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U.S. MEDIA IN THE 1990s

III. THE MEDIA AND SOCIETY

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SUMMARY: This is the third in a series of articles exploring the media of the United States in the 1990s. This installment covers press freedom and regulation, journalism ethics and training, and ethnic broadcasting.

FREEDOM OF THE PRESS

Media in the United States both reflect the values and complexion of the society and work to preserve the basic tenets upon which that society has been constructed. The First Amendment to the U.S. Constitution provides the basis for freedom of the press in America. Because of this broad constitutional protection of press freedom and analogous provisions in the constitutions of the 50 states, few press laws are in force in the U.S. The ones that do exist tend to provide additional protections and legal rights for journalists in categories not required by the Constitution. The Privacy Act of 1974, regulating the collection and dissemination of personal information contained in any federal agency's files, and the Privacy Protection Act of 1980, establishing protection from police searches of newsrooms, are examples of such laws. Additional examples include federal and state Freedom of Information and "sunshine" laws, such as the 1966 federal Freedom of Information Act, which opens up executive-branch records to public and press scrutiny.

However, the scope of U.S. press freedom has been determined principally by court decisions interpreting the nuances of the First Amendment. In general, the U.S. courts have held that the press has a "watchdog" role over government and is not subject to prior restraint or registration. On the other hand, defamation, obscenity and publication of national-security secrets have been generally determined not eligible for protection under the First Amendment.

Watchdog role. A variety of court opinions have found that the press has an important function as a guardian of democracy and as a check upon governmental abuse. U.S. Supreme Court Justice Hugo Black perhaps best summarized this vital theme of American constitutional law in his final concurring opinion in the 1971 "Pentagon Papers" case: The government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people.

The courts have rejected most attempts by the government to impose prior censorship. The best-known recent example of such a government attempt was the Nixon administration's call for a permanent injunction against publication of the "Pentagon Papers" by The New York Times and The Washington Post, based on the claim that publication of the highly classified documents on the history of U. S. involvement in Vietnam would cause grave damage to the United States. In a 6-3 vote, the Supreme Court determined that the government failed to meet the "heavy burden of showing justification of such a restraint."

By the same token, the courts have upheld the tradition that government censorship through licensing and registration requirements for newspapers and journalists is not constitutional. Nevertheless, requirements that owners and executives of general newspapers and magazines file sworn statements listing owners, stockholders and editors to qualify for mailing privileges at lower costs have been upheld by the courts. Because of their special nature, radio and television broadcasting have been subjected to special registration regulations.

Defamation. Over the course of U.S. history, the courts have ruled that the press is not protected by the First Amendment when it uses defamatory language, that which injures the reputation of individuals and institutions. Until 1964, the legal standards for defining and remedying defamation, including libel and slander, were left almost entirely to the states. However, in that year the Supreme Court, in the "The New York Times versus Sullivan" case, decided that the press was liable for defamatory falsehood against public officials only if such officials could prove "actual malice." This decision made it harder for plaintiffs to obtain verdicts against the press, because in addition to showing that the language to which they objected was false, they also had to show juries that the publication or journalist had knowingly published falsehoods.

Obscenity. Although the courts have long held that media publishing or broadcasting obscenity and pornography do not enjoy

First Amendment protection, it remains hard for a judge to define those terms. Consequently, in the 1973 "Miller versus California" and "Paris Adult Theater versus Slaton" cases, the U.S. Supreme Court rejected the notion of a national obscenity standard and left the definition and regulation of obscenity up to "contemporary community standards defined by the applicable state law."

The Court, however, proclaimed a general test for obscenity to be:

- 1) whether the "average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest.
- 2) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and
- 3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Military and atomic secrets. The U.S. has no Official Secrets Act, but the courts have held that the First Amendment does not protect media that print or broadcast military and atomic secrets. Nevertheless, if a journalist obtains such classified information, the government faces a heavy burden in attempting to convince a court to restrain publication in advance, as the "Pentagon Papers" case demonstrated.

