

secs. 11, 55-94, 109-151.

13. 17 Media L. Rep. at 2179.

14. 17 Media L. Rep. at 2180. See Restatement, Contracts (2d) sec. 90; Corbin, *Corbin on Contracts*, secs. 193-208. Professor Corbin objected to the phrase "promissory estoppel" as an imprecise description of the doctrine.

15. 17 Media L. Rep. at 2181.

16. *Cohen v. Cowles Media Co.*, 111 S.Ct. 2513 (1991).

17. 111 S.Ct. at 2518.

18. For example, *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979); *The Florida Star v. B.J.F.*, 491 U.S. 524 (1988); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978).

19. For example, *Zacchini v. Scripps-Howard Broadcasting Co.*, 443 U.S. 562 (1977).

20. *Associated Press v. U.S.*, 326 U.S. 1 (1945).

21. *Minneapolis Star and Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983).

22. 326 U.S. 1 (1945).

23. 111 S.Ct. at 2519.

24. 491 U.S. 524 (1989).

25. 111 S.Ct. at 2520 (Blackmun, J., dissenting).

26. 111 S.Ct. at 2521.

27. See *New York Times Co. v. Sullivan*, 37 U.S. 254 (1964). The actual malice standard requires that statements about public figures and public officials be made with knowledge that they were false or with reckless disregard for whether they were true or false in order for the plaintiff to recover libel damages.

28. 111 S.Ct. at 2523 (Souter, J., dissenting).

29. *Cohen v. Cowles Media*, 19 Media L. Rep. 1858 (1992).

30. 19 Media L. Rep. at 1861-62.

31. *New York Times v. Sullivan*, 376 U.S. 254 (1964).

32. 111 S.Ct. at 2519.

33. Prosser, *Law of Torts*, 6.

34. For example, *New York Times v. Sullivan*, 376 U.S. 254 (1964); *The Florida Star v. B.J.F.*, 491 U.S. 524 (1989).

35. 485 U.S. 46 (1988).

36. 111 S.Ct. at 2521 (Blackmun, J., dissenting).

37. 326 U.S. 1 (1945).

38. *Red Lion v. F.C.C.*, 1 Media L. Rep. 2053, 2062 (1969).

39. See Rodney A. Smolla, *Suing the Press*, (New York: Oxford University Press, 1986), 6.

40. *Ruzicka v. Conde Nast Publications*, 733 F.Supp. 1289 (D. Minn. 1990). On remand from an appeal, the *Ruzicka* case received more extensive analysis in *Ruzicka v. Conde Nast Publications*, 794 F.Supp. 303 (D. Minn. 1992). In the later opinion, the U.S. Supreme Court's *Cohen* decision was accounted for, but the defendant medium was still granted summary judgment.

NEWS COUNCIL COMPLAINANTS: WHO ARE THEY AND WHAT DO THEY WANT?

By Louise Williams Hermanson

This study explores alternative dispute resolution systems for holding media accountable for the power they wield in society. The study seeks to find a means of accountability that establishes dialogue between members of the public and media practitioners.



The obligation of our (legal) profession is, or has long been thought to be, to serve as healers of human conflicts. To fulfill our traditional obligation means that we should provide mechanisms that can produce an acceptable result in the shortest possible time, with the least possible expense, and with a minimum of stress on the participants. That is what justice is all about.

. . . (L)itigation is not only stressful and frustrating but expensive and frequently unrewarding for litigants. A personal injury case, for example, diverts the claimant and entire families from their normal pursuits. Physicians increasingly take note of "litigation neuroses" in otherwise normal, well-adjusted people. This negative impact is not confined to litigants and lawyers. Lay and professional witnesses, chiefly the doctors who testify, are also adversely affected. The plaintive cry of many frustrated litigants echoes what Learned Hand implied: "There must be a better way." - Warren E. Burger¹

Chief Justice Burger was speaking to members of the American Bar Association in 1982, and his comments were directed toward problems throughout the legal system. His remarks, however, can be directly applicable to recent lawsuits against the media, especially suits involving libel or invasion of privacy. The cry, "There must be a better way," is familiar to most involved in legal disputes between a citizen and media organization.

Plaintiffs and media alike are frustrated by the system. The process is very expensive, and the few plaintiffs who win often see awards consumed by legal fees. Media organizations spend hundreds of thousands of dollars and countless hours defending lawsuits, usually to win them, but frequently only on appeal. The expenses involved in defending are seldom recovered,

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even if the media organization is on firm legal ground. Cases often take years just to arrive at trial, and appeals add more time and expense for all parties. Media fear being sued for libel, and the public feels frustrated by a system that does not provide resolution appropriate to harm done to the individual's reputation.

In spite of opinions about media accountability in our democratic society or individual views concerning First Amendment protections for the press, the media have historically been held accountable through the courts. The 1987 Iowa Libel study found that the current system "puts the press on trial for the way it does a story instead of for the intrinsic accuracy of the story, and that makes judges the ultimate arbiters of editorial judgment and press responsibility."² Basic libel law is not likely to change, since there are some citizen-media disputes that cannot be resolved in other ways and some plaintiffs who would not accept another forum. But there are potentially workable alternatives for many disputes between the media and the public, and those alternatives hold promise for providing "a better way." This better way includes a potential for addressing ethical abuses by today's truly MASS media in addition to providing an alternative to the legal system for disputes normally heard in the courts.

This study is part of the search for a better way to hold media accountable for the power they wield in society. A major goal of the study is to help find a means of media accountability that encompasses social ethics as well as cases that could be appropriate for the courts. It seeks a way to establish meaningful dialogue between members of the public, who depend on the media for information, and media practitioners, who do a difficult job under extreme pressures.

This work is rooted in the social responsibility model of the press and accepts that model as realistic and appropriate for American media. The model suggests that a well-designed nongovernmental system of media accountability is in the best interest of the media, individuals, and society in general. Properly designed, established, and implemented, such a system can enhance First Amendment freedoms of speech and the press by encouraging dialogue on how the media do and should work in American society. Through a properly designed cooperative system of accountability, the public can increase its understanding of the way media work and become more accepting of honest errors. The media can gain credibility by showing a willingness to discuss journalism's contributions to social welfare.

News councils have been part of the dialogue about media accountability since the 1947 Hutchins Commission report called for an independent agency to evaluate media performance.³ A number of news councils have been attempted in America. Most have consisted of informal discussion groups begun by individual media organizations where members of the community were invited to comment on the performance of a particular news organization in a specific location. Most had no power to judge behavior as inappropriate or affect change in news coverage.⁴

But two American news councils – the Minnesota and National News councils – have served as formal adjudicating bodies, with hearings, evidence, and formal decisions. Both adjudicating news councils were begun in the early 1970s when public officials were extremely critical of media and suggested that if media did not become more responsible, First Amendment freedoms were in jeopardy.⁵ Both news councils stated goals of providing members of the general public with a forum for complaining about irresponsible media, serving as an alternative to the courts, and providing a forum for

discussion of general media performance in society.

