AN INVESTIGATION OF THE RELATIONSHIP BETWEEN CERTAIN SOCIO-POLITICAL IMPLICATIONS AND THE ISSUE OF PRIOR RESTRAINT OF THE PRESS DURING THE TWENTIETH CENTURY

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DEDICATION

This thesis is dedicated to the memory of my late uncle:

S. G. O. Ebo (Superior Colour)

Barrister-At-Law

"He taught me to believe that our destiny is not our fate, rather our faith holds our destiny."

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I would like to seize this opportunity to state that despite the fine counsel I received from my advisors during the preparation of this

thesis, certain imperfections may still persist, and that such imperfections are solely the responsibility of this author.

Bosah Louis Ebo

Stevens Point, Wisconsin

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CHAPTER I

INTRODUCTION TO THE STUDY

> What signifies a declaration that the liberty of the press shall be inviolably preserved? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude of evasion? I hold it to be impracticable and from this I infer that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.
>
> --Alexander Hamilton

The fundamental framework of any democratic nation is the formulation of public opinion and, subsequently, public participation in the process of government. If a democracy is to survive, the government must rest on the determination of the people. The implication here, of course, is that the people should be well informed about issues and events in their socio-political environment, in order to make adequate judgments. If this understanding is to be, the press has an obligation to disseminate accurate and reliable information among the people to help them make valuable decisions. As Robert Flinn observed,

> The first constitutional principle is that a self-governing people must have a thorough knowledge and understanding of the problems of their government in order to participate effectively in their solution. . . . Without an alert, free, and diligent press, there cannot be a well-informed citizenry.[1]

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[1]Robert Flinn, "The National Security Exception to the Doctrine of Prior Restraint," William and Mary Law Review, 13 (Fall 1979):223.

Such notions have allowed the press to become increasingly significant both as an informer and as an organ of public discussion. But beneath all these, some press observers have accused the press of exploiting this significance. In fact, they have gone so far as to accuse the press of unduly influencing public opinion, most often with adulterated information. Other press observers, on the other hand, have disagreed with this notion, and maintained that, if anything, the public opinion to a greater extent influences the press. This contention laid the groundwork for this study. Primarily, this study is an investigation into these questions to determine the nature of the relationship between the socio-political environment and the activities of the press.[2]

The thesis investigates and analyzes this relationship and attempts to discern the nature of the interaction between its components. The study will focus primarily upon the Twentieth Century to illustrate how the socio-political environment constitutes an influence on the press. This influence can be either positive or negative, in which case it can advance or inhibit the activities of the press respectively. In the latter case, it simply means observing the possibility of the socio-political environment <u>constituting a prior restraint</u> on the press.

Any attempt at defining prior restraint engenders the same complexity that the concept and its application engender as well. But, even so, some common grounds of perception seem to wield all the definitions together. The renown First Amendment scholar, Thomas Emerson, noted,

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[2]By socio-political environment, this author means government policies, judicial opinions, and the reaction of the public opinion on events and issues taking place in the country.

> The concept of prior restraint, roughly speaking, deals with official restrictions imposed upon speech or other forms of expression in advance of actual publication. Prior restraint is thus distinguished from subsequent punishment, which is a penalty imposed after the communication has been made as a punishment for having made it.[3]

Black's Law Dictionary defines prior restraint accordingly:

> In constitutional law, the First Amendment, U.S., Const., prohibits the imposition of a restraint on a publication before it is published. . . . Three exceptions are recognized: a publication creating a "clear and present danger" to the country. . . ; obscene publications, and publications which invade the zone of personal privacy. A prohibited prior restraint is not limited to the suppression of a thing before it is released to the public, rather, an invalid prior restraint is an infringement upon constitutional right to disseminate matters that are ordinarily protected by the First Amendment without there first being a judicial determination that the material does not qualify for First Amendment protection.[4]

Thus, implicit in the definition of prior restraint is the fact that the application can take different forms. Gregg W. Zive discusses four of the most prominent ways of applying prior restraint: licensing, "The most obvious form of prior restraint, and historically the most common. . . . Taxation, threat of subsequent punishment, and injunction . . . the judicial form of prior restraint."[5] The most common recent application- of prior restraint have been through injunctions and this is usually the focus of the contention between the government and the press.

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[3]Thomas Emerson, "The Doctrine of Prior Restraint," Law and Contemporary Problems, 20 (Fall 1955):648.

[4]Henry Campbell Black, Black's Law Dictionary, 5th ed. (St. Paul: West Publishing Co., 1979), pp. 1074-1075.

[5]Gregg Zive, "Prior Restraint and the Press Following the Pentagon Papers Cases--Is the Immunity Dissolving," Notre Dame Lawyer, 47 (April 1972).

The First Amendment of the United States Constitution holds that "Congress shall make no law . . . abridging the freedom of the press. . . ."[6] The ambiguity and vagueness surrounding this constitutional article has constituted a long standing controversy between the government and media. The government maintains that no right is absolute and so reserves the right to check press excessiveness when national security and welfare is at stake. The press on the other hand argues that the First Amendment was designed to regulate government interventions of press activities and that the press as an independent institution should function on its own guidelines, beyond government legislation, in order to ensure an unadulterated information coverage.

The complexities of domestic politics and international relations in the Twentieth Century has seen this conflict enlarge continuously. With the loophole for differing interpretations of the First Amendment by both the press and the government, the case for prior restraint emerged with each trying to uphold its own interpretation. The government, with an interpretation that seeks to foster an extension of its regulatory power into press activities and the press, with an interpretation that upholds its independence from government interference, have sustained a controversy that has not ameliorated relationships between the two. On several occasions this nagging controversy has been shifted to the domain of the body responsible for interpreting the constitution, the United States courts. Interestingly, the courts have not maintained a consistent control of the issue, but rather have manifested an

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[6]U.S. Constitution, amendment I.

undulating approach in their judgment of prior restraint.

Thus, this study will attempt in the analysis of this conflict to observe the activities of both the government and the press in the socio-political environment; in other words, their reactions and stands toward significant issues and events in the nation. Finally, in order to ascertain the presence and the nature of the relationship between the socio-political environment and the press, public opinion on the same issues will be investigated to determine its reaction and subsequent relationship with the press and court decisions.

The nature of this study almost inherently adopts a critical-historical approach. One only has to look at Kenneth Burke's contention to see this, a contention that William C. Davidson noted:

> The critic begins by determining the "equations" operative within the text. "The first step . . . requires us to get our equations inductively, by tracing down the interrelationships as revealed by the objective structure." By "equations" Burke has in mind the "dramatic alignments" within the discourse. The task is one of noting: "what is vs. what."[7]

Donn Parson made a similar observation when he stated, "The critic must necessarily take a stand. The position he takes will depend upon his material and the standards he brings to bear upon those materials, as well as upon the product of his own insight. Criticism is by its very nature argumentative."[8] Again one only has to look at the major

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[7] William C. Davidson, "Sam Houston and the Indians: A Rhetorical Study of the Man and the Myth" (Ph.D. dissertation, University of Kansas, 1971), p. 8.

[8] Donald Parson, "The Rhetoric of Isolation: A Burkeian Analysis of the America First Committee" (Ph.D. dissertation, University of Minnesota, 1964), p. 14.

contention of this study to see the critical nature of the investigation. As this study searches to present some equations in discourse that will shed light on the relationship between the public opinion and the activities of the press, the implication becomes clear that this study is also critically searching for the determinants that compose this relationship. For instance, significant political and social issues that occurred in the Twentieth Century will be documented, and the reaction of the courts, the government, the public, and the press on the issues will be observed. The establishment of these reactions will be argumentative, hence critical. Once the reaction of the four agents on a particular issue is established, the actual nature of press activities during the period will be analyzed to detect its relationship with the public opinion.

Through this analysis it can be detected if there is a relationship in the first place and which way the relationship goes. For instance, if there is a repeated indication that whenever the press takes a positive stand on an issue along with the government, with a negative stand in the public opinion, that the press is inhibited in its activities by both the public and legal decisions, then there is a definite relationship, and in this case one of the public opinions influencing the press. If, on the other hand, the government takes a positive stance on an issue, but with a negative stance from both the press and the public opinion, and if the activities of the press are advanced as indicated by judicial decisions, then the relationship shows an influence again from the public on the press. This contention, of course, implies that the judicial opinion most often parallels the public opinion,

a fact this study intends to substantiate.

The historical aspect of the study is apparent since the study will examine the social and political developments in the Twentieth Century, as well as legal decisions and the course of the press activities. Overall, the historical development will be substantiated by definitive accounts of this period in the works of recognized social historians and public discourse. Besides providing a base for the historical observation of the period under examination in this study, since this is a critical-historical analysis, the works of the social historians will also offer the necessary terms to justify the methodology of this study.

Every critical-historical study, in principle, involves an investigation of an event and the documentation of the terms of the event. In other words, the documentation of the relationships operating among the agents composing the event. Of this point, the renowned historian, Carl Becker, noted that the historian can not deal directly with an event

> . . . since the event itself has disappeared. What he can deal directly with is a statement about the event. He deals in short not with the event, but with a statement which affirms the fact the event occurred. When we really get down to the hard facts, what historians deal with is an affirmation--an affirmation of the fact that something is true. There is thus a distinction of capital importance to be made: the distinction between the ephemeral event which disappears, and the affirmation about the event which persists. For all practical purposes it is this affirmation about the event that constitutes for us the historical fact.[9]

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[9] Phil Snyder, ed., Detachment and the Writing of History: Essays and Letters of Carl Becker (New York: Cornell University Press, 1958), p. 47.