Privacy. The U.S. Supreme Court has long recognized a right of privacy under the constitutional Bill of Rights. Consequently, the media have no basis for intruding upon a person's privacy, although public figures have generally been considered fair game for news purposes. By the same token, the media cannot use a person's name or likeness for commercial purposes, such as advertising, without his or her consent.

Trials and the press. After wrestling for many years in the attempt to reconcile the right of the public to know what is happening in the nation's courtrooms, the right of the press to gain access to judicial proceedings and records, and the right of an accused person to a fair trial, the U.S. Supreme Court ruled in the 1976 "Nebraska versus Stuart" case that the press cannot be barred from reporting what takes place in a courtroom open to the public, except in exceedingly rare instances.

Following this ruling, American courts have gradually approved expanded media coverage of courtrooms. Between 1965 and 1980, for instance, 11 states decided to permit photographic and electronic coverage of the courtroom on a permanent basis. In the 1980 "Chandler versus Florida" case, the U.S. Supreme Court unanimously held that the Constitution does not prohibit a state from experimenting with electronic and photographic coverage of trials. By 1992, 45 states permitted electronic media coverage of trials on either a permanent or an experimental basis. Access to trials became so widespread in 1992 that the "Courtroom Network," a cable TV station, began transmitting trials, many of them live, 24 hours a day to 5.5 million American homes. In a contrary move, the U.S. Judicial Conference, a policymaking body representing U.S. federal judges, voted in September 1994 to maintain the ban on cameras in federal court rooms.

REGULATION OF BROADCASTING

Because of its special characteristics, radio and TV broadcasting has been subjected to stricter regulations than the print media, and the courts have upheld the view that such regulation does not violate the First Amendment. A rationale for stricter regulation of broadcasting is that the airwaves are a scarce resource owned by the public and that listeners and viewers are members of a "captive" audience, unlike the users of the print media. The recent explosion of media sources, however, has weakened this theory.

In 1934, Congress set up the current oversight agency of the broadcasting industry, the Federal Communications Commission (FCC). Although enacted before television became a mass medium, the legislation has not been substantially amended since. The law vested in the FCC not only "watchdog" functions, but licensing and rulemaking powers, subject to "public interest, convenience, and necessity."

Acting on this mandate, the FCC has sought to promote diversity in content and ownership in the broadcasting industry. The 1934 law establishing the FCC specifically applied antitrust laws to broadcasting and called for revocation of any station license from an owner accused of monopolistic practices. The FCC has over the years issued regulations limiting ownership of stations within any one city and, in 1975, issued an order that required divestiture of cross-owned newspaper-television stations or newspaper-radio stations in single markets. The FCC has also determined that foreign corporations may not hold more than 25 percent of the voting stock of any broadcasting operation in the United States.

The growth of cable television, which does not use the scarce radio spectrum, and offers great program diversity, prompted the FCC in the 1980s to begin relaxing its regulations on broadcasters. It increased, for instance, the number of AM radio stations, FM radio stations and VHF TV stations that could be owned by one company from seven of each to 12 of each, if the share of the TV station's national market did not exceed 25 percent. In 1994, the FCC again increased the maximum number of AM and FM stations that a single firm could own (to 20 each), but held the maximum number of TV stations at 12. The licensing period was extended from three years for both radio and television stations to seven years for radio and five years for TV. Television networks can now own cable TV systems (with certain restrictions), and the Cable Telecommunications Act of 1984 allows cable systems to be owned by newspapers even though both serve the same market.

Congress completely deregulated the cable TV industry in 1986. After widespread complaints by consumers, Congress passed a 1992 bill to reregulate the industry, and President Bush's veto of the bill was overridden. The FCC also decided in 1987 that it would no longer enforce its "Fairness Doctrine," which had required broadcasters to provide equal time for opposing points of view. Congress tried to codify the "Fairness Doctrine," but President Reagan vetoed the bill. Subsequent attempts by Congress to reinstate the Doctrine have been unsuccessful.