Also in the early 1970s, a number of alternative dispute resolution systems (ADR) were begun in other areas of the law.⁶ They include:

- Court annexed arbitration where a judge diverts cases to an arbitration panel which makes a binding or nonbinding decision. This constitutes diversion of cases already within the court system to a different form of resolution.⁷
- Voluntary arbitration where parties in a dispute contract or agree to let a third party make a binding decision in the dispute.⁸
- Mediation where a third party meets with those involved in the dispute and tries to help them reach a settlement through noncoercive means.⁹
- Summary jury or mini-trials where each side is given a limited time (usually one hour) to present its case before a six-member jury selected from the regular jury pool. The jurors then issue a nonbinding verdict, which the parties use to evaluate their chances of prevailing at trial. The procedure is used to encourage settlement.
- Rent-a-judge programs where retired judges hear the issues in a dispute and give an advisory ruling.
- Neighborhood justice centers where two or three mediators meet with parties in a dispute and encourage agreement.¹⁰

ADR have particular appeal because they encourage settlement quickly at low costs in time and legal fees.¹¹ Participants often appreciate the more relaxed procedures that allow them to tell their stories in their own ways.¹² However, throughout the ADR movement, voluntary programs have failed to attract a large number of cases, and such programs seldom have funds for massive publicity campaigns. Many have suffered from distrust of the unknown that makes people reluctant to accept them. However, minimal research has reported a high level of user satisfaction with the fairness of the processes, quality of decisions handed down, more humane and relaxed procedures, and elimination of high costs associated with litigation.¹³

Solid empirical evidence to support user satisfaction with ADR exists for at least two experimental programs within the court system. Craig A. McEwen and Richard J. Maiman studied mediation programs in several Maine small-claims courts that dealt with claims of \$800 or less. In this process, begun in the fall of 1977, the district court heard the cases using a simplified, less formal court procedure. Traditional court fees applied, and although both parties had a right to use attorneys, frequently neither party did so. Researchers compared the processes of mediation and adjudication by interviewing participants in three mediation programs and three small-claims courts that did not use mediation in Maine.

The mediation process encouraged more extensive exploration of grievances and emotions than adjudication and gave the

parties considerable control over the nature of the final settlement. As a consequence, litigants experiencing mediation were a little more likely to be satisfied with the resolution process and to evaluate the final settlement as fair than were parties whose cases were adjudicated. In particular, mediation reduced polarization between parties and weakened the otherwise strong relationship between winning or losing and viewing the outcome as fair.¹⁴

News council goals are very similar to those of the mediation process.

News councils have been specifically discussed as viable alternatives for dispute resolution in legal journals and at least two court decisions. In a dissent in *Gertz v. Robert Welch, Inc.*,¹⁵ United States Supreme Court Justice William Brennan acknowledged the work of the National News Council, and in *Miami Herald Publishing Co. v. Tornillo*,¹⁶ the court suggested a press council might be useful in resolving conflicts between the public and the press without violating First Amendment rights. The court saw a press council, such as the National News Council, as an independent body that could encourage access to the media in cases of inaccuracy or unfairness. Neither Chief Justice Warren Burger in *Tornillo* nor Justice Brennan in *Gertz* went as far as to say news councils should serve as a substitute for the courts. The implication was more that a news council could serve a function where existing legal mechanisms were unable to resolve conflicts between rights. But the boost to the news council concept was significant.

A major law review article in 1974 discussed American news councils from the First Amendment perspective and addressed questions raised by the legal profession about their fairness and value. The article evaluated the National and Minnesota News councils' procedures and their function as nonbinding arbitration boards. The authors saw news councils as capable of the following community benefits:

- Freeing the news media from restraints imposed by threat of economic or criminal sanctions;
- Allowing discussion and decisions made by both laymen and journalists;
- Encouraging comment on and correction of inaccurate or unfair reporting;
- Establishing a set of journalistic standards for the news media.¹⁷

The authors used the Minnesota Press Council's first case as an example of an alternative to a court libel action and an effective means of access to the press. In *Lindstrom v. Union Advocate* the news council agreed that the newspaper acted irresponsibly in publishing inaccurate information about a politician.¹⁸ "The publicizing of the decision in every newspaper in the state, including the one which printed the inaccurate stories, gave the complainant a better right of access than any right of reply statute would allow, since such statutes only apply to the newspaper carrying the story."¹⁹

As with other types of ADR, news councils have been cited for the small number of decisions handed down – 76 in eighteen years for the

Minnesota Council and 227 in ten and a half years for the National News Council – although the general consensus is and the limited research that has been done shows that the majority of those who do participate are pleased with the results. But no solid empirical evidence existed to support complainants' satisfaction with the news council process. This study was designed to remedy this.

This study joins an already active discussion about alternative dispute resolution in legal disputes with the media. The Iowa Libel Project,²⁰ the Annenberg Proposal,²¹ a joint forum of the Gannett Center for Media Studies and the Silha Center for the Study of Media Ethics and Law,²² and a Media Institute book devoted to alternatives for resolving press disputes²³ contributed important data and commentary to the search for an improved system of resolving public-media disputes. A new dispute resolution training program for communication begun at the University of Utah promises to contribute significantly to the debate.

However, because adjudicating news councils have actually served an ADR function, they provide the most data for a workable alternative system for citizen disputes with the media. Goals of the legal system's ADR are compatible with Minnesota and National News council goals. These are the only adjudicating news councils in American history and, therefore, the only ones which can give meaningful information concerning their usefulness in media/citizen dispute resolution. A study evaluating the two councils in light of ADR goals can add significantly to the search for alternatives to litigation. If the process, structure, funding, and other problems associated with news councils can be addressed constructively, news councils may provide answers to some serious problems in the media-dispute arena.

Much has been written about the media's response to the news council process, and much of this response has been negative. Many media representatives have gone on record as viewing news councils as just another form of harassment. But little research has been done concerning the function of a news council as a viable alternative to the legal system, and even less has been done to determine the satisfaction of members of the public who complained to a news council. This study involves unique original data. The survey collected information from those who complained to the Minnesota or National News council from March 1972 to March 1989.

From the time the Hutchins Commission report²⁴ called for an independent agency to evaluate media performance in 1947 until the early 1970s, suggestions that media should be judged by any adjudicating body elicited fierce opposition from members of the press.²⁵ The concept of a council to pass judgment on media performance was extremely unpopular in media circles, so it was remarkable that the Minnesota Press Council and the National News Council began operation in the early 1970s. However, the Minnesota News Council, the first statewide press council in the country's history,²⁶ is still functioning, and the National News Council recorded more than ten years as an adjudicating body.

As with the legal system, many complaints are initiated and either settled or dropped before they reach formal adjudication. The Minnesota News Council handled more than 1,100 complaints from 1971 to 1990. The council helped resolve 186 without hearing, disallowed 130, dropped 730 and handed down 76 written determinations.²⁷ The National News Council logged 1,253 complaints between 1973 and 1984. It took no action of any kind on 199, dismissed 827 without formal hearing and gave full hearing culminating in the issuance of determinations on 227.²⁸ The determinations stand as

the official decisions of the two news councils. News council cases taken through to determination represent issues important enough for the councils to agree to schedule them for hearing, and the cases involve complainants who were interested enough to follow through.

The survey has particular strengths in that it included all persons who made complaints resulting in written determinations for both councils. Although addresses were as much as 16 years old, a majority of the complainants were located, and response to the lengthy survey was good. The survey was designed to gather information about complainants and their involvement in the news council process. Done in mail survey form, the research concentrates on how those who used the councils perceived the system, how they perceive the media and whether they were satisfied with the news council as an outlet for frustrations they felt because of media coverage about an issue important to them.