But even beyond the fundamental tenets of a historical study is the operative formula of historiography itself, which this study will also employ.[10] This study, by critically investigating the presence or the absence of a pattern of relationships between two distinct agents, over a span of time, inherently involves a critical-historical methodology. This understanding is substantiated by further inquest into the theories of historical explanations, particularly the Popper-Hampel Theory.[11] Alan Donagan explicating Popper-Hempel Theory noted:

> Popper's theory of historical explanations is a special application of his general theory of causal explanation, which he formulated as follows: "To give a causal explanation of an event means to deduce a statement which describes it, using as premises of the deduction one or more universal laws, together with certain singular statements, the initial conditions."[12]

Donagan, further explicating the causal explanation of an event, divides an explanation into two, the <u>explanandum</u> and the <u>explanans</u>.[13] The explanandum must be deduced from the explanans, what Donagan calls the <u>deductive thesis</u>, and the explanans must contain one or more universal

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[10] Webster's New Collegiate Dictionary defines "historiography" as: the writing of history based on the critical examination of sources, the synthesis of particulars from the authentic materials, and the synthesis of particular into a narrative that will stand the test of critical methods.

[11] The Popper-Hempel Theory was propounded by Professors K. R. Popper and C. G. Hempel, and based on an article delivered to the American Association for the Advancement of Science at Colorado on December 1961.

[12] Alan Donagan, "The Popper-Hempel Theory Reconsidered," <u>Philosophical Analysis and History</u>, ed. William Dray (New York: Harper and Row Publishers, 1966), p. 127.

[13] The <u>explanandum</u> is a statement of what is to be explained or a statement that certain events occurred, and the <u>explanan</u> is a statement of what explains it or a statement where conditions are stated.

laws, the covering law thesis.[14]

Hempel, on the other hand, devised a similar theory of historical explanation. According to Donagan, Hempel's theory maintains that

> . . . the explanans must consist of "a set of statements asserting the occurrence of certain events C_1 . . . C_n at certain times and places" "a set of universal hypothesis;" all statements in the explanans must be "reasonably well confirmed;" and finally, the explanadum must be logically deductible from the explanans.[15]

The Popper-Hempel Theory with some inherent flaws, Donagan noted, forced Hempel to modify the theory.

> Instead of maintaining that all explanations satisfy both the deductive thesis and the covering law thesis, he now divides explanations into two classes: the "deductive-nomological," which satisfy both; and the "inductive-probabilistic," which do not satisfy the deductive thesis, but satisfy a weakened covering law thesis.[16]

Hempel maintains that every explanation falls into one of the two classes, and explains the inductive-probabilistic this way:

> Given that an event of the kind A has occurred (A_1), and that the statistical probability of an event of the kind B, given A_1, is equal to 1--b (where b is small), high inductive probability is conferred on the statement that an event of the kind B will occur.[17]

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[14]Dray, Philosophical Analysis and History, p. 128. By universal law Popper means that the expanans must not only purport to be true for any place and any time, but must possess universal names and no individual names. Also, ". . . universal laws must be empirically falsifiable. Hence an 'analytic,' i.e., a logically necessary, truth cannot be a universal law. Ibid., p. 129.

[15]Ibid., p. 130.

[16]Ibid., p. 131.

[17]Ibid. Of the Popper-Hempel Theory, Donagan further notes, "The most striking fact about the Popper-Hempel Theory is that few of the innumerable historical explanations found in the writings of historians even appear to accord with it. The reason why they do not is that few of them are put forward as resting on covering laws, whether explicit

This same operative principle of a critical-historical explanation is accorded recognition in the knowledge of other analysts, both within and beyond the realm of historiography. For instance, Sir Isaiah Berlin formulates the notion that a

> historical explanation is to a large degree arrangement of the discovered facts in patterns which satisfy us because they accord with life--the variety of human experience and activity--as we know it and can imagine it. . . . When the patterns contain central concepts or categories that . . . are of widescope, permanent, familiar, common to many men and many civilizations, we experience a sense of reality and dependability that derives from this very fact, and regard the explanation as well founded, serious and satisfactory. . . . the explanation not only involves, but reveals, basic categories of universal import, which, once they are forced upon consciousness, we recognize as underlying all our experience; yet so closely interwoven are they with all that we are and feel, and therefore so totally taken for granted, that to touch them at all is to communicate a shock to the entire system; the shock is one of recognition and one that may upset us, as is liable to happen when something deep-set and fundamental that has lain unquestioned and in darkness, is suddenly illuminated or prised out of its frame for closer inspection.[18]

Thus, historical explanations seek to document facts, and even beyond that, to critically investigate patterns of relationships derived from the facts. Often these facts are there to be accounted for, and at other times it becomes necessary to inquire into the existence of the facts. As this study seeks to investigate the relationship between the socio-political environment and the press, through a critical-historical

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or implicit. Of the few that are so put forward, I shall argue that the putative covering laws they contain are either spurious or untrue. In short, if the covering law thesis be true, then no historian has yet succeeded in providing a genuine historical explanation." Ibid., p. 142.

[18] Sir Isaiah Berlin, "The Concept of Scientific History," Philosophical Analysis and History, ed. William Dray (New York: Harper and Row Publishers, 1966), pp. 39-40.

analysis, the groundwork of the study becomes not only establishing facts, but also inquiring into the presence of even new ones. In other words, the tenets of this study allow for the adoption of a critical-historical methodology since the study inherently compounds existing facts, and at the same time allows for equative permutations of both the old and the new facts, to discern the motif of this study.

Even the works of most social historians, directly and often tacitly, exhibit the permutations of investigatory agents to sustain a historical explanation. When Perry Miller seeks to inquire into the Puritan mind, and the relationship between its nature and composition on the New England society, the equative principle of a historical explanation is evident. The peculiarity of the Puritan ideology existed and became identifiable only to the extent that the idiosyncrasies that permeated the Puritan mind and culture could be equated into a pattern of discernable relationships. For instance, Miller in explicating the Puritan idea of social covenant noted,

> When the Puritan spoke of the natural man in purely pietistic terms, they emphasized his irremediable depravity and found in him nothing whatsoever that was good, but whenever they spoke in the language of formal logic or psychology, they made the most of what remained of the divine image and built as much as possible upon the innate law of nature or the innate light of reason.[19]

According to Miller, the Puritan had a certain mind and outlook that held his ideology, which, of course, reacted in certain discernable ways with the other agents in his environment. The explanative theory of history becomes operative in Miller's analysis, since the very moment a

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[19]Perry Miller, The New England Mind (Cambridge: Harvard University Press, 1963), p. 402.

historian seeks to inquire into the nature of a certain understanding, it is also purely a quest into the relationships operating in the composition of that understanding. Thus, when Miller seeks to establish the nature of the Puritan mind, it is intrinsically also an investigation of the composition in that order. This study follows a similar channel since the tenets unquestionably exhibit the same investigative formula by seeking to establish the relationship between the socio-political environment and press activities.

The explanative principle of a critical-historical study was also operative when David Noble inquired, through the works of notable historians, into the Frontier Thesis and the National Covenant in American Historical Writings.[20] Tracing the transition of American thought from feudalism to the Puritan era and beyond, Noble observed that the Puritans ". . . believed that the community they established in the New World was sustained by a covenant with God which delivered them and their children from the vicissitudes of history as long as they did not fail in their responsibility to keep their society pure and simple."[21] The tacit implication here, of course, is that the Puritan mind sustained a certain nature, and that nature, relating in certain ways with the other agents in the environment, dictated the conditions that existed in the Puritan society. By every account Noble's assessment is an equative explanation of the Puritan society, and the evolving patterns of relationships and impacts on the society as a result. This contention even became more evident with

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[20]David Noble, Historians Against History (Minneapolis: University of Minnesota Press, 1965).

[21]Ibid., p. 3.

Noble's observation that ". . . the Puritans began a tradition which entered most powerfully into the imagination of the United States when the new nation took shape in the late Eighteenth Century."[22]

Thus, what emerges from this analysis of critical-historical explanation, based on the works of historians themselves, is an understanding that history involves a critical investigation into an event, to document the circumstance and the process of that event. Thus, historical explanation seeks to detect relationships in the event and to present an equative permutation of the relationships discovered. This study, by not only seeking to investigate the nature of the socio-political environment and press activities at a certain period, but by also trying to detect some type of relationship between the two, fulfills the requirements of a critical-historical study.

To allow for a broader recapitulation of the existing conditions in the socio-political environment at a given time, which will in turn reinforce the definitive account of the same period in the works of social historians, the public discourse will include statements issued by public agencies that reflect the culture of the nation. Examples of such public discourse are: Public Papers of the President, Executive Orders, The State of the Union Message by the Presidents, Congressional Quarterly Weekly Reports, and Treaties and Other International Acts of the United States.

It should be noted that the issue of prior restraint is so broad and the controversy it entails so complex that this study will not attempt

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[22]Noble, Historians Against History, p. 7.

to account for its entirety. There is an immense amount of information exploring the various aspects of prior restraint, but most of these studies were done on a longitudinal basis. In other words, they paid particular attention to particular cases of prior restraint under particular circumstances.[23] This study adopts a different approach since it will be observing the development of a trend that marks the issue. While this is advantageous since it may congeal some of these specific studies into an identifiable whole, it has its disadvantages as well. By looking at the broad nature of the issue, it may tend to overlook certain significant aspects.