In 1990, Congress passed the Children's Television Act which slightly reduced the amount of advertising permitted each hour on children's programs.

The FCC, in December 1994, opened public comment on proposals to gradually increase the national TV audience limits of any one network from 25 to 50 percent, (TBF -- clarify) given the heightened competition between cable and satellite TV operators. The FCC proposals also would relax restrictions on owning two TV stations in large markets and would permit companies to own TV and radio stations in the same market.

Recognizing the increasing convergence between media, the Clinton administration has proposed a new telecommunications policy to open up the so-called "Information Superhighway." In a January 11, 1994, speech, Vice President Gore outlined the administration's proposals to encourage competition in the information marketplace, including a recommendation that telephone and cable TV companies be allowed to enter each other's businesses. These proposals did not pass in the 103rd Congress. In January 1995, The new Republican Party leadership of the 104th Congress proposed an even more sweeping rewrite of the 1934 Communications Act, which would do away with the court decree breaking up the communications giant AT&T, as well as federal and state laws barring phone and cable companies from each other's markets.

MEDIA AND ELECTIONS

America's media have become an increasingly important factor in the electoral process. Tens of thousands of daily and weekly newspapers and hundreds of weekly and monthly periodicals give wide coverage to electoral campaigns. Endorsements by the major publications are eagerly sought by national candidates. However, since 1960, the dominant medium by far has been television. In that year, John F. Kennedy defeated Richard M. Nixon in one of the closest presidential elections in American history, and many observers credit Kennedy's strong performance in the televised debates between the two candidates as a determining factor in his victory.

Young and telegenic, Kennedy was the first president to fully recognize television's potential and to exploit it effectively. On the other hand, Walter F. Mondale, the unsuccessful Democratic Party candidate for president in 1984, admitted, "I never warmed up to television, and television never warmed up to me." His victorious Republican opponent, Ronald Reagan -- nicknamed the "Great Communicator" -- performed masterfully on the home screen during his two presidential terms, thanks to years of experience as a television and film actor.

The presidential campaign of 1992 marked a change in the power of the big three networks -- CBS, NBC, and ABC -- to dominate coverage and campaign messages. The candidates that year turned frequently to cable TV, especially Cable News Network (CNN), as an important alternative media vehicle. Independent candidate Ross Perot, for instance, announced his availability on CNN's "Larry King Live" show, and Democratic candidate Bill Clinton chose MTV to showcase his talent as a saxophone player. As the ability of cable TV to cover a campaign 24 hours a day has become more apparent, the major networks have shifted emphasis to interpreting and analyzing campaigns rather than trying to cover them exhaustively. Although the "Big Three" networks were still clearly in control in 1992 with 55 percent of the audience for evening news programs, or 22 million U.S. households, cable TV began to play a role in the election process that will surely increase throughout the decade.

As television has become more expensive and sophisticated, both major parties have spent increasing sums on experts to teach candidates how to make the best possible use of the medium, especially the crucial televised debates that have become a staple of presidential campaigns since 1960. In addition to the Kennedy-Nixon debate, the third debate between President Carter and then-candidate Ronald Reagan is widely considered to have been crucial to the election outcome. The two major parties, Democrats and Republicans, have also allocated large budgets for advertising agencies to create brief TV commercials to showcase their candidates' messages and discredit their opponents. The 1988 Bush campaign ads, for instance, clearly played a large part in Bush's victory over Michael Dukakis.

In casting their campaigns, politicians make increasing use of opinion polls. First tried by a Harrisburg, Pennsylvania, newspaper in 1828, polls have become a fixture of America's electoral process. Although opinion polls have become more sophisticated over the years, they have failed dismally on several occasions to predict who would win the presidency. The best-known example is the defeat by Harry Truman in 1948 of Thomas E. Dewey, whom pollsters had confidently picked and whom the Chicago Daily Tribune erroneously declared the winner the day after the election. In spite of their failings, opinion polls conducted by the major national newspapers, usually in conjunction with a national TV network, have become an important tool for political strategists to fine-tune their campaigns and identify opponents weaknesses.

