to cut off Green's credit. A jury found the contents of the memo to be false and awarded Green $9.2 million, including $2.5 million in punitive damages (Green v. Alton Telegraph Printing Co., Inc.). The newspaper declared bankruptcy. The plaintiff had died before trial. Ultimately, the plaintiff's family and the newspaper settled out of court for $1.4 million.

After the suit was settled, the paper's editor/publisher told the Wall Street Journal, "All the ideals and principles in the world don't mean a damn when it comes down to hard economics." When the newspaper received a tip about alleged misconduct in the sheriff's office, the editor was quoted as saying, "Let someone else stick their neck out this time (Curley, 1983, p. 1).

Libel lawyer Sam Klein told the 1987 national conference of the Investigative Reporters & Editors that in the Philadelphia area where he works, the chill factor has affected a number of smaller publications. According to an account of the meeting in the journalism trade journal, Editor and Publisher:

> One of his own clients, a small weekly owner, has gone from putting out an aggressive investigative paper to publishing one that consists almost entirely of weddings and other social announcements.
>
> Since being a defendant in several libel suits, which he won with one exception, this publisher "won't print anything that could lead to a defamation suit," Klein reported. "And he's making a hell of a lot more money now than he did when he was doing investigative reporting." (Stein, 1987, p. 10)

While media prevail in most libel suits, the cost of defending such suits definitely has a chilling effect. "Whether a

suit is settled, won, or lost, the legal fees alone can be chilling. From the media's perspective, the 'big chill' in libel litigation comes more from legal fees than from jury verdicts--for most jury verdicts are overturned on appeal, while the legal bills come anyway" (Smolla, 1986, p. 74).

Anderson (1975) argued that neither Sullivan nor Gertz was successful in reducing press self-censorship. While attempting to advance, enhance and preserve maximum public discussion by reducing incentives for press self-censorship, the privilege established in Sullivan and reaffirmed in Gertz "usually provides no protection until both parties have incurred the full expense of trial, and often of appeals as well" (p. 479).

Even when publishers or editors are confident a story would eventually be vindicated in court, they may not publish it because of fear of how a jury may apply the law. "Or the publisher just may not want to bear the costs of a trial" (Hughes, 1985, p. 544).

Large legal fees spent to defend against an unsuccessful suit can have a dramatic impact on media, particularly smaller community newspapers. The Baker (Ore.) Record Courier, a 5,000 circulation weekly, spent $6,000--nearly half of the previous year's gross profit--in legal fees in winning dismissal of a $1 million libel suit (Curley, 1983, p. 1).

Homer Marcum was sued for libel seven times from the time he started The Martin Countian in Inez, Ky., in 1975 until he sold the paper in January 1989. He won the only suit that went to

trial. Five were dismissed and Marcum was granted a summary judgment in the seventh. Marcum (1988) estimated his legal expenses at more than $50,000. "I've never lost, but danged if I can afford to keep winning" (Gersh, 1986, p. 18).

Marcum told Columbia Journalism Review in 1985, "I'm litigation-weary. Over the last nine years, I've had to spend an average of one day a week on court-related matters--giving depositions, looking for records, and the like." As a result, "I'm not as aggressive as I used to be. When I write, I second-guess myself so much that the words themselves come to seem criminal" (Massing, p. 34).

All seven of the libel suits against Marcum were filed by a former county attorney either for himself or on behalf of a client. The attorney, John Kirk, was also publisher of The Mercury, a competing newspaper in the county. The two publishers were ever embroiled in disputes over legal advertising and other matters (Marcum, 1988).

Marcum decided to sell because his newspaper was "near financial collapse" (Marcum, 1988).

> After spending 13 days in one month in depositions, I finally came to conclude there might not ever be an end to this, and here I am 40 years old and I'd rather do other things than spend my life in dispute with this guy in court. And mental anguish is the biggest headache of it all. I would not repeat the last 15 years for any amount of money because of the mental anguish (Marcum, 1988).