In view of the large amount of inquiries existing on the issue of prior restraint, only a handful will be examined here, but even then, only those that directly touch on the tenets of this study will be reviewed in some form. This approach highlights the difference between this study and those that were examined, but more importantly, it also shows how this study will answer some of the questions raised in those studies, or possibly even raise additional questions.

The concept of press freedom and prior restraint in particular, has been a subject of constant inquiry. Thomas Emerson, in his thesis, "The Doctrine of Prior Restraint," looked at the entire concept, its developments and its implications. Emerson implicitly pointed out the relationship between the socio-political environment and prior restraint when he noted, "there are strong pressures in modern industrial society for

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[23]See, for instance, William Small, Political Power and the Press, and James Aronson, The Press and the Cold War. Both studies and others mentioned in the Review of Literature clearly illustrate this point.

controls over expression that prevent rather than punish after the event. In part, perhaps, the trend may be justified by the complexities of modern life and the increased need for effective regulation."[24] But even with this note, Emerson's analysis dealt more with the formulation of the concept of prior restraint and its implications.

The Pentagon Papers case, in 1971, was among the most controversial prior restraint cases in the United States history because it was the first time the federal government sought to enjoin a newspaper publication of information already in its possession. Richard Rubin looked at the factors surrounding the Pentagon Papers case, certain elements in the judicial decision and its implications. Rubin's analysis took a one line approach since, for the most part, it examined the concept of press freedom in the circumstances of the Pentagon case.

Howard Smith and Louanne Norris in, Newsmakers: The Press and the Presidents, investigated the nature of the relationship between the Presidents and the press. Their concern came through when they stated, "occasionally the press goes from its role of merely reporting the news to becoming a factor, a very real factor, in national politics."[25]

In, Political Power and the Press, William J. Small studied the continued conflict between the government and the press. The study examined the ways normally employed by the government in inhibiting the press and dealt with the Pentagon Papers case. Small concluded: "Two themes were to emerge from the government's side during the ensuing debate, two

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[24] Emerson, "Doctrine of Prior Restraint," p. 649.

[25] Howard Smith and Louanne Norris, Newsmakers: The Press and the Presidents (Reading: Addison Wesley, 1971), p. 111.

questions about the role of news in a democratic society. First, was there no recourse by the government to protect itself from damaging publication? Secondly, where was the patriotism of the news people, have they no love of country?"[26]

In, "The Press, The Court and the Law," Zelman Cowen, in light of the Thalidomide litigation in United Kingdom, discussed the relationship that exists between the government and the press. Zelman, the Governor-General of Australia

> . . . outlines briefly the development of the common law of contempt with respect to media reporting of matters sub judice, together with parliamentary practice as to the discussion of such matters, and relates these to an examination of the conflicting claims to protection of freedom of the press and the right of parties not to have a trial of the issues prejudiced by adverse publicity.[27]

The Press and the Cold War, by James Aronson, looked at a moment of high sensitivity in international relations and how the press fared during that period. Aronson also discussed the Bay of Pigs and the Cuban Missile Crisis. It was a time when the press had to be watched seriously and carefully because of the delicate nature of the moments.[28]

The one area of strong concern in the socio-political environment is the national security, and this is also the most fertile area of conflict between the government and the press. Jerrold Becker looked at the Supreme Court's decisions on the issue of national security, and the

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[26] William J. Small, Political Power and the Press (New York: W. W. Norton Co., 1972), p. 221.

[27] Zelman Cowen, "The Press, The Courts and the Law," Melbourne University Law Review, 12 (June 1979):1-8.

[28] James Aronson, The Press and the Cold War (Indianapolis: Bobbs Merrill Co., 1970).

socio-political elements that shaped the attitude of the courts. Becker noted that the thesis of his article was that the continued overhauling of "previously formulated discernable standards for adjudicating conflicts in terms of national security . . . is a result often attributed more to the composition of the courts than a lack of precedent."[29]

The influence of international relations on domestic politics is substantial enough to dictate the government's attitude towards the press and vice versa. In any study of the socio-political environment of a nation, its international relations and foreign policies can not be overlooked since their impact on any given political environment, can implicitly or in some cases directly, shape the relationship between the government and the press. In view of this understanding, this study intends to mention, and in some cases analyze, relevant international conflicts that may have a bearing on the tenets under consideration.

The delicate nature of international relations that has become a mark of the Twentieth Century, engendered severe secrecy and the classification of many government materials. Increased government classification had a substantial impact on the American public opinion. The whole question of "Secrecy in The Conduct of United States Foreign Relations" is what Peter Copeland examined.[30]

The policies of a particular President or a particular administra-

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[29] Jerrold Becker, "The Supreme Court's Recent National Security Decisions: Which Interests Are Being Protected?" Tennessee Law Review 40 (Fall 1972):2.

[30] Peter Copeland, "Secrecy in the Conduct of United States Foreign Relations: Recent Policy and Practice," Cornell International Law Journal 6 (May 1973).

tion not only influences the socio-political environment, but can also create one. An existing socio-political environment can and often does influence the relationship between the government and the press. Ironically, both are adversaries in the components of democracy where both have a significant role to play in protecting the public. R. E. Bird looked at this idea in "Role of the Press in a First Amendment Society."[31]

The media are torn between their obligation to truth and their obligation to their nation, and this notion very often presents the grounds for conflict between the government, the public, and the press. The question of truth and national obligation becomes a sensitive matter when it is drawn into issues of foreign policy, for its impact on public opinion can be even more sensitive. James Reston examined this idea noting "that the rising power of the United States in world affairs, and particularly of American Presidents, requires not a more compliant press, but a relentless barrage of facts and criticisms, as noisy but also as accurate as artillery fire."[32] But the disadvantages of such a platform in a sensitive and fast changing world is apparent, especially in the relationship between the United States and the Soviet Union. Reston recognized this fact when he stated, "Moscow with its controlled press, had many tactical advantages over Washington, which had to deal not only with the opposition of Soviets but also with the skepticism of its own reporters."[33]

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[31] R. E. Bird, "Role of the Press in a First Amendment Society," Santa Clara Law Review 20 (Winter 1980):1-12.

[32] James Reston, The Artillery of the Press, Its Influence on American Foreign Policy (New York: Harper and Row Publishers, 1966), p. Introduction.

[33] Ibid.

This distinctive nature of the press system of the two leading nations leaves a situation that places the United States at a disadvantage, and thus creates another reason why the government resents an unlimited press. From the above review it is evident that there is a good number of inquiries existing on the issue of press freedom and that most of them have no direct bearing on the tenets of this study.

The remainder of this study is divided into four chapters. The second chapter deals with the historical development of the press from the colonial period up to the end of the Nineteenth Century. This chapter examines the relationship between the press, the public, the government, and the place of the judiciary in this relationship. It also discusses some significant implications in the relationship, and observes the presence of a pattern. Chapter Two, in other words, sets the stage for the building of the core of the study in the subsequent chapters.

Chapter Three deals with a major time span in the Twentieth Century, from 1900 to 1945. It looks at the socio-political environment of this period and attempts to detect the significant highlights in issues and events.[34] For instance, significant issues and events like the Muckraking era, the First World War, the Depression, and the Second World War are examined. The reactions of the government, the press, the public, and the courts on these issues are observed and analyzed in order to

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[34]Note that the Twentieth Century, the period of study, was broken into two parts: from 1900 to 1945 and from 1945 to 1980. The reason for this is to make the study more manageable. However, the choice of 1945 as the benchmark is due to the significance of that time. 1945 marked the birth of the nuclear age, and saw the rise of the United States as a super power.

determine the nature of the relationship existing between the socio-political environment and the press. The equative permutations of the components of this relationship are presented to substantiate the contention of this study that a relationship does exist between the socio-political environment and the activities of the press, and that this relationship is one of the former influencing the latter.

The fourth chapter of this study deals with the second time span of the Twentieth Century, from 1945 to 1980. This chapter essentially does the same thing as the previous chapter, except it observes a different time frame, and also examines different issues and events in the socio-political environment. For instance, the chapter examines such issues as the Korean War, the Bay of Pigs Invasion, the Cuban Missile Crisis, and the Vietnam war. Again, the idea is to establish the reaction of the government, the press, the public, and the judiciary on these issues, and to make a determination as to the type of relationship between these agents. As evident in Chapter Three, this relationship also comes through in Chapter Four, and is seen to uphold the contention of this study that there is not just a relationship between the socio-political environment and the press, but that the relationship is one of the socio-political environment influencing the activities of the press.

The final chapter draws all the components of the investigation and their findings into a centralized discernable pattern. It provides a synthesis of all the singular relationships detected in this study between the socio-political environment and the activities of the press. Finally, it advances a matrix that makes it possible to see that a trend exists, which is the motif of this study. It also points out certain

questions which this study did not address and calls for further inquiry into these areas.