The media put candidates for national office in the U.S. under intense scrutiny, which has often led to the downfall of those candidates. A leading Democratic candidate in 1988, Senator Gary Hart was forced to withdraw from the campaign when the press revealed that he was having an affair with a young woman. In 1992, for the first time, a president, George Bush, was asked

by a reporter whether he had ever committed adultery. Such increasingly intrusive behavior by the U.S. press has generated considerable debate about the extent to which the press should be allowed to delve into the private lives of national officials or candidates for national office. There seems to be no clear-cut conclusion to the debate, but the tendency is toward an ever-increasing scrutiny by the media into the private, as well as the public, lives of leaders.

JOURNALISM ETHICS

The watchdog role of the American press came to the fore in the 1960s during the Vietnam War and during the Watergate investigation of the early 1970s. In the former case, the press played a major role in accelerating the U.S. exit from an unpopular war, and in the latter case, two persistent reporters from The Washington Post, Bob Woodward and Carl Bernstein, succeeded in uncovering facts that led to the resignation of President Nixon. As a result, Woodward and Bernstein became media celebrities, and their book about the investigation, *All the President's Men*, was made into a movie.

For a time thereafter, the trend toward greater investigative journalism flourished. However, some excesses in the early 1980s caused the American public to doubt press credibility. For instance, a young Washington Post reporter, Janet Cooke, won a Pulitzer Prize (the top U.S. journalism award) for her moving portrayal of an eight-year-old heroin addict named Jimmy. Later, it was learned that she had fabricated the article, and the Pulitzer Prize was withdrawn.

In the face of polls showing increased public distrust of the press beginning in the late 1970s, many editors showed renewed interest in codes of ethics and other forms of self-regulation. Journalistic codes of ethics outlining how the press should behave have been in use in the United States since 1923, when the American Society of Newspaper Editors (ASNE) approved the first one, revised most recently in 1975. The Society of Professional Journalists/Sigma Delta Chi and the Associated Press Managing Editors have adopted similar codes. These ethical codes of the three major newspaper professional organizations offer important guidelines, calling on journalists to perform with intelligence, objectivity, accuracy and fairness. However, they are only voluntary and lack sanctions for noncompliance.

Some newspapers have experimented with another vehicle for improved ethical performance, the ombudsman, a concept that originated in Scandinavia. An ombudsman is an individual appointed by a newspaper to investigate complaints concerning the paper's coverage and practices and to publish the results of the investigation. In 1967, The Louisville Courier Journal (Louisville, Kentucky) became the first U.S. newspaper to adopt the system. Among the national elite dailies, however, only The Washington Post implemented an independent ombudsman office with powers to look into abuses or failures by the newspaper and act on complaints by readers. In 1985, the Organization of Newspaper Ombudsmen had an active roster of 30 ombudsmen, and the median circulation of the papers for which they worked was about 130,000. Since then, however, many papers have discontinued the system.

The news council concept, also imported from Europe (the United Kingdom), represented another attempt at press self-regulation that had mixed results. The most ambitious U.S. experiment was the National News Council, launched in 1973 with funding by various private foundations. It had the backing of The Washington Post, The Wall Street Journal, The Christian Science Monitor, CBS, The Associated Press, and United Press International. The Council acted as an alternative for libel and other judicial action. It investigated complaints against media organizations in which the plaintiff agreed not to bring civil actions against the accused. Its funding terminated, however, in 1984, and only a few news councils at the state level, such as the Minnesota News Council, have continued to operate successfully.