Since complainants make up a full section of the triad necessary to conduct a news council – media, council, complainants – complainants' reactions to the process provide a missing element in the search for a workable media ADR system. Previously, almost nothing had been done to get feedback from complainants. The literature is heavily skewed toward media reaction to news councils. Only two studies were found that addressed the process from the complainants' perspectives. Those studies were limited in scope, based on a small number of respondents, and focused on media satisfaction with the process, using complainants' surveys as incidental to each study.

Robert Schafer's 1982 thesis focused on how the media responded to the Minnesota News Council, but Schafer also surveyed thirty-eight complainants to determine if they thought the council was biased and whether they approved of the council. A slight majority saw the council as unbiased. Complainants also reported they were pleased with the news council process, although about a fourth of them said the procedure was time-consuming and confusing.²⁹

Fred Johnson's 1975 study of the Minnesota Press Council, which included only twenty-four usable responses, showed that complainants overwhelmingly supported the council, but did not feel performance of the media had improved because of its existence.³⁰

Amanda Nunamaker's dissertation examined the structure of the National News Council in 1977.³¹ Her study looked at how the National News Council fit into the social responsibility theory of the press and evaluated its chances of serving a useful function under that concept. The study did not deal with complainants' opinions about the council.

Ann Brill interviewed Minnesota News Council members about their free speech philosophy and knowledge of the media. She found few differences between media and public news council members concerning views of media freedom and accountability. She did not survey or deal with the opinions of complainants.³²

Because news councils evolved instead of being created through feasibility studies, most of the literature on the topic is reactive. A number of articles discuss how the media perceive news councils, but little was known about who complains to news councils, what complainants hope to accomplish or how they perceive the process. The topics complained about can be identified by analysis of news council decisions, but why the individual chose a news council for a forum and how satisfied he or she was with the outcome can be determined only by asking complainants.

There were no similar studies dealing with news council decisions, so the best examples in structuring the survey were studies dealing with media disputes in the legal system. The Iowa Libel Research Project, which involved a 1985 study of those who sued the media for libel,³³ and a study at the Silha Center, which hopes to take a look at those who sued the media for invasion of privacy,³⁴ provided a basic model for the social science research used to collect information from those who complained to the councils.

The Iowa Project studied "the entire libel litigation process, from the appearance of the allegedly libelous story through discussions between plaintiffs and attorneys, to the outcome of the case."³⁵ The Iowa researchers used telephone interviews to ask plaintiffs about their involvement in libel suits litigated between May 1980 and April 1984.

The Iowa study sought to identify plaintiffs' goals, evaluate satisfaction with the legal process and determine if the media's treatment of plaintiffs was a factor in the decision to litigate. The study found that plaintiffs had been strongly influenced to bring suit by media treatment of them after the story had been run and that plaintiffs sued for reasons other than money. The main reason, the researchers reported, was vindication.

Although a news council complaint is not as structured as a lawsuit, there were strong similarities in the goals of the studies. This study sought to determine why complainants decided to use the council, identify complainants' goals, measure their satisfaction with the process, and evaluate how they perceived the media in light of their involvement with the news council.

News council complainants were also asked selected questions taken from a 1985 APME study done by MORI Research³⁶ and a 1986 Times Mirror study done by the Gallup Organization³⁷ to determine how complainants' perceptions of the media compared to other groups in society. Demographic data from the APME study is used in the analysis of the news council data.³⁸ The APME study focused on journalists' responses, but also asked questions of members of the public. The Times Mirror study surveyed members of the public and provided useful comparative data for the news council study.

For this news council study, a telephone survey was cost prohibitive; therefore a mail survey was chosen. This required a questionnaire design that encouraged complainants to fill out and return the survey in a timely manner. A great deal of information was sought about events that happened a long time in the past for most respondents. This was a major concern, both for validity of the information and for response rate. Ideally, the survey would have been done immediately after the hearing stage of the news council process. This was not possible, but the study was considered valid since this pool of complainants is made up of the only Americans to experience the news council adjudication process.

The survey instrument was divided into two parts.³⁹ Part One consisted of twenty-nine questions with sub-parts designed to collect general information about the complainant and his or her views about media. Part Two consisted of twenty-six questions with sub-parts designed to collect information specific to the complaint made to the council. Questions were answered using agree-disagree, approve-disapprove, satisfied-dissatisfied scales or by selection from carefully stated categories. In addition, respondents were asked to explain answers where appropriate and were encouraged to provide additional comments at the end of the survey.

No list of those who complained to either council existed; therefore, it

was necessary to go through each complaint file to gather names and addresses of complainants.⁴⁰ Because the study focused on how individuals perceived the process, complainants, rather than cases, were used as the research unit of analysis. Two hundred seventeen persons were identified as complainants in the 227 decisions handed down by the National News Council. Addresses were in the files for 212 of them. All addresses were at least six years old; some addresses dated back sixteen years. A similar situation existed with the Minnesota News Council, but news council staff went through the files and created a list of complainants' names and addresses. Again, addresses were old. Eighty-one individuals were identified as complainants in the seventy-six determinations issued by the council between September 1971 and February 1989. This lack of basic information about complainants is indicative of the void of information about what complainants thought of the process.

As expected, it was much more difficult to find National than Minnesota News Council complainants. There was a greater likelihood National News Council complainants were geographically mobile, since a number of them worked for national corporations and gave business addresses to the council. Also, the National News Council had ceased operation more than five years earlier and it was necessary to identify complainants from files without the assistance of news council staff. While only 15 Minnesota News Council complainants could not be located, 104 National News Council complainants could not be located. Four National News Council complainants were deceased. This left a pool of 66 from the Minnesota News Council and 104 from the National News Council for the survey.

Fifty Minnesota and seventy National News Council respondents returned the completed surveys, providing a return rate from the pool of located complainants of 75.8% for Minnesota respondents and 67.3% for National respondents. Returned surveys represented forty-nine Minnesota cases and seventy-three National News Council cases. This represents 61.7% of all Minnesota complainants, who were involved in 64.5% of all cases, and 33% of all National News Council complainants, who were involved in 32.2% of all cases.

Summary of Data

The news council survey data indicate most respondents do not hate the media, although they see a number of negative sides to news gathering and reporting processes (See Table 1). Respondents see freedom of the press as an important societal goal, and they think news councils can contribute to that goal. Frustration about the system becomes apparent in responses about where individuals can complain about media sins and how much effect those complaints have on the long-term practices of the media.

The data support the theory that complainants who are actively involved in the process and who participate in the hearing are more likely to be satisfied with all aspects of the process.⁴¹ Seventy-six percent of those who made a statement at the hearing were satisfied with the decision, while only 47.8% of those who did not participate in a hearing were satisfied or very satisfied with the decision. The data also show that 81.8% of complainants who sought legal advice and thought they had a case strong enough for the legal system were satisfied or very satisfied with the news-council process.