Massing (1985) also found that it is not necessary for a newspaper to make a mistake in order to be sued. The intent of many suits seems be be harassment and intimidation. Between 1974

and 1984, The Charleston Gazette in West Virginia was sued for libel 25 times. Of the 13 pending in 1984, 10 were brought by public officials, candidates and attorneys (p. 33).

Of 497 defamation cases brought against the news media between 1974 and 1984, 61 percent were filed by public figures. Public officials were plaintiffs in 119 (24 percent) of all cases (Bezanson, Cranberg and Soloski, 1987, p. 100). The study also classified libel suits as petty or non-petty based on the facts in the case. The researchers found 81 percent of all suits against media were classified as petty. Eighty-four percent of suits filed by public plaintiffs were classified as petty, compared to 76 percent of those filed by private plaintiffs (p. 100, 111). Ninety-five percent of cases in the petty category were eventually won by media defendants. In contrast, 45 percent of non-petty cases were won by plaintiffs (p. 109).

Bezanson, Cranberg and Soloski (1987) also found that public officials and public figures appear to sue more often for nonfinancial reasons. Their objectives "tend to relate to vindication of reputations and correction of falsity, as such. Their suits, in short, may tend more often to relate to public or political ends rather than to wholly personal or financial harm" (p. 79, 111).

Marcum contends that the libel suits against him were intended to harass and put him out of business (Gersh, 1986). Marcum's comments to Columbia Journalism Review in 1981 foreshadowed what was to become of his newspaper eight years

later: "I don't see how there can be any doubt that these people are trying to drive us out of business by litigation. It's harassment by litigation. If anything puts me under, it will be these suits. I don't think they should be able to use the courts to stifle freedom of the press." (Pearce, 1981, p. 64).

The courts have deplored the use of libel suits to harass media. In Liberty Lobby v. Dow Jones, the U.S. Court of Appeals for the District of Columbia Circuit noted:

> This suit epitomizes one of the most troubling aspects of modern libel litigation: the use of the libel complaint as a weapon to harass. Despite the patent insufficiency of a number of appellant's claims, it has managed to embroil a media defendant in over three years of costly and contentious litigation. The message to this defendant and the press at large is clear: discussion of Liberty Lobby is expensive. However well-documented a story, however unimpeachable a reporter's source, he or she will have to think twice about publishing where litigation, even to a successful motion for summary judgment, can be very expensive if not crippling. (14 Med. L. Rptr. 2261-2262)

Media defendants have begun fighting back against frivolous libel suits. Riley (1982) examined the ways in which media can strike back. He concluded that at that time the interests of defendants in meritless suits were not well-protected and the courts were "taking a highly conservative stance" toward countersuits (p. 572).

The first case in which the media successfully struck back and recovered at least part of the legal fees was Nemeroff v. Abelson. The U.S. Court of Appeals for the 2nd Circuit found in Nemeroff that the award of attorneys' fees was warranted in a case where the plaintiff and his attorney had continued a lawsuit without any factual basis.

In several other cases, state and federal courts have awarded attorneys' fees to defendants who prevailed in libel suits (DeRoburt v. Gannett Co., Brueningsen v. Sparks, Martocchio v. Chronicle Broadcasting Co., Kirk v. Marcum). Marcum recovered about $21,000 in legal fees and punitive damages through his countersuit against Kirk (Marcum, 1988). The courts have also denied award of attorneys' fees to defendants in cases in which the plaintiff was apparently motivated by good faith (Valento v. Ulrich, 1987).

In addition to recovery of attorney's fees, Riley outlined other potential remedies for meritless libel suits including filing suits for malicious prosecution, wrongful civil proceedings and abuse of process (1982, p. 569). The courts e found against media in two recent suits. In Stevens v. Independent Newspapers Inc. (1988), a Delaware Superior Court ruled that a libel plaintiff's suit against a newspaper for statements that were true and for protected statements of opinion did not constitute abuse of power. A California appeals court granted a summary judgment against newspaper reporters who had filed a malicious prosecution action against the attorneys for libel plaintiffs whose action was resolved by settlement. The court found the libel plaintiffs had filed the suit in good faith (Walsh v. Bronson, 1988).