These experiments, though laudable, did not measurably improve the American public's perception of the press. Polls immediately following the U.S. dispatch of troops to the Caribbean island nation of Grenada in 1984 and participation in the Persian Gulf War of 1991 indicated that the American public overwhelmingly supported the restrictions by the U.S. military on media coverage of the two conflicts. While reporters had almost unlimited access to battle situations in Vietnam, they were highly restricted in Grenada. Then, under an agreement reached with the U.S. Department of Defense following Grenada, they operated under a "pool" arrangement in the Persian Gulf War, with designated representatives providing footage and reports from the front to media representatives away from combat areas. The Defense Department cited security concerns and the small battlefronts in both cases as reasons for the restrictions.

Ethical questions continue to haunt American media. One of the hottest current issues for American journalists is where to draw the line between the individual's right to privacy and the public's right to know. For example, when The Village Voice was offered a free-lance article in July 1991 exposing the homosexuality of a high Defense Department official, editors of the New York City weekly rejected the piece as an unwarranted invasion of privacy. One month later, the same editors permitted a Voice columnist to summarize the allegations, including the official's name. They cited as their rationale the fact that the man's identity was so widely circulated by other news organizations that continued restraint would have been a futile exercise. On the other hand, The Washington Post chose to cover the controversy without citing the official by name, because of its policy of "not writing about personal lives of public officials unless the personal aspects begin influencing their jobs."

Newspapers have also differed on whether to name the victims in rape cases, another delicate privacy issue. The U.S. court system, state and federal legislatures, regulatory bodies, the public and the media will all continue to have a hand in shaping how such legal and ethical issues are handled in America during the 1990s.

JOURNALISM EDUCATION

U.S. journalism benefits from a wide network of educational facilities. The first U.S. school of journalism was founded by the University of Missouri in 1908. By 1990, the number of universities offering journalism degrees had jumped to 404. Between 1960 and 1990, college journalism enrollment grew from slightly over 11,000 to almost 160,000. Most of these students (93.8 percent) were studying for the bachelor's degree, while 5.6 percent were in master's programs, and 0.5 percent in doctoral programs. The most dramatic trend in journalism education is the increasing percentage of women, who in 1990 constituted a majority in both the bachelor's and master's programs. Table 1 lists the ten largest journalism and mass communication programs by 1990 undergraduate enrollments.

U.S. journalism schools prepare students for more than newspaper careers. In addition to news-editorial, the traditional slot for newspaper journalists, the three other major areas are advertising, broadcast journalism and public relations. In 1990, the largest number of enrolled students, 33 percent, was in advertising. In addition to journalism schools, most U.S. newspapers offer internships, whether or not for academic credit. There is also a growing emphasis on continuing education and mid-career training of professionals. In 1980, Northwestern University inaugurated the first one-year graduate program for journalists with at least three years' experience.

Most American journalism schools and a number of U.S. foundations and other institutions offer scholarships for foreign students. Among these are the American Society of Newspaper Editors International Journalism Exchange Program, Alfred Friendly Foundation Press Fellowship, Nieman Foundation Fellowship for Journalists, Fulbright Commission Scholarships, Eisenhower Exchange Fellowships, and Hubert H. Humphrey Fellowships.

FOREIGN OWNERSHIP AND ETHNIC MEDIA

Reflecting the significance of the United States on the world stage and the ethnic diversity of its people, there is a significant presence of foreign media and of ethnically-targeted domestic media in the country. Foreign media enjoy basically the same rights and privileges as domestic media in the United States. They are not subject to special restrictions in areas such as visas, transmission of cables or imports, and there are no special accreditation procedures for foreign correspondents. Washington D.C. and New York have the largest concentrations of foreign correspondents in the United States, with approximately 3,000 in Washington, the largest number for any city in the world. The Overseas Press Club of America, the Foreign Press Association of New York, and the Foreign Press Centers of Washington and New York offer a variety of services to these correspondents, including assistance in covering the U.S. scene.