> The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity.
>
> --Sir William Blackstone

CHAPTER II

A HERITAGE: PRESS FREEDOM AND PRIOR RESTRAINT FROM THE COLONIAL PERIOD TO THE 20TH CENTURY

> If there is ever to be an amelioration of the condition of mankind, philosophers, theologians, legislators, politicians, and moralists will find that the regulation of the press is the most difficult, dangerous and important problem they have to resolve. Mankind cannot now be governed without it, nor at present with it.
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> --John Adams, Feb. 11, 1815

The relationship between the government and the press, especially with regards to the influence of the socio-political environment, can be traced back to the origin of the American colonies. A thorough observation of the history of the American press prior to the Twentieth Century shows a discernable pattern between the socio-political environment and the issue of prior restraint of the press. The idea that citizens should be well informed about the activities of their elected officials has always been embraced by both the government and the public at large. The contested ground, however, has always been the limits of the dissemination of information. Evidence of such contest, and its relationship to the legal attitudes towards the press, can be traced back to colonial times.

The emergence of newspapers in the early American colonies was long in coming despite the fact that the printing business was long established. The European leaders were heavy-handed with the English

papers, especially when it came to official criticisms, and anticipating such measure in the colonies as well, people were reluctant to start newspaper publication. The newspaper business was very lucrative and offered avenues for both economic and political prestige, but willing "printers knew they faced loss of business and property and even severer punishment if they offended government, and they knew from the experience of their brethren in the home country [England] how sensitive officials were to criticism. . . ."[1]

When the first newspaper was finally started in Boston in the late 1600's, the founder, Benjamin Harris, soon incurred the wrath of the European authorities and did not last long. As Sidney Kobre notes, Harris "became more audacious, and in the latter part of 1679, published a seditious pamphlet. He was tried, found guilty, and sentenced to the pillory and also fined 500 [pounds]."[2] The English royal family had anticipated such occurrences and had in 1662

> passed the first formal act for restrictive censorship of the press in Massachusetts, in the following terms: "For prevention of irregularitjes & abuse to the authority of this country by the printing presse, it is ordered, that henceforth no copies shall be printed but by the allowance first had & obtained under the hands of Capt Daniel Gookin & Mr. Jonathan Michel, vntil this court shall take further order therein." [sic][3]

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[1] Frank Luther Mott, American Journalism: A History: 1690-1960 (New York: The MacMillan Co., 1967), p. 7. (The words in brackets are this author's.)

[2] Sidney Kobre, The Development of the Colonial Newspaper (Gloucester, Mass.: Peter Smith Co., 1960), p. 13. (The words in brackets are this author's.)

[3] Clyde Augustus Duniway, The Development of Freedom of the Press in Massachusetts (New York: Burt Franklin Co., 1969), pp. 41-42.

The reason for the acute fear of the press, which was commonplace amongst the English leaders, was not far to seek. Although the political environment was considerably stable before the revolution, and under the control of the royal family,[4]

> immediately after the perfection of printing, ideas and information reached reader public which lacked the requisite literary background and experience for reasoning, therefore, the first appeal had to be through the emotions, rather than through reason. When people react to emotion, rather than to rational thinking, they sometimes forget the safety of docility . . . it was the reason the governing classes fear the press.[5]

One would imagine that even with an adequate control of the masses, the English royal family would not have any reason to fear the press. This was not the case and, in fact, to strengthen its repressive measures against the press, the Royal rulers commissioned the Privy Council which, ". . . kept an eye on the courts and controlled the press."[6] The Proclamation Ordinance enacted by the Council became its main tool of regulating the press. To make assurance doubly sure, the Star Chamber Court was also established. "The infamous Star Chamber Court, originally set up to protect the public, but later the symbol of repression, was another barrier to free expression during the long period preceeding the appearance of the English newspapers."[7] With a strong resentment against a free press in England, such was also the case in the colonies.

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[4]It was not until the American revolution that the political scene really changed substantially and took a turn towards repressive direction.

[5]Edwin Emery, The Press and America (Englewood Cliffs: Prentice Hall, Inc., 1964), pp. 7-8.

[6]Ibid., p. 10.

[7]Ibid.

Even with these hard handed measures against the press in the colonies, courageous press participants kept practicing their trade. The numerous punishments metted out to the pronounced journalists of this period did not stop the upward surge of newspaper publication. There were many prosecutions of journalists during the Colonial period and such prosecutions ranged from official reprimand to withdrawal of license, and in the most severer cases, to death in the pillory.[8] The most dramatic press case during this period was the trial of Peter Zenger, a well known newspaper editor. Zenger published an article criticizing the Governor of New York, William Cosby, for administrative mismanagement and abuse of office, an accusation that Cosby did not take kindly. "Governor Cosby could not let these attacks on his integrity go unpunished."[9] Zenger was arrested, confined to jail and, on August 4, 1735, was brought to trial. The surge of the government to halt publication of any criticisms of its members once more came to display. It made no difference whether the information in the publication could be substantiated or not, "indeed it was an axiom that 'The greater the truth, the Greater the Libel.' If Peter Zenger merely printed the utterances against the government, no matter how truthful and accurate they were--he was guilty."[10] The significance of this case lay in the fact that it was not

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[8]Leonard Levy notes, "judged by actual prosecutions, the crime consisted of criticizing the government: Its form, constitution, officers, laws, symbols, conduct, policies, and so on." See, Leonard Levy, Freedom of Speech and Press in Early American History: Legacy of Suppression (New York: Harper and Row, 1963), p. 10.

[9]Kobre, Colonial Newspaper, p. 66.

[10]Ibid.

Zenger that was on trial but the freedom of the press. Zenger was found not guilty by the jury and acquitted. Thus emerged the dramatic case that had an impact on the future relationship between the government, the public, and the press. This development was transposed into future socio-political issues until the American revolution.

The American revolution had an impact that influenced the political environment and ultimately the press. When the Royal rulers established the Stamp Act in March 1765, little did they realize the effect it would have on the colonies. In their continued quest for a firm control of the press, the Stamp Act was one more measure to ensure this. The Act required all publications and official papers to be printed on government stamped papers, a move highly resented by the colonial newspapers, since it amounted to permission before publication. What the newspapers had to do now, "in the face of a law which forbade them to appear without the stamps," was an easy guess. "Some of them, especially in New England, came out boldly and defiantly as usual."[11] The end result was the revocation of the Stamp Act by the Royal rulers.

Having successfully fought the application of the Stamp Act, the press had once more manifested its influence while at the same time incurring the wrath of the Royal family. It was too late for the Royal authority to assert tougher measures against the press, the seeds of revolution were already sown in the colonies and the press saw to it that it was maintained. The socio-political environment now was one of

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[11]Mott, American Journalism, p. 66.

protestation and resentment of the Royal rulers.[12] Even when the revolution started, the press did not slack its efforts to keep the public sentiments and emotion high. It was more than a fight for freedom of the press, it was now also a fight for the freedom of the colonies, "and many colonial newspapers served as powerful agencies which stimulated and crystallized certain economic and political resentments of the colonies."[13] Edwin Emery notes, "Editors used every known trick to win public support for the revolutionary movement."[14] Even as the revolution wore on, the Royal authority knew that one way to control the public sentiments was to control the press. They attempted to carry out such actions, "but Royal Governors and Judges found their efforts to curb the growing boldness of utterance on the part of the newspapers during this period to be limited by the unwillingness of grand juries to indict for such offences."[15] Thus it can be stated that, before the revolution, the Royal rulers made every concerted effort to regulate the press, although without substantial success. There were several measures and proclamations enacted in order to control the press and limit its influence on the socio-political environment. The failure of some of these measures may have been in large part due to the unstable political climate and the slippage in the strong wield of power maintained by the English authority.

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[12] Kobre discusses this point very well in his book: Colonial Newspaper, p. 15-40.

[13] Ibid., p. 104.

[14] Emery, Press and America, p. 118.

[15] Mott, American Journalism, p. 103.

With an added prestige due to the score of success it achieved, the press became significantly important now, and this made any attempts of restraint very difficult. The coming of the revolution was immiment and Lieutenant Governor Colden of New York in 1765 noted, "I agreed with the gentlemen of the Council that considering the present temper of the people this is not a proper time to prosecute the printers and publishers of the seditious papers."[16]

The period of the revolution found little restraint on the press in any legal manner, although mob activities increasingly harassed any paper that objected to the revolution.[17] But in general, ". . . the press enjoyed more freedom in post-revolutionary America than it had ever before known anywhere in the world."[18] The press had wielded a strong support from the public, and the new American leaders also realized the part played by the press in maturing the revolution. In this regard, to turn around right away and effect repressive measures on the press would defeat the whole purpose of the revolution. Afterall, "'one of the objects of the revolution,' Schofield concluded in a statement quoted with approval by the Supreme Court, 'was to get rid of the English common law on liberty of speech and of the press.'"[19] And for a people who had

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[16]Mott, American Journalism, p. 103.

[17]Mott, "The outstanding example of mob violence against a Tory paper (anti-revolutionary paper) was the destruction of Rivington's New York Gazetteer." Ibid., p. 104.

[18]Ibid., p. 143.

[19]Mott notes, "The safety and prosperity of the people obviously depended on the correct answers to certain pressing political questions. Four leading issues of the year 1783-1801 may be named: (1) the adoption of the Federal Constitution; (2) high taxes and assumption of state debts; (3) the French question; and (4) the Treaty with England." Ibid., p. 118.

just fought for liberty, freedom became a cherished possession. To effect a law that may constitute restraint on any aspect of liberty would be highly unwelcomed.