Several recent cases beginning with Bose Corp. v. Consumers Union of the United States, Inc. (1984) indicate a move toward more protection for the press in libel suits. In Bose the U.S.

Supreme Court reaffirmed that appeals courts must judge First Amendment issues in cases as if trying them for the first time. "The Court's reaffirmation of the constitutional importance of de novo review to ensure that the actual malice standard has been correctly applied was of enormous value to journalists, who lose heavily with juries but see 70 percent of the verdicts reversed on appeal" (Dill, 1986, p. 30). Ollman v. Evans (1984) provided increased protection for opinion. However, in a 1985 decision, the Supreme Court appeared to cut back again on First Amendment protection for defamatory material. In Dun & Bradstreet v. Greenmoss Builders, Inc., the Court ruled that protections for defamatory material set forth in Gertz apply only to matters of public concern.

Bull (1987) argued that the U.S. Supreme Court's decision in Philadelphia Newspapers, Inc. v. Hepps (1986) "could go a long way toward reversing the chilling effect newspapers are feeling from libel suits--a chill that threatens to become a deep freeze that severely curtails the free flow of information to the public" (p. 785). In Hepps the Court held that plaintiffs suing for defamation in cases involving matters of public concern must prove the statements are false (1564). It shifts the burden of proof from the media to the plaintiffs. Bull contents that "for publishers seeking protection from ruinous libel awards, Hepps could be a godsend" (p. 791). However, Hepps does not deal with the issue of determining whether a story deals with a matter of public concern (Bull, 1987, p. 788). Nor does it address the

problem of huge legal fees amassed in defending against suits that are eventually decided in the media's favor.

Another 1986 U.S. Supreme Court decision, Anderson v. American Liberty Lobby, has made it more difficult for public officials and public figures to survive a summary judgment. In a 6-3 decision written by Associate Justice Byron White, the Court held that a judge must grant a media defendant's motion for summary judgment in a libel case involving a public official or public figure unless the plaintiff can demonstrate prior to the motion by clear and convincing evidence that a reasonable jury could find actual malice on the part of the defendant. This ruling reinforces a tough standard for public official/public figure plaintiffs since it imposes the same evidentiary standard ("clear and convincing evidence") at summary judgment as at trial. Thus it goes a long way toward removing some of the chill from libel suits since it is unusual to find clear and convincing evidence that a reporter or editor acted with reckless disregard for the truth or with knowledge of falsity.

A more recent U.S. Supreme Court case, Hustler Magazine and Larry C. Flynt v. Jerry Falwell (1988), was a strong blow against the attempt by some public figure/public official plaintiffs to circumvent the tough standards for libel by suing for the tort of intentional infliction of emotional distress. In a unanimous decision written by Chief Justice William Rehnquist, the Court reversed a $200,000 jury award to Falwell by holding that Falwell must show actual malice for intentional infliction of emotional

distress, which the Court said Falwell had failed to do. In other words, the Court said that the actual malice standard for public officials/public figures suing media defendants applies to both libel and intentional infliction of emotional distress. While not a staple of most community newspapers, political cartoons and caricatures such as the parody featured in Hustler play a prominent role in public debate and, therefore, enjoy full First Amendment protection, according to the Court.

Methodology

A questionnaire, cover letter and self-addressed stamped envelope were mailed to all 167 newspapers with fewer than 50,000 circulation listed in either the 1988 Kentucky News Media Directory or the 1989 Newspaper Yearbook & Directory of the Kentucky Press Association. Letters were addressed to the publisher or the editor and requested that the person in charge of the day-to-day news operation of the newspaper complete the questionnaire. Sixty-nine questionnaires were returned March 1-16, 1989, for a 41 percent response rate.[2]

Chilling effect was assessed by a scale specifically developed for the current study. Eleven items included in the questionnaire were worded to clearly indicate the presence or absence of a chilling effect. A five-point Likert-type scale was used with the most chilling effect response being scored 5. Responses to the eleven items were totaled and an item analysis performed. Eight of the eleven items significantly distinguished between respondents scoring in the top and bottom quartiles of

total scores and were included in the final chilling effect scale (see Appendix). Responses to each of the eight items as well as the total scale score were analyzed.