The *Times Mirror* study of the public's perception of the media outlined six types of media users: Reflexive Supporters (21%), Empathetic Supporters (26%), Ambivalent Supporters (23%), Main Street Critics (15%),

TABLE 1

Question (Neutral responses and nonanswers deleted.)	Minnesota News Council				National News Council			
	Strongly Agree	Agree	Disagree	Strongly Disagree	Strongly Agree	Agree	Disagree	Strongly Disagree
News Media usually do a good job of providing accurate stories	2.0	65.3	12.2	6.1	3.4	54.2	18.6	5.1
News media usually act responsibly when collecting information	0.0	62.5	8.3	2.1	3.4	50.8	25.4	1.7
News Media often mislead by presenting only part of facts people need	34.7	36.7	12.2	2.0	36.1	34.4	14.8	1.6
Media frequently fail to provide information from minority groups	10.2	24.5	38.8	8.2	5.2	17.2	36.2	3.4
The First Amendment says newspapers can print anything they want to print	10.2	14.3	42.9	28.6	11.9	16.9	32.2	32.2
Everyone in America should be allowed to say whatever they want even if it hurts individuals or groups of people	8.5	17.0	40.4	27.7	10.3	24.1	44.8	15.5
Every adult American has the right to give a speech that is less than complimentary about a racial or ethnic group	22.9	47.9	12.5	2.1	27.6	53.4	8.6	3.4
Every adult American has the right to read anything they choose, even if others consider the material pornographic	27.1	41.7	18.8	8.3	31.0	46.6	12.1	0.0
With deadline pressures, news media are as accurate as can be expected	6.3	33.3	22.9	8.3	3.3	38.3	33.3	5.0
The government should prohibit distribution of material it considers threatening to national security	10.4	39.6	20.8	14.6	17.2	31.0	22.4	12.1
Teachers have the right to use whatever materials they think most appropriate in their classes	6.3	35.4	29.2	12.5	20.7	22.4	34.5	13.8
It is important to have a free press even if the press acts irresponsibly	33.3	37.5	12.5	6.3	27.1	47.5	11.9	6.8
Television is more believable than print because you can see what's happening	2.0	18.2	55.1	24.5	3.3	11.7	50.0	28.3

Embittered Critics (10%) and Vociferous Critics (5%). Press critics, the report said, are more vocal, intense, and involved with press issues than other citizens. Vociferous Critics are likely to have attended college, be business or professional people and live in urbanized areas. They are said to be upscale, conservative, vocal, intense, and informed, and although their numbers are small, Vociferous Critics are reported to have a major impact on media issues.⁴²

The 1985 American Society of Newspaper Editors' study of media credibility identified a group the study calls "Sophisticated Skeptics." This group was found to be heavily exposed to media, have a high level of interest in government and public affairs, and feel they can influence events. Seventy-two percent of Sophisticated Skeptics read a newspaper almost every day and more than half prefer newspapers and magazines as their sources of news.⁴³

This news council study shows that the demographics of news council complainants (See Table 2) are closely related to those of the *Times Mirror* study's Vociferous Critics and the ASNE study's Sophisticated Skeptics. For the most part, news councils have served an elite, sophisticated audience. Those who complained to the councils and received determinations in their cases were very well educated,⁴⁴ very affluent individuals⁴⁵ who kept up with current affairs and frequently used the news council to further special interests. A number of them were actively involved in the political process and many had either run for political office or worked on campaigns. Others were paid to protect the image of a group, organization or business. Some served as public relations practitioners or lobbyists. The councils also served individuals enraged by coverage of a particular issue, but these individuals had to be articulate, organized and persistent enough to pursue the complaint through a rather complex procedure. They also had to have the time to devote to such a pursuit. Neither news council served a cross section of the population, and a number of serious concerns about media responsibilities, such as how media cover minority and women's issue, seldom arose.

Although complainants were frustrated with parts of the news council procedure and with the imbalance of power between individuals and the media, complainants saw a free press and the news council process as valuable (See Table 3). The majority of complainants expressed a belief that courts were not really an alternative for the complaint they brought to the news council. The problem complainants had with the media was not appropriate for the courts, or litigation was perceived as being too expensive or too complicated. Although income levels indicate complainants should have been financially able to litigate if they chose, a number of complainants said they were not willing to risk heavy legal fees to obtain resolution of the case. Most of the complainants who saw their cases as suitable for the courts did not want what the courts could offer. Complainants said they wanted vindication, not money; or to have their views considered important, to be heard, to be recognized (See Table 4). Complainants said media-controlled ombudsmen, letters to the editor, or retractions cannot be trusted, and the news council was perceived as the only forum where complainants had a chance to accomplish these objectives.

Some complainants were negative about news councils, most were not. Most said the idea is a good one, but the process and power of the council need to be modified. Few were overjoyed with the process, but most felt it was better than nothing. Basically, complainants saw the media as arrogant and inconsiderate (See Table 5) and said an independent body to mediate public-media disputes is badly needed.

Overall Minnesota respondents spent more time on their cases, were better satisfied with the result and expressed more willingness to use a news council again (See Table 4 and 6). Ninety percent of Minnesota respondents made a statement at a hearing; only 4.3% of National News Council respondents did. Complainants who made a statement at the hearing, a key indicator of complainant involvement in the process, were likely to be

TABLE 2

Question (All figures are given in percentages. Percentages may not add up to 100 because of rounding.)	Minnesota News Council N=50	National News Council N=70	Both News Councils N=120
Date of birth			
Before 1932	32.5	61.8	48.1
1933-1952	52.8	37.2	44.4
After 1952	14.1	1.8	7.5
Sex			
Male	87.8	78.0	82.4
Female	12.2	22.0	17.6
Race			
White	97.9	96.6	97.2
Other	2.1	3.4	2.7
Total household income in 1988			
Less than \$25,000	18.2	3.6	10.0
\$25,000 to \$49,999	36.4	24.6	29.7
\$50,000 to \$74,999	20.5	22.8	21.8
More than \$75,000	25.0	49.2	38.6
Highest level of education			
Not college graduate	22.4	13.7	17.7
College graduate	30.6	35.5	33.7
Post graduate degree	47.0	50.0	48.6
Political party affiliation			
Democrat	44.9	30.4	37.1
Republican	32.7	39.3	36.2
Independent	18.4	30.4	24.8
None	4.1	0.0	1.9
Political activity			
Very Active	30.6	7.1	18.1
Moderately Active	36.7	41.1	39.0
Minimally Active	24.5	39.3	32.4
Not Active At All	8.2	12.5	10.5
Political ideology			
Very conservative	6.3	1.9	4.0
Conservative	22.9	21.2	22.0
Moderate	12.5	40.4	27.0
Liberal	22.9	25.0	24.0
Very liberal	10.4	0.0	5.0
Labels not applicable	25.0	11.5	18.0
Representing whom in complaint?			
Respondent only	44.0	47.1	45.8
Other individual	4.0	1.4	2.5
Respondent and others	18.0	15.7	16.7
Nonprofit organization	16.0	21.4	19.2
Social cause	8.0	1.4	4.2
Business or corporation	4.0	4.3	4.2
Governmental body	6.0	5.7	5.8

satisfied with the overall news council process (See Table 7). Minnesota respondents also evaluated all parts of the process more favorably than did National News Council respondents, and a much larger percentage of Minnesota respondents reported satisfaction with the way the case was handled by the news council - 76% for Minnesota respondents and 38.6% for

TABLE 3

Question (Neutral responses and nonanswers deleted.)	Minnesota News Council				National News Council			
	Strongly Agree	Agree	Dis- agree	Strongly Disagree	Strongly Agree	Agree	Dis- agree	Strongly Disagree
News Councils help make the press more responsive to the public	22.44	46.9	10.2	2.0	6.8	47.5	18.6	0.0
Because I complained to the news council, I learned about how news organizations operate	10.2	20.4	32.7	2.0	0.0	16.4	47.3	14.5
News councils are better than the courts for resolving disputes with the media	12.2	36.7	18.4	8.2	1.8	40.4	21.1	5.3
News councils should be able to require media to run apology	48.9	27.7	8.5	2.1	25.9	50.0	13.8	1.7
Media are too powerful for an average person to win against them in any forum	18.4	28.6	30.6	6.1	31.0	25.9	22.4	3.4
I complained to the news council because I wanted media to act more responsibly on all stories	49.0	36.7	10.2	0.0	55.2	39.7	3.4	1.7
If there had not been a news council, there would have been no one to complain to about the problem in my case	40.0	40.0	10.0	0.0	28.6	28.6	14.3	7.1

National News Council respondents. Greater involvement in the process also made complainants feel they accomplished more of their goals, and many added comments to express appreciation for the chance to be heard by the news council.