For the founding fathers, a new nation was born and there were pending political and economic issues to be discussed, and the press was needed to transmit the necessary information to foster a healthy discussion. The extent to which the founding fathers could effect changes tailored to the needs of the people depended on an adequate correspondence between the people and their officials and, in this regard, a free press and a free public discourse were needed. Ironically, there have been arguments also made to the effect that this posture was not an adequate representation of the founding fathers, and that they, like the English colonial rulers, saw the need to restrict the press and actually did attempt to do it.[20] This contention may be valid since after the revolution the press embraced what it considered an absolute right and soon began criticizing government officials and their policies. Despite such criticism, which often extended to personal attacks, the new American leaders persisted in their quest to safeguard the freedom of the press, although after a while it became unbearable and several attempts were made at restricting what they termed press excessiveness. In other words, while willing to protect press rights, officials on the other hand

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[20]Leonard Levy observes that, "Indeed the American legislatures, especially during the colonial period, were far more oppressive than the supposedly tyrannous common law courts. The evidence drawn particularly from the period 1776-1791 indicates that the generation that framed the first state declarations of rights and the First Amendment was hardly as libertarian as we have traditionally assumed." Levy, Speech and Press, p. Preface.

were not willing yet to take kindly to press criticism. In fact, events preceding the ratification of the Constitution and the Bill of Rights clearly sustained this contention.

During the revolution there was a strong need for public support, and any opposition press was resented. The delicate nature of the fight for independence, and the need to fight the English with a united front, meant that,

> speech and press were not free anywhere. . . . A long war for independence is scarcely a propitious time for the birth and nurturing of freedom of expression or any civil liberties. Everywhere there was unlimited liberty to praise the American cause; criticisms of it brought the zealots of patriotism with tar and feathers.[21]

Even after the revolution such was still the case. When George Washington was elected the first President of the United States, in 1789, he found himself the target of this new press power. Although a strong "believer in the freedom guaranteed by the Bill of Rights, including free speech of which freedom of the press is essentially a part," his advocation of a limited press during the revolution because, "he was concerned with the indiscretions of the patriot's press in disclosing information to the British," was noticeable and, now the press had a chance to exhibit its resentment. In effect, the press and the government, compatriots during the revolution, were now once again at opposing ends.

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[21]When the Federal Constitution was submitted to the States for their ratification, the omission of a Bill of Rights was strongly contested. In fact, Thomas Jefferson, "wished Virginia to withhold its ratification until freedom of religion and of the press should be properly acknowledged. At its first session, Congress adopted Amendments providing: Congress shall make no law . . . abridging freedom of speech, or of the press. . . ." Mott, American Journalism, p. 145.

This new antagonism was ultimately manifested in 1800 when William Duane appeared before the Senate on charges of publishing, "false defamatory, scandalous and malicious" reports of the Senate's proceedings.[22] The major contention of the officials was that the press was becoming partisan in its dealings and,

> now that the establishment of peace and the organization of settled government gave scope for the development of national parties, the vituperative powers of ardent partisans were employed against each other as domestic antagonists. Coarse personalities, vulgar ribaldry, malicious slanders, were poured forth, until it seemed to sober-minded men that unrestrained freedom of discussion was leading to the triumph of anarchy.[23]

Thus, it appeared that the demise of hostilities with England created a peaceful atmosphere in the Union, and a less stringent measure on the activities of the press, and the press in turn seized this opportunity to foster increased attacks on government officials and their policies. All the Presidents after Washington were the target of such attacks and other types of press excessiveness until the second war with England in 1812 during the Madison Administration. Even Thomas Jefferson, the darling of the press and one of the profound architects of press freedom, did not escape bitter attack. "Ironically, he was a victim of the very freedom of the press he so long and ardently championed." He soon realized that, "the licentiousness of the press was due to its intense partisanship which was a sign of the times," but he also took measures to curb press attacks on him by carefully urging, "various correspondents to see that

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[22]Mott, American Journalism, p. 144. When the order for William Duane's arrest was passed, he went into hiding until the end of the session.

[23]Duniway, Freedom of Press, p. 143.

nothing he wrote got into print."[24]

In their continued quest to place a restrictive measure on the activities of the press, the government in 1789 introduced the Sedition Act,

> an obvious attempt to control the journalistic spokesmen of the Anti-Federalists. It declared: "That if any person shall write, print, utter, or publish . . . any false, scandalous and malicious writing . . . against the government of the United States, or either house of the Congress . . . or the said President or to excite against them the hatred of the good people of the United States . . . or to resist or oppose, or defeat any such law . . . shall be punished by a fine not exceeding two thousand dollars and by imprisonment not exceeding two years."[25]

The press was highly critical of the Sedition Act although the law allowed for proof of truth in such statements as a defense.[26] The reason being the "fact that the difficulty of establishing the truth, and the mere threat of prosecution may operate as a gag."[27] The opposition to

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[24]Mott, American Journalism, p. 52. Mott notes the further concern of Jefferson when he stated that, "The liberties which the presses take in mutilating whatever they can get hold of obliges me to request every gentleman to whom I write to take care that nothing from me may be put within their power." Ibid., p. 66. This is the echo of an earlier point by James Pollard. Pollard notes that the press attacks on Washington during his administration were so severe that Jefferson once told Madison, "that Washington was not well and that one cause lay in the newspaper attacks made upon him. . . . He is extremely affected by the attacks made and kept upon him in the public papers. James Pollard, The Presidents and the Press (New York: The MacMillan Co., 1947), p. 15.

[25]Emery, Press and America, p. 155.

[26]Ibid., p. 156. "And in some way the Sedition Act can be called a milestone on the road to freedom of the press. The law did not forbid criticisms of the government. It only attempted to curb malicious and false statements published to defame officials. And it provided a pair of safeguards: truth could be offered as a defense, and the jury could determine both the law and the fact."

[27]Mott, American Journalism, p. 140.

the Act multiplied and finally when, "Jefferson became President, he pardoned all those convicted under this 'unauthorized act of Congress.' The House Judiciary Committee of the 22nd Congress denounced the Act as unconstitutional, and fines imposed under it were restored, with interest."[28]

The post-independence years, up until the end of the Nineteenth Century, did not see much change in the press activities towards the government nor in the government's attitude towards the press. The press kept their growth and their subsequent influence on the public scene became increasingly visible. The government although clearly resentful of this press power could not do anything about it. The treaty with England had been signed and the absence of any major domestic or international strife made any government action aimed at regulating the press warrantless. The increasing partisanship of the press was nevertheless a threat to the American leaders. In fact they all echoed the concern of Thomas Jefferson, as observed by Emery, that ". . . a few convictions for libel might have a salutary effect . . . he advocated a 'selected' prosecution of notorious and malicious offenders," as a means of dampening the press excessiveness.[29]

The significant case of press freedom during this period was the case against Federalist editor, Harry Croswell. Croswell was indicted, in 1804, for printing defamatory charges against Thomas Jefferson. Ironically, Jefferson was one of the pioneers of press freedom, and this made the case all the more interesting. Alexander Hamilton, a man who had

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[28]Mott, American Journalism, p. 152.

[29]Emery, Press and America, p. 168.

always shared the same views with Jefferson on the issue of press freedom, pleading for Croswell argued that the "right to publish with impunity, truth, with good motives, for justifiable ends, though reflecting on government . . . was a defense for libel action."[30] Harry Croswell lost the case, and once more "truth" has been denied as a defense for a libelous charge.[31]

The second war with England, 1812-1815, again saw the revival of attempts by the government to repress the press. The mob activities reminicent of the revolution days came alive again. One particular incident took place in Baltimore where a local newspaper had protested strongly against the war. The public did not take kindly to the utterances of the Federal Republican, who protested against the declaration of war in 1812, and immediately "a mob stormed the print shop, wrecked the presses, and tore down the building."[32] The public support of "Mr. Madison's War" was unquestionably clear, and it was one thing to criticize administration policy in peacetime, but another to condemn the government while the enemy was threatening our shores.[33] In other words, the public sentiments were positive towards the war and as such any action by the government aimed at curbing the excessiveness at this time

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[30]Ibid., p. 170.

[31]Croswell lost the case because the court refused to admit testimony as to the truth of Croswell's accusation in evidence.

[32]Mott, American Journalism, p. 174.

[33]Emery, Press and America, p. 184. Mott also notes, "Violent protest against newspaper comments also took the various forms of individual assaults and duels." The death of Alexander Hamilton as a result of such incidents was one of the highlights of such occurrences during this period. Mott, American Journalism, p. 175.

would have received public support. The press realizing this, and also attempting to avoid legal entanglements that might be influenced by this climate, avoided negative remarks, except in a few instances, and the violators in those instances were summarily dealt with. The end of the war again saw a stable political environment and press advances. The "era of good feeling" set in and partisan rivalry was subsumed by other issues. "Between 1816 and 1820 some of the former bitter factionalism disappeared. As a result, it was a dull period, journalistically speaking."[34]

The coming of the Mexican War in 1846 was very welcomed by the press, since it offered them a chance for resurrection. After the second war with England, expansionist thinking was taking root in American ideology. The whole idea of enlarging the country by extending its frontier into Texas and California was a part fulfillment of the theory of "Manifest Destiny" which was dominant in American thinking at this time. With prospects that such acquisitions might lead into war with Mexico but, "many Americans, Northerners and Southerners, supported the war because they believed it was America's destiny to cover the whole northern, if not the southern, continent."[35] This does not in any way dispute the fact that when the war started, there was visible opposition to the war. Some members of the press criticized the government, and considering the mood at the time because of the public support for the doctrine of "Manifest Destiny," the actions taken by the government

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[34]Emery, Press and America, p. 186.