In addition, attitudes toward libel insurance were measured by the following three Likert-type items: (1) Libel insurance is a necessity for newspapers today, (2) For most newspapers the size of mine, libel insurance is too difficult to obtain, and (3) For most newspapers the size of mine, libel insurance is too expensive. Strongly agree responses were scored 5 and strongly disagree responses were scored 1.

Three more Likert-type items measured other attitudes about libel. They included: (1) For most newspapers the size of mine, defending a libel suit is an unfair financial burden, (2) If a newspaper is unsuccessfully sued for libel, it should file a countersuit to recover legal fees, and (3) Most people who threaten to sue for libel would be satisfied by a retraction or apology by the newspaper. Again, strongly agree responses were scored 5 and strongly disagree responses were scored 1.

Respondents were also asked if their newspaper had been threatened with a libel suit in the past five years, had been sued in the past five years, had libel insurance, and if they personally had used the state libel hotline or had attended one or more libel seminars. A final group of questions dealt with circulation; population of the community served; frequency of publication; respondent's gender, position with the paper, length of employment, and time in current position; ownership of the

newspaper (i.e. individual, family or local corporation versus regional or national media chain); and organizational affiliations of the newspaper.

Newspaper circulation ranged from 1,500 to 48,000, with a mean of 7,650. More than half of the newspapers (56.5 percent) had a circulation of 6,000 or less. Forty-one were weeklies. About half were published in areas with a population of 16,000 or less.

Thirty-nine percent of the newspapers were owned by individuals or families, 27.5 percent by local corporations, 26 percent by national media chains and 4 percent by regional media chains. Almost 95 percent were members of the state press association.

A third of the respondents (33 percent) were editors, 25 percent were publisher/editors, 19 percent were publishers and 15 percent were managing editors. More than half had held their current position for five years or less and one third were female.

Results

Almost 70 percent of the newspapers had been threatened at least once with a libel suit in the past five years. More than half (51 percent) had been threatened by a private citizen, 36 percent by a public figure (other than an elected official), 30 percent by an elected official, and 15 percent by a business. Nine (13 percent) of the papers had been sued a total of 13 times in the past five years. Five suits were filed by private

citizens, five by public figures (other than elected officials) and three by elected officials.

About three-fifths of respondents (62 percent) reported having libel insurance. Exactly half of respondents reported using the state press association's hotline at least once, and almost two-thirds (64 percent) had been to a seminar or workshop which dealt with libel in the past five years. These findings indicate that libel is an important concern for community newspapers.

Correlations among selected variables and chilling effect/libel attitude variables are presented in Table 2.

The findings suggest that even the threat of a libel suit has a chilling effect on community newspapers. Respondents who had been threatened only once had a significantly higher chilling effect score than did those who had not been threatened.

The feeling that most newspapers the size of theirs had been sued for libel was positively correlated with respondents having been threatened themselves.

Perhaps due to the small sample, no statistically significant relationship was found between chilling effect and a newspaper actually having been sued.

A significant positive correlation was found between chilling effect and being insured for libel. Those surveyed who believe most newspapers the size of theirs have been sued for libel are more likely to have libel insurance, as were larger-circulation newspapers ($r = .25$, $p \leq .05$) and those owned

by regional and national chains ($r = .29$, $p \leq .05$).[3] Actually having been threatened with a libel suit and having libel insurance were not significantly correlated ($r = .14$, n.s.).

Chilling effect was found to be positively related to attending libel seminars. Those respondents who view libel as a daily concern for newspapers are more likely to have attended a libel seminar in the past five years. While there was general agreement that a newspaper should not retract an accurate story just to be on the safe side if someone threatens a libel suit, those who had attended at least one seminar were even more likely to oppose retraction.