About 70% of all respondents reported that councils are somewhat or very valuable (See Tables 6 and 8). Eighty percent reported they were glad they filed their complaint, although only 46.7% said the decision was for the complainant. About 57% thought the news council process was fair. About 52% thought the news council took care to consider both sides of the issue and was thorough enough to learn the truth. Almost 47% said news council decisions are somewhat or very valuable, but fewer than 18% said the decision in their case had a long-term effect on media performance.

About 45% of respondents agreed that news councils are better than courts for resolving disputes. This was unexpected and probably due to respondents' consideration of the costs involved in litigation. Fewer than 42% thought news councils should be allowed to fine media, but more than 76% thought the news council should be allowed to require media to run an apology if the council found against the medium. Although media practitioners understand that such requirements would be in violation of the First Amendment, surveys have indicated that members of the public do not share this understanding.⁴⁶ The results of this part of the survey indicate that news council respondents would be willing to punish unethical media.

Two-thirds of respondents agreed there would have been no one to complain to if there had not been a council. A majority would use a council again if one were available and they had another complaint similar to the one they brought to the council. Many respondents wrote long passages in open-

TABLE 4

Question (All figures are given in rounded percentages.)	Minnesota News Council N=50	National News Council N=70	Both News Councils N=120
Your news council complaint was about:			
General media practices	20.0	12.8	15.9
Specific story	66.0	78.6	73.3
Particular reporter	4.0	4.3	4.2
Other	10.0	4.3	6.7
What did you hope to accomplish by complaining to the council? (Percent marking option)			
Obtain apology	60.0	8.6	25.8
Have media admit mistake	56.0	38.6	45.8
Obtain retraction	66.0	47.1	55.0
Stop unethical practices	68.0	47.1	55.8
Stop misleading public	44.0	55.7	50.8
Encourage balanced reporting	46.0	50.0	48.3
Do you feel you accomplished your goals by complaining to the council?			
Yes	26.0	2.9	12.5
Some, but not all	54.0	41.4	46.7
No	18.0	51.4	37.5
Don't know	2.0	4.3	3.4
Did the media organization offer to take any corrective action prior to your filing the news council complaint?			
Yes	26.0	5.7	14.2
No	70.0	80.0	75.8
Don't remember	4.0	14.2	10.0
At any time during your discussions of the case did anyone say you had a complaint which:			
Could be taken to court	40.0	7.2	20.8
Should be taken to court	30.0	4.3	14.9
Did you contact an attorney about this complaint?			
Before complaint	20.0	7.1	12.5
During process	6.0	1.4	3.3
After decision	0.0	1.4	0.8
Do you think you could have won if you had sued the media organization?			
Yes	30.0	10.0	18.3
No	24.0	45.7	36.7
Don't Know	46.0	44.3	45.0
If a situation arose again in which you had a similar complaint and a news council were available, would you:			
Go to a news council	72.0	50.0	59.2
Go to court	14.0	5.7	9.2
Try to talk with media	28.0	22.9	25.0
Settle some other way	10.0	10.0	10.0
Do nothing	14.0	20.0	17.5

ended sections of the survey explaining that they felt the news organization would have simply ignored them if they had not had the council available to them. They reported a feeling that they lacked power to force even an acknowledgement that a problem existed. The news council, many said, at

of the public who are poorer and/or disenfranchised.

Conclusions

National News Council files contain a number of letters from people with vague complaints of the nature many media practitioners dismiss as coming from "crazies," and critics of the news council process have expressed concern that news councils allow disgruntled members of the public to harass the media over trivial matters. This study shows that American adjudicating-news council complainants were not irresponsible people with nothing better to do with their time. The two news councils considered complaints from well-educated media critics heavily involved in political, community, and social issues. If unsophisticated complainants without foundation for their criticism approached the news councils, they obviously were weeded out by news council staff before hearing stages.

Most members of the complainants' groups are also affluent and hold positions of power in their professions and communities. Complainants appear to have the contacts and money to bring lawsuits against offending media in cases where such action would be appropriate, but reported they prefer to avoid the courts because of time and expense. Complainants were more interested in vindication or acceptance of their opinion about media performance than in winning money. Complainants also want to affect what they perceive to be media arrogance and lack of concern for individuals and social or business organizations. An overwhelming majority reported media should be required to run information about a news council decision if the medium was found to be irresponsible, but they oppose government interference with media. Complainants respect freedom of speech and the press but think individuals have just as much right to complain about the media as the media have to say what publishers, editors and news directors wish.

Respondents were overwhelmingly supportive of a social responsibility concept of American media. This was particularly obvious in the open-ended sections of the survey. Complainants said all members of society, especially those who work for powerful communications media, have a responsibility to the whole. Complainants said responsible media coverage of events and issues is necessary so individuals can make important personal and public decisions. Respondents appear to demand accuracy, fairness and balance. They want all sides of stories included and want explanations and evaluations of data so that the public is not misled. Many respondents said media cooperation with a forum such as a news council is a small price to pay for First Amendment guarantees.

Although most news council decisions dealt with ethics and policy in news gathering, this study shows several cases where the news council did serve as an alternative to the courts. All respondents who said they had a complaint that could have been taken to court also reported satisfaction with the news council procedure and decision. Their reasons for choosing the council instead of going to court involved unwillingness to spend the money to sue, desiring to avoid the complex structure of the courts, and feeling the courts are not the answer to problems dealing with media sins.

Other studies have reported that many persons who bring lawsuits want vindication,⁴⁸ and a news council is uniquely qualified to provide that type of remedy. The news councils addressed disputes with the media giving special attention to news-gathering problems, and the news council concept places a moral obligation on the medium to publicize council decisions. Media that accepted this moral obligation and publicized the news councils'

decisions gave complainants what many consider the best possible remedy for defamation: correction of errors in the eyes of the public.

What is exceedingly clear is that the type of person whose complaint was accepted for hearing by the two news councils will complain about the media whether there is a news council or not. Strong criticism surfaces in reports of media think tanks, letters to the editor of competing media, and articles in specialized publications dealing with media criticism. One respondent said his news council case provided information for an article he was writing at the time, and others reported contributions to magazines or newspapers.

The type of person who complained to the councils will also criticize media performance regardless of whether the media listen or cooperate in answering questions about media practices and actions. If journalists are unwilling to participate in a forum that encourages input from those who understand practical and economic constraints on news gathering, media lose a valuable chance to explain news-gathering processes to the most vocal media critics. They also lose the public-relations value of showing that they are willing to allow others to discuss and express opinions about media performance.

One of the most obvious results of the news council survey was the difference in satisfaction between complainants who made statements at the hearings and those who did not. In Minnesota, most complaints come from the Twin Cities area and involve Twin Cities' media. Interaction with media representatives and news council staff involves a local telephone call or a drive down the street. Attendance and participation at hearings is also convenient. The news council has also tried to take out-state hearings to the locality when possible. The difference participation makes was obvious in comments made by respondents in open-ended parts of the survey.