[35]Armin Rappaport, The War With Mexico: Why Did It Happen? (Chicago: Rand McNally Co., 1964), p. 44.

to protect itself against such press accusations were welcomed. In one incident in 1847, a local newspaper, The Union, criticized the Senate,

> for failure to support the administration in certain military matters incident to the Mexican War. Four days after the publication, resolutions were introduced in the Senate proposing to expel Ritche [the Editor] for having libeled that body and to exclude The Union reporters from the press gallery for having given a colored report of the debate. . . .[36]

Although it can be said that by in large the press and the public supported the Mexican War, The Union case once again showed official willingness to limit press excessiveness during times of tension, and more so with public support.[37]

The end of the Mexican War again marked the beginning of another peace period that extended up until the Civil War. It was another period that allowed the press to once again grow and accumulate influence. The Mexican War was a heroic mission that not only fulfilled the dominant thinking in America, but also asserted the military power of the nation. The success of the war left both the public and the government with a great amount of satisfaction and reassurance in the ability of the nation. This atmosphere left room for uninterrupted press activities, which often involved criticism of officials and their policies. The government made little or no effort to curb such press abuses for the simple fact that it did not want to stir resentments towards itself from the public.

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[36]Mott, American Journalism, p. 246.

[37]Mott argues that in general the press was allowed a relative amount of criticisms of the government. "War is commonly an enemy to press freedom, but the Mexican War was an exception to the rule. Papers opposed to that conflict were allowed extraordinary license of criticism." Ibid., p. 308.

Between the Mexican War and the Civil in 1861, there was no domestic or international strife that seriously concerned the nation and as such any attempt by the government to limit the freedom of the press at this time would meet both press and public resentment. The tranquility of this period was, however, changed with the coming of the Civil War in 1861.

The Civil War was actually the manifestation of the hostility, far beyond the issues of slavery, which was precipitating at the time, a hostility, ironically, partially blamed on the press.[38] The mid-nineteenth century had witnessed a remarkable practical improvement in press activities: The introduction of the telegraph lines and the type-revolving press created not only as a faster means of news gathering but dissemination as well. There were other technical improvements which led to better printing machines and cheaper paper. These developments led to the upsurge of newspapers and, ironically to the growth of sectionalism in the press, since the technological advancement allowed the press to grow more influential and partisan in its activities. The slavery issue became the culmination of this sectionalism, with Northern papers proposing emancipation and the Southern anti-abolitionist papers issuing contrary utterances. The Northern abolitionist papers were understandably stronger than their Southern counterparts, the "fire-eaters" who were, "completely muzzled on the issue."[39]

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[38] Emery, Press and America, p. 268.

[39] Ibid., p. 274. As Emery further notes, "There were laws against any 'tendency to incite to insurrection' in most of the slave states; understandable, perhaps, when an entire population lived in fear. A Georgia code of 1835 made any such breach of the law punishable by death. By 1859 it was a prison offense in some states to subscribe to an abolitionist paper." Ibid., p. 274.

When the war broke out in 1861, "freedom of the press beyond anything ever before known in the world had become a fixed national tradition in America, . . ." and was severely tested again. Although the war was hardly an avenue for a free press, the Union press was relatively free during the Civil War.[40] The dangers of biased criticisms and fear of undue disclosure that is often associated with every war had an apparent tendency here also. The Union government was aware of this tendency and, afraid of the "potential danger of information useful to the enemy being leaked," took precautionary measure by prescribing some press controls. The press on the other hand, well aware of the sociopolitical environment and the nature of public sentiment towards the war, "appeared willing to submit to certain controls."[41] Edwin Emery explains the cohesive understanding between the government and the press as follows:

> Since honest journalists and military planners both recognized the problem, it was natural that they should try to work out some agreement. On August 2, 1861, General George B. McClellan, commanding the army of the Potomac, called a historic press conference of Washington correspondents. He presented to them an unprecedented plan that was the forerunner of modern voluntary censorship. . . . Each of the delegates to the conference signed a document binding him to transmit no information of military value to the enemy. On the other hand, the General agreed to use all his considerable influence to facilitate the gathering of news that was of interest to the public.[42]

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[40]". . . Civil War conditions allowed for more uncensored, on the spot reporting than did those of later wars." Mott, American Journalism, p. 329.

[41]Emery, Press and America, p. 294.

[42]Ibid., p. 295. Although the agreement failed later, it at least marked a departure from the usual antagonistic climate that existed between the government and the press that prevailed during this war time.

One reason for the unprecedented press compliance with such limitation stemmed from not only the delicate nature of the war, but the fact that emotion was running high in the public sector. It was evident that if the press resisted such restriction, any government action to force their compliance would meet public accord. People in the North were supportive of the war and considered Northern based pro-Southern newspapers as secessionists and enemies of the Union, and treated them as such. As far as the people of the North were concerned, it was not only a war to abolish slavery, but also a war to keep the Union together and everything had to be done to preserve the Union. In fact, "pro-Southern editors sometimes had to flee from mob violence whipped up by returning veterans. In 1861 the pro-Southern New York papers were warned by placards that national security was more important than their right to criticize."[43] Nevertheless, "the fact remains that the press was relatively free throughout the war, and considering the tensions, the responsible press emerged unscathed."[44]

While the press in the North enjoyed freedom, their counterparts in the Confederate South faced a different story. The idea of emancipation was generally unwelcomed in the South, and even before the war the Southern abolitionist papers were treated unkindly. In 1845, when _The American_ published a pro-abolition article in Kentucky, Cassius Clay's [the editor] ". . . press was impounded. It was another blow at freedom

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[43]Emery, _Press and America_, pp. 300-301.

[44]Ibid.

of the press in regard to the question of emancipation."[45] With such a situation existing when the war eventually started, the press in the South still faced the same problem. In fact, "a stricter control of the press was maintained in the South than in the North, and in general Confederate censorship was more consistent and effective."[46]

The reason why the Confederate measures against the press were effective was clear. Before the war, most Southern secessionist leaders consistently maintained that emancipation meant the demise of Southern integrity, and adequately prepared the public mind to accept this notion. The agricultural development of the South was advanced to a much greater degree by the presence of slave labor. To give up this potential source of agricultural permanence meant a reduction in economic advantage for the Southern plantation owners. Unwilling to accept emancipation, they had two alternatives. One, to persuade the public mind into rejecting any abolitionist move as interference into the integrity of the Southern province. Alternatively, to put pressure on the government and political leaders to denounce emancipation. The effect from the former would be stronger and could, indirectly, spark off the latter; hence, the former was the choice. It thus followed that with favorable public support, any press criticisms or even any government action aimed at controlling such anti-abolitionist criticisms met total public support and approval. This was entirely the case as it existed in the South. It may be of interest

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[45] Hodding Carter, Their Words Were Bullets: The Southern Press In War, Reconstruction, and Peace (Athens: University of Georgia Press, 1969), p. 14.

[46] Mott, American Journalism, p. 365.

to mention here that the press was not the only one to suffer from the government's repressive measures. Even private citizens were arbitrarily arrested, imprisoned and often tried. The number of private citizens that experienced such forms of government actions during the Civil War was placed between 13,000 to 38,000.[47]

These governmental actions did not entirely subdue the press. There were occasional outbusts and rejections by the press both in the North and in the South. In the words of James Mock,

> Such outbusts were mere whispers drowned in the roar of popular approval that greeted the extra-legal silencing of the dissenters. About such manifestations, Lord Lyons, in Washington wrote Earl Russell, "The applause with which each successive stretch of power is received by the people is a very alarming symptom to the friends of liberty and law." And Count Gurowski observed, in January 1862, "The thus called arbitrary acts of government prove how easily on the plea of patriotic necessity, a people, nay, the public opinion, submits to arbitrary rule. . . . Here every such arbitrary action is submitted to because it is so new, and because the people have the childish naive, but honorable, confidence that the power intrusted by the people is used in the interest and for the welfare of the people. . . . Thus in the final analysis, the people themselves, by their own inattention, if not their downright approval, made it possible to set aside the Constitution during the Civil War and in the era that followed."[48]

This situation applied to both the Northern and the Southern people. However, to the Southern leaders the need to keep the public support was

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[47]James Mock, Censorship 1917 (New York: DACAP Press, 1972), p. 11. This figure is for both the North and the South. At the conclusion of this discussion of the pressures brought against any pro-abolitionist commentary, it should also be noted that during the war such criticism disappeared as the Davis Administration became sympathetic with emancipation before the war's end. For a discussion of this aspect, see: Robert F. Durden, The Gray and the Black: The Confederate Debate on Emancipation (Baton Rouge, 1972).