The findings indicate that libel is perhaps more chilling for small newspapers today than for larger ones. Newspapers with small circulations were significantly more likely to disagree with the statement, "In general newspapers my size of mine can be <u>less</u> concerned today about libel suits than they were five years ago." Smaller-circulation newspapers were more likely to agree that the possibility of being sued for libel has a "chilling effect" on community newspapers. Despite the small sample size, a significant relationship ($r = .27$, $p \leq .05$) was found between circulation and having actually been sued for libel.

Papers owned by individuals, families and local corporations were more likely than those owned by regional or national media chains to characterize a libel suit as an unfair financial burden and libel insurance as too expensive. Those owned by regional or

national media chains were more likely to have been sued (r = .38, $p \leq .01$).

Experience appears to influence respondents' perceptions regarding libel. The longer an individual has worked for the paper and held his or her current position, the more likely he or she is to disagree that libel is less of a concern today than five years ago. Also, newer publishers or editors are more likely to believe most newspapers the size of theirs have never been sued for libel.

Conclusions

The findings indicate that community newspapers are indeed chilled by libel. The chill, as measured by the chilling effect scale, is greatest for smaller, locally-owned newspapers and for those which have been threatened even once with a libel suit. While the chilling effect scale developed in this study appears to be generally reliable, it will probably need to be refined for use with a national sample.

Libel threats appear to be a constant reality for most community newspapers. This probably contributes to the perception that libel insurance is a necessity and to use of the state press association hotline and attendance at libel seminars.

A libel suit does not have to be filed to create a chill. Even one threatened suit is sufficient to chill most community newspapers.

Some media critics mourn the decline of independent small

community newspapers, but the results of this study indicate that one positive effect of acquisition of community newspapers by chains may be a lessening of the chilling effect.

Not surprisingly, publishers and editors develop a greater fear of threatened libel suits the longer they work for a particular community newspaper.

While these findings provide some indication of the nature and scope of the chilling effect of libel on community newspapers, a more comprehensive national study is needed.

First Amendment attorney Bruce Sanford reported that a 1988 study found a decline in new libel cases. Most media attorneys believe that "growing pains associated with the development of libel law have at last subsided," according to Sanford, (1988, p. 63) and that access, not libel, will be the issue of the 1990s. But if this study is any indication, libel continues to be a major concern for community newspapers. It is well-known that community newspapers serve a different audience and differ significantly in content from larger newspapers, but the assumption has been that legal issues are essentially the same for both. Apparently they are not.

One publisher responding to this study provided a glimpse of how the threat of libel can affect the day-to-day operations of a community newspaper. She noted that her newspaper competes with a paper she believes is heavily influenced by local officials. According to her:

Local officials, who never had a hard-hitting newspaper in this county before (this newspaper) was established five years

ago, would have sued long before now if they could have found a reason. They feel if they could get rid of (this newspaper), they could return to "business as usual" with no one knowing anything....When officials have a newspaper in their back pockets, it makes it hard as hell for a real newspaper to operate. They go over (this newspaper) with a fine tooth comb every week looking for a reason to sue. We've kept them at bay, so far, by staying on our toes and providing fair, accurate articles. It's tough!

Table 1. Libel Claims Against Newspapers, 1975-1985

	Circulation				
	100,000 and up	50,000-99,000	25,000-49,999	15,000-24,999	Total
Total Suits	111	46	147	87	391
Newspapers Responding	18	15	72	70	175
Rate of Suits per Newspaper(%)	6.2	3.1	2.0	1.2	2.2

Note. From Libel Law and the Press (p. 283) by Randall P. Bezanson, Gilbert Cranberg and John Soloski, 1987, New York: The Free Press.