The National News Council faced a number of logistical problems that prevented complainants from actively participating in the process. One problem was the wide geographic area; another was the nature of news suppliers about whom the council invited complaints. Those who complain to a national news council will always face difficulty in personally interacting with the medium involved and with news council staff. Complainants usually live a considerable distance from the medium's and the council's headquarters. A number of National News Council respondents reported feeling left out. Respondents reportedly lost incentive to care about the news council process. Several even reported ignorance about the decision until they received a copy as part of the survey.

Feeling involved in the process is so important that some way to handle cases from various geographic areas must be worked out. Complainants need to participate in the hearings so they will grow to trust the council and learn from the give-and-take that is part of deliberative decision making. A system that overlooks this need is sure to have many of the problems the National News Council faced. Modern technology provides possible solutions. Such things as teleconferencing during the hearings could allow active participation by individuals in diverse geographic locations and build confidence in the process. The network of news councils and smaller hearing panels would also make it practical to hear cases in diverse geographic locations.

This research shows that for complainants, a news council was a viable way to deal with frustrations about media performance. Results were similar to those in studies of other ADR. Although complainants "got nothing" but

the satisfaction of being heard, more than 90% of Minnesota and 70% of National News councils respondents said they were glad they made and pursued the complaint. Although fewer than 43% from either council reported they had "won" the case, more than 62% of Minnesota and 40% of National News councils respondents reported satisfaction with the process and the decision. For complainants, the news council provided a specialized, independent group of knowledgeable individuals to pass judgment on the validity of their complaints. In the process, many reported that they learned to better understand how the media work. These benefits of news councils should not be overlooked in the search for a way to resolve disputes and increase dialogue about media performance in American society.

Limitations and Strengths of the Study

The primary limitation of the study is the small group of respondents. This is caused by the limited number of cases that went to the determination stage and the difficulty of locating complainants. An additional problem with the survey of complainants is the time between complaint and survey. Many of the complainants answered questions about their involvement six, eight, or ten years after active involvement in the case. Human memories are distorted with time, but to assist respondents in answering the questions, copies of the determinations were sent with the survey for respondents to review.

In addition, to be able to identify the type of person who used news councils, it would be necessary to identify and contact complainants who made complaints not taken through the complete process. This group makes up the majority of those who complained to the news councils, but identification and location of the approximately 2,500 persons was prohibitive. However, it is necessary to be careful about generalizing from this study.

A major strength of the study is the willingness of respondents to elaborate on answers. Most respondents were eager to cooperate with the study and a number expressed appreciation for the fact that someone was doing the research. Respondents took great pains to answer as accurately as possible considering the time lapse between decisions and the survey. Several reportedly went to attics or basements and pulled files concerning the complaint.

Another strength of the survey is the number of Minnesota News Council complainants located and represented in the completed surveys. These responses represent reactions over time, and several respondents who have followed the work of the council for years offered comments concerning changes in the process. They offered views as to whether the news council was better or worse than when they complained to it.

The most important strength is identification of demographics about complainants. It has long been claimed that news councils provide forums for the average citizen to complain about media performance. The demographics of those who answered the survey indicate this is not true and raises concern that news councils, in addition to having unique problems may also have some of the same problems encountered in using the courts.

It is important to remember that this study is part of an overall search for a system of accountability for the media. While it provides valuable new information for that search, it does not provide specific solutions to the general problem. The goal of the research is to better understand a viable system that has been tried in this country and to use that increased understanding to help in identification of an alternative dispute resolution

system for complaints about the media.

NOTES

1. Warren E. Burger, "Isn't There a Better Way?" *American Bar Association Journal* 68 (1982): 274-275.

2. Randall Bezanson, Gilbert Cranberg, and John Soloski, *Libel Law and the Press: Myth and Reality* (New York: Free Press, 1987), 4.

3. *A Free and Responsible Press* (Chicago: University of Chicago Press, 1947).

4. William Burl Blankenburg, "Community Press Councils" (Ph.D. Dissertation, Stanford University, 1968); "Local Press Councils: An Informal Accounting," *Columbia Journalism Review* (Spring 1969) 14-17.

5. This was during the time Vice President Spiro Agnew expressed his "nattering nabobs of negativism" and other statements highly critical of the media. A number of efforts to establish governmental press councils arose. The Washington state legislature discussed a press council to be appointed by the governor and funded by the state government. In Iowa, the American Legion urged formation of a governmental agency to deal with complaints against the media. And a Minnesota state representative revealed he was "preparing legislation to set up a press council by statute, with the council empowered, if it found against a newspaper, to prohibit receipt of public legal advertising ... for one year. The council would consist of a district judge and a representative of each of the major political parties." [Alfred Balk, "Minnesota Launches a Press Council," *Columbia Journalism Review* (November-December 1971), 21-22.] Although such a move would probably have been declared unconstitutional, the mere proposals were enough to raise concerns about finding a way for media to become more socially responsible.

6. An overview of alternative dispute resolution systems complete with discussion of each is found in a published report on the Alternative Dispute Resolution Symposium in the *University of Florida Law Review* 37 (Winter 1985): 1-59. The report consists of three articles.

7. Albert W. Alschuler, "Mediation with a Mugger: The Shortage of Adjudicative Services and the Need for a Two-tier Trial System in Civil Cases," *Harvard Law Review* 99 (1986): 839.

8. Richard A. Posner, "The Summary Jury Trial and Other Methods of Alternate Dispute Resolution: Some Cautionary Observations," *University of Chicago Law Review* 53 (1986): 366-39.

9. A good outline of mediation styles and procedures is found in Susan S. Silbey and Sally Engle Merry, "Mediator Settlement Strategies," *Law and Policy* 8 (January 1986): 7-32.

10. Stephen B. Goldberg, Eric D. Green, and Frank E.A. Sander, *Dispute Resolution* (Boston: Little, Brown & Co., 1985), 594.

11. Curtis H. Barnette, "The Importance of Alternative Dispute Resolution: Reducing Litigation Costs as a Corporate Objective," *Antitrust Law Journal* 53 (1984): 277-282.

12. Sally Engle Merry and Susan S. Silbey, "What do Plaintiffs Want? Reexamining the Concept of Dispute," *The Justice System Journal* 9 (1984): 151-179; William L.F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming . . .," *Law and Society Review* 15 (1981): 631-654.