[48]Ibid., p. 16.

of the utmost importance and the need to manifest this through the press was just as important. It was necessary to limit press criticism and effect their compliance with the secession of the South. In fact anything short of total press compliance with the dictates of the Confederate officials was wrong and deserved punishment. As a matter of fact, the Southern press suffered on two ends: the endless repressive measures of the Davis Administration and the constant harassment of the Northern forces stationed in occupied cities in the South. In the latter case, it was important for the Union to watch the activities of the Southern press, well aware that the Southern journalist had a potential to inflict strong criticism that might hamper Union efforts in the war. This realization was thoroughly maintained, in fact:

> If the newspapers of the South's occupied cities published anything that the general in charge thought was treasonous, the paper would be suspended or the writer of the editorial or news or news report would be forced to resign from the paper, or the newspaper itself, in some cases, would be turned over to Northern newspaper men to edit.[49]

The end of the Civil War did not change the plight of the press right away, especially in the South. It was time for reconstruction and to heal the wounds of the war, the need to bring the South into the mainstream of the American life was of utmost importance. The war was over--the South vanquished and the North victorious; but, in a war between members of the same household, no one is really the winner. This type of mood needed to be conveyed to the people and the press was needed to do it. This also meant that the press had to be watched carefully

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[49] Carter, Southern Press, pp. 24-25.

since undue excessiveness could puncture the delicate and vulnerable mood following the Civil War. In fact, "until 1870's there was widespread fear that the effort to destroy the Federal Union had not ended, and that the fruits of victory would be lost if the political rights of the South were restored."[50] Despite this deep-seated fear, the Union government did realize and did use the press to maintain the necessary sense of oneness amongst the people. This new sense of duty once more brought the press into prominence.

The unprecedented freedom enjoyed by the press during this period was soon reflected in its growth. By 1870, there were at least 4,500 newspapers, an increase of one third over the period before the Civil War.[51] Journalism was attracting "men of high character and educational attainments as to command a more general respect for the calling than it had formerly enjoyed."[52] This period further saw improved mechanization in journalism, with the extension of news coverage techniques and wire service. Sectional papers were still in operation, either anti-Southern, pro-Northern, or vice versa. However, such sectional press was in the minority; besides, pressing political and economic issues dominated both the government and public concern to warrant any significant attention to them. In sum, the years following the Civil War marked a limited antagonism among the press, the government, and the public. Although it was also a period marked by some of the most controversial issues in the

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[50]Emery, Press and America, p. 319.

[51]Mott, American Journalism, p. 404.

[52]Ibid., p. 405.

history of the nation, the four years of war probably also left everyone tired of continued criticisms, prosecution, or any other form of belligerency.[53]

The "new journalism" that followed the Civil War, with its extensive freedom, produced the likes of Joseph Pulitzer and William Randolph Hearst, and introduced the era of "yellow journalism." The press was wielding a strong influence in the socio-political environment, a fact which became evident in the Spanish-American War of 1898. The press at the time was more than a news courier, it was actually contributing to the shaping of both government policy and public opinion. Such active participation brought about an unprecedented press championship in the socio-political environment and gave birth to the era of "sensational journalism." The eventual result was journalistic competitiveness more than ever seen before in the history of American journalism. The acuteness of this competition subsequently led to reckless and uncontrolled press activities which figured prominently in the Spanish-American War. It can be said then that the absence of any form of serious government reprimand for the press obviously contributed, and in fact, permitted excessive press activities which in turn allowed the press to amass a substantial amount of influence as exhibited in the Spanish-American War of 1898.

The Spanish domination of Cuba and the Cuban insurrectionist movement for liberation was an issue the press found comforting to attend to,

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[53]Nonetheless there were instances where attempts were made by the American Senate to place restrictive measures on the press. Those attempts often proved ineffective. Mott, American Journalism, p. 509.

and the ultimate reason for the war. In fact it became an object of scramble for news coverage and an issue of journalistic competition. While it may not be a fair generalization, most "American newspapers were actively engaged in exploiting the Cuban revolt against the Spanish rule, some to build circulation and acquire prestige. . . ."[54] The press was well aware of its massive influence on both the government and the public and they exploited this influence to the fullest in advocating the cause of the Cuban insurrectionist movement and clamouring for American intervention. The fact, however, was not so much the advocation of American intervention as it was the ill conceived and falsely represented advocation. There was no doubt that some of the

> reports of Spanish atrocities were evidently exaggerated, and in some instances the product of the reporter's imagination. The American public, therefore was being given striking accounts of cruelties for which, in many cases, there was no foundation of fact. . . .[55]

But the public failed to see this; for one thing, their trust in the press was firm, maybe because of the press influence on the public mind at this time. President Cleveland initially became cautious of this journalistic jingoism and refused any practical intervention in Cuba, a pledge he kept until he left office.[56]

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[54] Marcus Wilkerson, Public Opinion and the Spanish-American War. A Study in War Propaganda (New York: Russell and Russell, 1932), p. 5. "There seems to be a great probability in the frequently reiterated statement that if Hearst had not challenged Pulitzer to a circulation contest, there would have been no Spanish-American War." Mott, American Journalism, p. 527.

[55] Wilkerson, Spanish-American War, p. 53.

[56] Ibid., p. 63. "President Cleveland steadfastly refused to agree to the recognition of belligerency because he felt it to be impractical." Ibid.

The jingoistic press kept up the pressure for American belligerance toward Spain when William McKinley became President. Like his predecessor Cleveland, "McKinley was essentially a man of peace. War was abhorrent to him and he was reluctant to plunge his people into such a conflict if any reasonable and practical way could be found to avoid it."[57] The press relentlessly kept up its urge for intervention, building up support not only from the public, but an intense war passion from its publication of highly exaggerated and often false claims about Spanish activities in Cuba. The reason for the success of this war passion was clear.

> The American public has no other source of information concerning these incidents except what was revealed by the press. Inasmuch as those papers which devoted space to the events at all generally exaggerated the facts, and inasmuch as the nature of the news reports was such as to produce response, it seems evident that the feeling against Spain was intensified.[58]

In such a situation, with a persistent press and an emotionally charged public, there was little President McKinley could have done but go to war when the _Maine_ was sunk off the shores of Cuba in February, 1898. The press

> played up the _Maine_ explosion without restraint and left the American public reeling from a bombardment of half-truths, misstatements of facts, rumors, and faked dispatches. Sensing the popular tide, a hesitant administration, edged on by a "jingo" Congress, proposed war with a nation already on the verge of collapse from internal strife and rebellion.[59]

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[57] Pollard, _Presidents and the Press_, p. 562.

[58] Wilkerson, _Spanish-American War_, p. 97.

[59] Ibid., p. 132.

The journalistic competition centered primarily between two newspaper giants of this period, William Randolph Hearst and Joseph Pulitzer. Although competitive journalism is usually encouraged to disavow monopoly by one press, the competition between Hearst and Pulitzer engendered a damaging side effect. Their papers became excessively dangerous in their publications, especially Hearst's, as demonstrated by their treatment of the Spanish-American War in 1898. As Mott notes,

> . . . if Hearst had not challenged Pulitzer to a circulation contest at the time of the Cuban insurrection, there would have been no Spanish-American War. Certainly the most powerful and persistent jingo propaganda ever carried on by newspapers was led by the New York Journal and World in 1896-98, and the result was an irresistible popular fervor for war which at length overcame the long unwillingness of President McKinley and even swept over the last minute capitulation by Spain on all the points at issue.[60]

The jingoistic propaganda of Hearst was more glaring in an activity that occurred during the period. Hearst had sent one of his reporters, Frederic Remington, to Cuba to take pictures. Remington cabled Hearst to say that everything was quiet in Cuba and that he was coming back, at which point Hearst was quoted to have replied, "PLEASE REMAIN. YOU FURNISH THE PICTURES AND I'LL FURNISH THE WAR."[61] The one fact about this episode was the realization by the press, or at least by Hearst, of their immense influence on the government and the public opinion. Thus we see that peace-time may not only advance the press, but can actually promote an excessive press, often difficult to control. Hearst had the ". . . world's biggest publishing empire, in terms of newspapers and

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[60] Mott, American Journalism, p. 527.

[61] Ibid., p. 529.

their combined circulation," and this contributed to his strong influence on the public opinion. As Emery notes, "Those who have sought to explain the causes of the war have often centered the blame on William Randolph Hearst in particular, and the newspapers of the country in general."[62]

The extensive freedom the press enjoyed after the Civil War and up to the Spanish-American War really transcended into the war also. The press covered the war widely and unlimitedly, with no strong attempts by the government or the public to impose any restrictions or censorship on anti-war coverage or even excessive pro-war coverage that may have the potential of offering harmful information to the enemy. The reason for this far stretched repressive relaxation by the government may have been due to the strong public support for the war, a support strongly inspired and engineered by the press. Any official government attempt to restrain the press at this time might have resulted in a strong public and press resentments, so it was probably better that the government left the press alone. The second reason may have been the strong conviction by the government that the war was in the bag for America, and that no amount of press excessiveness could really distort the chance of America winning the war. As Mott observed, "The leniency of the military censorship on the American side was extraordinary, and newspapers freely printed reports of the movements of the navy and army and such news and rumors of American plans as they could gather."[63]

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[62] Emery, Press and America, p. 427.

[63] Mott, American Journalism, p. 536. Mott commenting on press unlimited coverage notes, "We [America] gave the Spaniards no use for spies, for our yellow journals became themselves the spies of Spain." Ibid.

To offset the likelihood of any exaggeration of government nonchalance and leniency towards the press during the Spanish-American War, it may be necessary to point out that the government did try in some cases, although without much success, to control or restrict the press. When Grant Squires was appointed a military censor in 1898, bitter resentment from the press made his job relatively ineffective. Nevertheless, the military often successfully restricted press coverage of particular war zones for obvious reasons.[64] The Spanish-American War was a six month war that ended with spite for Spain and glamour for America, an easy victory that no doubt boasted the American might and power.