There are no laws specifically prohibiting foreign participation in U.S. print media, but in broadcasting, the FCC bars all aliens, alien governments and alien corporations from holding more than 25 percent of the voting stock of a potential licensee. Several buyouts in the late 1980s and early 1990s have increased the foreign presence in U.S. media. Australian-born media magnate, Rupert Murdoch, purchased the New York Post, Chicago Sun-Times, and TV Guide. Murdoch also paid \$575 million to gain control of Twentieth Century-Fox Film Corporation and bought seven large television stations from Metromedia to found the Fox Broadcasting Company. He was able to avoid the 25 percent foreign limit in broadcasting ownership by becoming a naturalized American citizen on September 4, 1985 -- before the purchase.

However, in 1984, the FCC began investigating a complaint by the National Association for the Advancement of Colored People (NAACP) charging that Murdoch had misled the FCC about the extent of participation in the purchase by his Australian-based News Corporation. NBC soon joined the NAACP in this action. In February 1995, NBC agreed to drop its legal challenge after Fox announced it would carry NBC programming on its Asian satellite broadcasting system. NBC's decision did not affect the ongoing FCC investigation of the NAACP complaint. In May 1955, the FCC ruled that Murdoch was in violation of federal rules limiting foreign ownership of U.S. TV stations, it left open a door for Murdoch by maintaining that there would be no violation if the purchase had been only a loan by News Corporation. Murdoch's Fox network promptly announced that accounting change to bring it into compliance.

In 1991, the Japanese companies Toshiba and Itoh bought for one billion dollars a 12.5 percent interest in Time Warner, one of the largest U.S. media groups. As mentioned earlier, a Saudi group bought UPI in 1992. The same year, the Hallmark Company sold the leading Spanish-language television network in the United States, Univision -- with 13 TV stations -- to an investment group that included Grupo Televisa, Mexico's largest media group, and Venevision, a leading Venezuelan broadcasting firm.

Foreign-language and ethnic media aimed at specific groups -- especially Hispanics resident in the United States -- have been growing quickly. In addition to Univision, a second major network, Telemundo, is competing for the lucrative U.S. Hispanic market of 22 million people. This is the fastest-growing population group in the United States -- it has increased by more than 34 percent since 1980. Both Univision and Telemundo have also begun to export their programming to Latin America and other Spanish-speaking markets.

Among the hottest properties in the U.S. media industry are radio stations aimed at the Hispanic market. Since 1990, the number of such radio stations has grown 21 percent, to 390. For the first time, in January 1993, a polling firm confirmed that a Spanish-language station was number one in Los Angeles, America's largest radio market. Almost 90,000 people a day listen to KLAX-FM's Mexican-oriented programming, beating out Los Angeles' other 44 radio stations. CNN went bilingual on March 30, 1993, with the launching of CNN Radio Noticias, a Spanish-language radio news service broadcast nationwide via satellite. CNN Radio Noticias consists of six minutes of news every hour on the hour, Monday through Friday, and started up with 40 affiliate stations in the major U.S. markets.

A 1991 study by the National Association of Hispanic Publications showed that there were more than 350 Spanish and bilingual publications in the United States with a readership of more than 5 million. In 1986, by contrast, there were only about 60 Hispanic newspapers and magazines. Still, only two Hispanic-oriented publications -- both English-language -- had circulations of more than a million in 1989: Vista with 1.4 million and Newsweek International with 1.02 million. Ahora, a quarterly magazine with a controlled circulation of 500,000, became the largest-circulating Spanish-language magazine in the United States when it was launched in San Diego, California, by the Hallmark Company in 1989. One of the largest-circulating weeklies in 1991 was Variedades and its companion TV guide, La Guia, which had a combined circulation of 421,000. The 1991 edition of Editor & Publisher International Yearbook lists several hundred newspapers either in a foreign language or in English aimed at 39 ethnic groups in the United States, with the largest being Spanish speakers. Fredric A. Emmert is a U.S. Information Agency foreign service officer who has observed and worked with U.S. and foreign media during a 25-year career, including Public Affairs assignments in Latin America, Europe and Washington. D.C.

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