13. Pearson, Jessica, "An Evaluation of Alternatives to Court Adjudica-

TABLE 5

Question (Nonanswers deleted)	Minnesota News Council				National News Council			
	Very	Some	A Little	None	Very	Some	A Little	None
When you contacted the news organization in response to your concerns, to what extent did you find its representatives to be:								
Concerned	8.0	14.0	22.0	48.0	2.9	1.4	12.9	47.1
Cooperative	12.0	16.0	14.0	48.0	2.9	1.4	7.1	48.6
Apologetic	0.0	2.0	12.0	64.0	0.0	0.0	4.3	51.4
Responsive	8.0	4.0	14.0	54.0	1.4	5.7	12.9	40.0
Sympathetic	0.0	6.0	10.0	68.0	0.0	1.4	4.3	51.4
Polite	18.0	10.0	34.0	28.0	4.3	10.0	22.9	20.0
Hostile	32.0	24.0	14.0	20.0	11.4	14.3	17.1	15.7
Arrogant	42.0	14.0	12.0	20.0	28.6	14.3	8.6	8.6
Annoyed	20.0	30.0	18.0	18.0	11.4	15.7	17.1	12.9
Condescending	28.0	10.0	10.0	36.0	14.3	11.4	8.6	17.1
Defensive	42.0	30.0	14.0	8.0	18.6	21.4	14.3	7.1
Amused	4.0	20.0	14.0	36.0	2.9	1.4	7.1	22.9

Question	Minnesota News Council				National News Council			
	Little Effect	Some Effect	Major Effect	No Answer	Little Effect	Some Effect	Major Effect	No Answer
What effect did the attitude of the media organization have on your decision to file or continue the complaint with the council?	20.0	16.0	64.0	0.0	34.5	15.7	28.6	21.4

least got the attention of the news organization.

The survey addressed general questions concerning news councils. Although the original complaint letters and other correspondence between complainants and news council staff are available in the National News Council files, they do not answer a number of questions important to any continuation or improvement of the news council process. Answers to general questions posed by the study and answered by complainants in open-ended comments include:

• *Why did the complainant decide to use the council?*

Complainants said they wanted vindication, a chance to be heard, an opportunity to try to persuade the news council and the media to accept their side of the story. They also hoped to get the news medium to apologize and to run the news council decision.

• *What would complainant have done if the council had not been available?*

Many complainants reported they would have done nothing if there had been no council. Others said they would have tried to talk with the media. Although contacting the news organization is part of the news council process, some reported that they might have approached the media differently if they had not known the news council was there to assist them in getting the complaint heard. Almost all expressed frustration with contacting the media as the only alternative. Several said they would probably have

TABLE 6

Question (Neutral responses and nonanswers deleted.)	Minnesota News Council					National News Council				
	Very Valuable	Somewhat Valuable	Useful	Of Little Value	Almost Worthless	Very Valuable	Somewhat Valuable	Useful	Of Little Value	Almost Worthless
What is your opinion of:										
Social value of news council you used	50.0	33.3	6.3	6.3	4.2	20.7	27.6	22.4	19.0	10.3
News council decisions	32.6	34.8	13.0	13.0	6.5	9.1	20.0	34.5	21.8	14.5
General news-council concept	47.7	34.1	11.4	0.0	6.8	32.1	32.1	22.6	9.4	3.8

at least threatened or filed a lawsuit.

• *Whom did complainant talk with about the problem before he/she contacted the council?*

The survey shows Minnesota respondents talked with many people about the complaint besides persons at the news organization and news council staff. National News Council respondents talked with fewer friends, relatives and coworkers about the complaint. This more business-like approach may be due to the fact that most National News Council complainants were representing groups or organizations instead of making a complaint about coverage of themselves as individuals. National News Council complainants were less likely to have a personal stake in the outcome of the decision, and as Merry explains, disputes are cultural events, and ways of dealing with disputes derive from customs embedded in social groups and cultures.⁴⁷

• *What perception did the complainant have about the purpose of the council?*

The council's purpose was to give complainants a chance to speak out about abuses and to persuade the media to apologize, according to most respondents. News council procedures required complainants to contact the media and try to resolve the issue before the news council would hear the case, and complainants reported that contact was unsatisfactory. Although complainants realized the news council might side with the media in the

TABLE 7

Crosstabulations

A) How satisfied were you with the overall news council process?	B) Do you think you had a case strong enough to win if you had sued the media?			C) Did you make a statement to the council during the hearing?		D) At any time did you contact an attorney concerning this complaint?	
	Yes	No	Don't Know	Yes	No	Yes	No
Very Satisfied	54.5	23.7	35.9	51.1	21.7	50.0	30.3
Satisfied	27.3	23.7	25.6	25.5	26.1	29.2	21.2
Neutral	0.0	13.2	20.5	4.3	17.4	8.3	15.2
Somewhat Dissatisfied	4.5	26.3	15.4	14.9	17.4	8.3	21.2
Very Dissatisfied	13.6	13.2	2.6	4.3	17.4	4.2	12.1

TABLE 8

Question (Neutral responses and nonanswers deleted.)	Minnesota News Council				National News Council			
	Very Sat.	Sat.	S/W Sat.	Very Dissat.	Very Sat.	Sat.	S/W Dissat.	Very Dissat.
How satisfied were you with the:								
Decision	46.0	16.0	16.0	18.0	18.6	22.9	12.9	35.7
Publicity decision received	24.0	34.0	20.0	8.0	5.7	8.6	12.9	24.3
News organization's response to decision	10.0	12.0	32.0	22.0	1.4	2.9	10.0	28.6
News organization's response to process	18.0	18.0	16.0	20.0	1.4	4.3	25.7	27.1
News council process	52.0	22.0	14.0	4.0	14.3	22.9	15.7	11.4

complaint, they wanted a chance to address their concerns in a forum that was separate from the news organization's staff.

• What did the complainant hope to accomplish through the use of the council?

Complainants mainly hoped to correct the record, to get media to give more balanced coverage, to get an apology.

• What did the complainant actually accomplish through the use of the council?

Almost all respondents thought they accomplished some of their purposes, if nothing more than giving the medium a hard time. One respondent said media think twice about hurting those who fight back. He perceived that a medium was a little more careful when it did stories about his organization after his complaint. That was enough for him. However, another complainant, whose food-industry product received negative publicity based on what he felt were irresponsible journalistic practices, said the news organization avoided all coverage of his business because he complained to the Minnesota Council. He reported that his products were left out of all future comparisons in the food pages, thereby denying positive coverage he felt his products deserved when compared fairly with similar products in the field.

• Was the complainant satisfied with the results?

Unless the determination was almost exclusively in the complainant's favor, few expressed satisfaction with the results. Even those who won their cases were not satisfied with the publicity the decision received except in two cases. Most felt the media should have an obligation to report on the decision and were disappointed when nothing was reported or when the decision was buried in the back pages after the original article had been run on front page.

• Had the complainant ever used the legal system in a dispute with a media organization?

Twenty-four percent of Minnesota and 8.1% of National News Council respondents were attorneys, so they, of course, had been involved in legal disputes. A small number of others had filed suit, and the reasons covered a variety of areas of the law. A large number said they simply did not believe in suing. One respondent, who reported he had received irresponsible

medical treatment that cost him a leg, said he was so glad to be alive he did not consider suing. Someone who refuses to sue for such a serious, permanent, life-threatening loss is highly unlikely to sue for damages caused by words.

• Would complainants have used the legal system if the press council had not been available?

Again, many respondents simply would not consider going to court. Several respondents reported they had been told they could probably win in court, but they chose the council because it could give vindication quicker without the expense. Looking back, at least two said court would probably have been better than the council.

• What did complainant think of the council's legal waiver policy?

Most respondents recognized their complaint as inappropriate for the legal system, and because of this did not object to the legal waiver. Others thought the legal waiver was unfair because it was one-sided. Some thought it nonbinding, and at least one sued on related issues after the council's decision. This complainant took issue with the news council's interpretation of the waiver and obviously won the right to sue even though the waiver was signed.

• If there had been a charge for press council services, would the complainant have used the council?

A number of respondents would consider using the council if there were a fee, but most of these complained on behalf of an organization or business. Several thought the idea was "simply ridiculous." Almost none of the respondents who complained on an individual basis reported a willingness to use the council if the fee were more than a few dollars.