Table 2. Means, Standard Deviations and Correlations of Chilling Effect and Attitude Variables with Selected Variables

	Threat	Sued	Circ.	Years w/ paper	Years in position	Who owns	Insured	Use hotline	Attend seminars	$\bar{X}$	s.d.
Chilling Effect Scale[a]	.28*	-.09	-.07	.07	.08	-.06	.25*	.11	.25*	26.26	4.08
Chill 2	.13	-.11	-.16	.15	.16	-.05	.12	.07	.24*	2.93	1.30
Chill 5	-.05	-.10	.00	-.04	.02	-.13	.15	-.14	.19	2.20	1.09
Chill 6	.16	-.13	.06	-.01	.03	-.07	-.11	-.03	.22	3.64	.92
Chill 7	.08	-.03	-.08	.01	.14	-.15	-.16	-.07	.10	3.82	.67
Chill 8[b]	.11	-.01	-.37**	.30*	.24*	.09	.22	.27*	.03	4.00	.84
Chill 9	.14	-.06	-.29*	.03	.06	-.14	.10	.02	.03	3.07	1.18
Chill 10[b]	.29*	.16	.36**	-.28*	-.30*	.21	.23	.16	.02	2.75	.99
Chill 11[b]	.27*	-.05	.21	.13	.03	-.00	.42**	.12	.12	3.91	1.00
Chill 3 (Retract Accurate Story)	-.22	.15	-.16	.23	.14	-.13	-.20	-.16	-.31**	1.43	.87
Libel Unfair $ Burden	-.10	-.02	-.13	.34**	.30*	-.27*	-.12	-.07	-.15	3.65	1.28
Insurance Needed	.21	.04	.10	-.02	-.03	.13	.72***	.26*	.25*	3.90	1.06
Insurance Difficult	.00	-.13	-.18	.05	-.00	-.17	-.46***	-.28*	-.29**	2.85	1.19
Insurance Expensive	-.20	-.06	-.11	.11	.05	-.28*	-.37**	.04	-.20	3.73	1.09
$\bar{X}$	1.69[c]	1.13[c]	7.63[d]	4.09[e]	3.49[e]	1.32[f]	1.62[c]	1.50[c]	1.66[c]		
s.d.	.47	.34	7.60	1.98	1.88	.47	.49	.50	.48		

[a] See Appendix for listing of chilling effect items.
[b] Reverse scored.
[c] 1 = no; 2 = yes.
[d] In thousands.
[e] 1 = 1 year or less; 2 = 2-3 years; 3 = 4-5 years; 4 = 6-10 years; 5 = 11-15 years; 6 = 16-20 years; 7 = more than 20 years.
[f] 1 = individual, family or local corporation; 2 = regional or national media chain.

* $p \leq .05$
** $p \leq .01$
*** $p \leq .001$

Footnotes

1 Summary judgment is defined by Murray (1978, p. 104) as "action of a judge dismissing a case because no grounds exist to carry the case further." Summary judgment works to prevent self-censorship through fear of the cost of defending against unwarranted libel suits.

2 Time constraints prevented use of followup telephone calls for this preliminary study. A national study planned in the future will include followup contacts either by mail or telephone.

3 Correlations between selected variables do not appear in Table 2. Results are available on request from the authors.

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Appendix

Chilling Effect Scale Items

Chill 1* If a newspaper were ready to run a story and someone mentioned in the story threatened to sue for libel, the newspaper should go ahead and publish the story if it is accurate.

Chill 2[a] For most newspapers the size of mine, the possibility of being sued for libel is a daily concern.

Chill 3 If a newspaper is threatened with a libel suit over a story that is accurate, it should print a retraction anyway just to be on the safe side.

Chill 4 Most libel suits are filed primarily to harass newspapers.

Chill 5[a] Newspapers the size of mine sometimes withhold accurate, important stories because of fear they will be sued for libel if the story is published.

Chill 6[a] Newspapers are more careful in handling a story about someone who has threatened in the past to sue for libel.

Chill 7[a] Newspapers are more careful in handling a story about someone who has sued them in the past for libel.

Chill 8*[a] In general, newspapers the size of mine can be <u>less</u> concerned today about libel suits than they were five years ago.

Chill 9[a] The possibility of being sued for libel has a "chilling effect" on a newspaper the size of mine.

Chill 10*[a] Most newspapers the size of mine have never been sued for libel.

Chill 11*[a] Most newspapers the size of mine have never been threatened with a libel suit.

*Reverse scored

[a]Indicates item included in 8-item chilling effect scale