• Which of the two news council systems - that of the National News Council and that of the Minnesota News Council - is most workable and why?

Minnesota News Council respondents clearly rated that council as better than National News Council respondents rated the national council. Data from the survey indicates a key can be found in the interaction allowed by the Minnesota News Council process. This increased participation is more practical because of the smaller geographic area covered, especially since most Minnesota News Council cases come from the Twin Cities area. National News Council respondents reported feeling unimportant to the process. Many said they were forgotten after the complaint was made, and several said the news council completely lost sight of the purpose of the complaint and focused on what respondents said were mini-issues or insignificant details of the complaint.

• What changes could be made in the system to make it more workable?

More attention needs to be given to the reasons complainants use the councils. Basically they want vindication and a fair airing of the complaint. Complainants in this survey responded well to an opportunity to tell their side of the story. Complainants said speedier results and regional hearings would be beneficial. Councils should also find ways to appeal to members

tion," *Justice System Journal* 7(1982): 420-431.

14. Craig A. McEwen and Richard J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," *Maine Law Review* 33 (1981): 237-268.

15. 418 U.S. 323 (1974).

16. 418 U.S. 241 (1974).

17. John A. Ritter and Matthew Leibowitz, "Press Councils: The Answer to our First Amendment Dilemma," *Duke Law Journal*, 845-870 (December 1974), 851. Quotation, 851.

18. The case involved a complaint against a Minnesota Newspaper Association board member who had advocated starting and served as a charter member of the Minnesota News Council. The news council found in favor of the complainant. Some say this willingness to pass judgment on one of their own gave immediate legitimacy and credibility to the work of the council.

19. Ritter, "Press Councils," 855-856.

20. John Soloski and Roselle L. Wissler, "The Libel Dispute Resolution Program: A Way to Resolve Disputes Out of Court," in Richard T. Kaplar, ed., *Beyond the Courtroom: Alternatives for Resolving Press Disputes*, (Washington, The Media Institute, 1991), 83-111. According to a telephone interview with Roselle Wissler on 20 September 1991, funding for the Iowa Project ended in May 1991, and the American Arbitration Association has taken over the project. During the time the project was active at Iowa, three cases were handled. In one case, the parties did not waive legal rights but the project accepted the dispute for mediation anyway, in spite of the legal waiver requirement publicized by project personnel. Mediation was not successful in resolving the case. In the second case, parties from Massachusetts and Florida were successful in mediating a dispute through the program. In the third, although both parties agreed to waive legal rights and signed an agreement to have the dispute handled by the program, for some unknown reason, the dispute did not go to arbitration.

21. *Proposal for the Reform of Libel Law: The Report of the Libel Reform Project of the Annenberg Washington Program* (Washington: The Annenberg Washington Program in Communications Policy Studies of Northwestern University, 1988), 20.

22. A public forum titled "Media Freedom and Accountability" was held April 4, 1986, at the Gannett Center at Columbia University in New York, and a summary of the discussion was compiled into a book of the same title. Everette E. Dennis, Donald M. Gillmor, and Theodore L. Glasser, eds., *Media Freedom and Accountability* (New York, Greenwood Press, 1989).

23. Richard T. Kaplar, ed., *Beyond the Courtroom: Alternatives for Resolving Press Disputes* (Washington: The Media Institute, 1991).

24. *A Free and Responsible Press*.

25. Norman E. Isaacs, "Why We Lack a National Press Council," *Columbia Journalism Review* (Fall 1970), 19-17.

26. J. Edward Gerald interviewed by the author, tape recording, Minneapolis, 3 May 1988.

27. Tom Patterson, Executive Director, Minnesota News Council, Minneapolis, telephone interview by the author, Minneapolis, 17 May 1988 and "An Index to News Council Complaints," an unpublished report, was provided by news council staff in January 1990.

28. *In the Public Interest III*, (New York: National News Council, 1983); *In the Public Interest III, Supplement*, (Minneapolis, MN: Silha Center for the Study of Media, undated).

29. Robert Mills Schafer, "The Minnesota Press Council" unpublished master's thesis, University of Minnesota, 1982.

30. Fred Johnson, "The Minnesota Press Council: A study of its effectiveness," *Mass Communications Review* (Winter 1976-77), 13-19.

31. Amanda W. Nunamaker, "The National News Council: A Study of Its Concept and Development, 1972-1977," unpublished Ph.D. dissertation, George Peabody College for Teachers, 1977.

32. Ann M. Brill, "The Minnesota News Council: Who ARE These People and Why Are They Second-Guessing the Media?" (Paper presented to the Mass Communication and Society Division, Association for Education in Journalism and Mass Communication, Minneapolis, August 1990.)

33. Randall P. Bezanson, Gilbert Cranberg, and John Soloski, *Libel Law and The Press: Myth and Reality* (New York: The Free Press, 1987).

34. For more information about this proposed study, contact Dr. Donald M. Gillmor, Silha Center, University of Minnesota, Minneapolis.

35. Bezanson, "Libel Law and the Press," 239.

36. *Journalists and Readers: Bridging the Credibility Gap: A national study commissioned by the Associated Press Managing Editors Association* (Minneapolis, Minn.: MORI Research, Inc., October 1985).

37. "The People & The Press: A Times Mirror Investigation of Public Attitudes Toward the Media. Conducted by the Gallup Organization." Published by Robert F. Erburu, Chairman and Chief Executive Officer, Times Mirror, January 1986, 4.

38. MORI, 5.

39. Copies of the survey are available from the author.

40. The National News Council's original files are housed in the Social Welfare History Archives, University of Minnesota, Minneapolis.

41. It is very important to point out differences in the procedures of the two councils. Minnesota News Council complainants are actively involved in the process and the hearing. National News Council complainants did everything from a distance, and because of the logistics of investigating complaints and getting the news council together, National News Council decisions tended to take longer. Almost without exception, National News Council respondents indicated they did not know when the decision was handed down. They made the complaint and felt forgotten. Two even said the copy of the decision received with this survey was the first they had seen of the decision. Several said that because they felt they made no contribution to the process, the council was a waste of time.

42. Gallup, 4, 51.

43. David Lawrence Jr., "Survey Maps Out Details of the 'Credibility Problem'," *ASNE Bulletin*, May 1985, 4, 17.

44. More than 84% had at least a college education, and more than 48% had post graduate degrees. David Lawrence Jr., "Survey Maps Out Details of the 'Credibility Problem'," *ASNE Bulletin*, May 1985, 4, 17.

45. More than 60% had total household incomes of more than \$50,000 in 1988.

46. A number of surveys have reflected willingness by the public to control media. *Editor & Publisher* reported on a survey that found two-thirds of voters do not support unqualified press freedom. The study found a large majority of voters favor limits on basic press freedoms to endorse candidates, criticize government and the military, report on politicians' past mistakes and depict images of violence. "The study found support for free speech protections was so weak that the First Amendment would fail a ratification

vote if it were taken today. . . . About one of every four people said the media should receive no protection at all in those areas." George Garneau, "Press Freedom in Deep Trouble," 20 April 1991, 11.

47. Merry and Silbey. "What Do Plaintiffs Want?", 157-171.

48. Bezanson et al., *Libel Law and the Press*; Sally Engle Merry, "Going to Court," *Law and Society Review* 13 (Summer 1979): 891-925; Merry, "What Do Plaintiffs Want?"

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