In general, the freedom of the press observed during the Spanish-American War of 1898 may have been due to a host of reasons. The acquired significance and importance of the press from the previous era, which allowed them not only to unlimitedly cover the war, but actually to have been instrumental in inspiring the war both in the public mind and in government action. With a subsequent positive socio-political environment for the war already set by the press, the government although rarely attempting, was relatively ineffective in any type of repressive action against the press.

The relationship between the government and the press up to the end of the nineteenth century, while showing an undulating trend, also maintained a discernable pattern. While realizing the necessity and importance of an informed citizenry, consequently the need also for the

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[64] Such military attempts to restrict the press was typified when General Shafter, "banished all Hearst men [staff of The Journal] from captured Santiago." Mott, American Journalism, p. 537.

services of the press, and also aware of the tempting tendency of the press to influence the public opinion, the government attempted to curb press excessiveness if there was a potential for irreparable damage to the well being of the nation. The government could advocate and perpetuate a policy or program to restrain the activities of the press, but such a measure was bound to fail without adequate public support. In other words, a conducive socio-political environment had to be maintained if such a restrictive measure was to be applicable. This may be the reason why in promoting a particular policy and attempting to create a favorable perception in the socio-political environment, the government often found it necessary to either seek press support in maintaining a positive outlook on the policy or control the creation of a possible negative bias by the press on the policy. Whichever alternative the government pursued, the press was generally resentful of any form of government influence or intervention into its activities, rigidly maintaining that its function was the dissemination of accurate information to the public.

However, there is no doubt that this functionary role could be excessive as demonstrated in the Spanish-American War, or could be advantageous as demonstrated by the fruitful attempts of the press to rally public support during the American revolution. One thing stands clear and that is the presence of a trend, or a pattern, in the issue of prior restraint of the press and the socio-political environment during the period preceding the Twentieth Century. When the socio-political environment was supportive of an issue--in other words, if there is adequate public support for an issue--government efforts to curb negative press coverage of the issue were usually effective. Again this can be seen

from the events in the period of the Yellow Journalism. The peaceful environment promoted an excessive press that often criticized, challenged, and in fact helped shape government policy indirectly. The government was ineffective in checking press excessiveness for the simple fact that the peaceful time did not offer sufficient reason for the application of repressive measures against the press and it would also appear that the government did not adequately advance its own "case." The activities and dealings of Hearst with the government portrays this impression vividly. When the socio-political environment was non-supportive of an issue, government action to restrict press criticism of the issue was usually ineffective. In other words, and as demonstrated by the Civil War, periods of war and especially the wars that have the public support, were not generally favorable periods for the advancement of the press. In such situations too, the government's measures to restrict press excessiveness usually were effective since they had the public support.

Overall, these observations were clearly indicated during the American revolution, the second war with England in 1812, the Mexican War, the Civil War, and finally the Spanish-American War. The examination of these events either in separation, or in totality, exhibit a relationship between the issue of prior restraint of the press and certain socio-political implications.

> I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man
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> --Thomas Jefferson

CHAPTER III

THE PRESS IN THE PRE-NUCLEAR AGE

> Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided by the practice of the States, that "it is better to leave a few of its noxious branches to their luxuriant growth, than by purning them away, to injure the vigour of those yielding the proper fruits." And can it be doubted by any who reflect that to the press alone, chequered as it is with abuses, the world is indebted for all the triumphs . . . which have been gained by reason and humanity over error and oppression.
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> --James Madison, 1876

The American press entered the twentieth century with the air of authority and influence it acquired in the final decade of the nineteenth century. The general importance of the press over the course of American history managed to become progressively significant. Such significance was highlighted for the first time during the American revolution, then increased after the Civil War, further reinforced during the burst of Yellow Journalism, reaching its zenith during the Spanish-American War. The impact of the press on public opinion during the period of the Spanish-American War and, in fact, on the war itself made overt the tremendous influence and authority the press had wielded in the earlier decades. The press itself realized this power and did not hesitate to use it extensively.

The power of the press continued into the Twentieth Century and in the absence of any serious domestic or international strife, had to be

channeled into other things. The political as well as the social conditions existing at the turn of the twentieth century made it possible for the press to escape the "cloud" of Yellow Journalism unscathed. As Emery observes,

> The opening of the twentieth century found the United States moving toward a consolidation of her position as an industrial nation. The framework had been completed by 1900: The economic expansion which had begun after the Civil War, the growth in the population and the tying together of the country, the rapid development of rich natural resources, the inventive and productive genuis, the political and cultural advances--all ensured the future of a new world power.[1]

Thus the burst of Yellow Journalism had inspired and created a power in the press, a power with strong impact on the public opinion. In this capacity the press saw itself not only as a public informant, but also as the champion of causes, destined to preserve the liberties and welfare of the American public. Having successfully created this impression in the public and sustaining this perception in its self, the press heralded the birth of the era of "Muckraking." In the words of Harvey Swados,

> Something exhilarating happened to American journalism at the beginning of the twentieth century. For a brief period, a decade--roughly from 1902 to 1912--an extraordinary keen group of editors and publishers made common cause. . . . The cause which changed the course of our history, was the exposure of the underside of American capitalism.[2]

The muckraking era marked the most controversial press activities in the history of American journalism. The muckrakers dealt with various

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[1]Edwin Emery, The Press and America (Engelwood Cliffs: Prentice Hall, Inc., 1964), p. 447.

[2]Harvey Swados, Years of Conscience: The Muckrakers (Cleveland: The World Publishing Co., 1962), p. Introduction.

domestic issues ranging from prison conditions to the abuse of political office. The socio-political environment was ripe for such investigative journalism, although authorities were not quite accommodating to the criticisms. President Theodore Roosevelt had, during his administration, advocated a free press despite the fact that he himself was often the target of these severe press attacks. He never quite changed that opinion, although at times he felt that some press excessiveness needed to be controlled for the good of the nation. In fact, "Early in his career, Roosevelt said in a speech in the New York legislature, 'We have all of us suffered from the liberty of the press, but we have to take the good and the bad.'"[3] But even with such a view and opinion, Roosevelt did not really welcome the muckraking crusade,

> In fact, it was the Square Deal's father who also fathered the name which has identified these journalists from that day to this. On April 14, 1906, in the midst of the labors of this unusual band, Theodore Roosevelt unloosed an attack on them, taking as his text a passage from Pilgrims Progress: ". . . the man with the Muckrake, the man who could look no way but downward with the muckrake in his hand, who was offered a celestial crown for his muckrake, but would neither look up nor regard the crown he was offered, but continued to rake to himself the filth of the floor."[4]

But such official rejection of the muckraking movement did little if anything at all to stop the press. The mood in the public at this time was one of dejection and dissatisfaction with the economic inequality and social injustice plaguing the nation. The prevalent condition in the nation did not reflect the basic principles of a democratic society.

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[3]Frank Luther Mott, American Journalism, A History: 1690-1960 (New York: The MacMillan Co., 1967), p. 608.

[4]Swados, The Muckrakers, p. 10.

> The ardent American notion of a free society, freely inclusive, freely elected, and freely helpful, had been cynically shoved aside in the closing decades of the nineteenth century. If it was revivified in the early years of the new century, to the benefit of every American who has come of age since then, that must be credited in substantial measure to the ringing voices of the muckrakers, recalling their fellow citizens to an honest understanding of their responsibilities and their potentialities in a democratic society.[5]

The emergence of the new century did not bring any beneficial changes. In fact, social inequality and environmental discontent progressively multiplied to the increasing concern of the American public.

With no imminent socio-political changes in sight, the attention of the public became steadily centered on these domestic problems. The industrial revolution taking place at this time made these problems intense since it brought

> the growth of trusts and centralization of economic power in a few hands; the inadequate incomes of the working man and farmer; corruption and inadequacies in political and business life. To many Americans it seemed that national wealth and strength, while reflecting basic progress for all the people, actually were mainly benefiting a plundering few who were usurping the freedoms of the many.[6]

In such a dissatisfactory socio-political environment, there was little surprise at the enthusiasism with which the public greeted the questions and investigations of the muckraking journalists. It not only sought to question the basis of democracy, but reflected the major concern of the American people at this time. It was what the people wanted to hear and they heard it. It was clear that, "muckrakers had even quick approval because they both illuminated the real causes of public dissatisfaction

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[5] Swados, The Muckrakers, p. 17.

[6] Emery, Press and America, pp. 449-450.

and gave the appearance of doing something about them."[7] With this type of public support for the muckrakers there was nothing the official resentments could do to stop the press.

The legal support the press enjoyed during the muckraking era needs to be mentioned since it no doubt helped the press ascertain the legitimacy of their crusade. Although there were few legal incidents at this time over the activities of the muckrakers, the ones that reached legal dictations generally supported the press. A typical example was in 1909 when the Indianapolis News and the New York World accused Attorney General William Nelson Cromwell of corruption in the Panama Canal purchase. President Roosevelt in anger directed Cromwell to file suit in the name of the government against the papers since, "the offence had been committed against the whole people, and therefore the action should be prosecuted by the United States. . . ."[8] The result from the proceedings were not encouraging for the government since the indictments against the papers were thrown out by the courts. The federal judge at Indianapolis, ". . . expressed the opinion that the News was no more than doing its duty in looking into a public matter and that, 'If constitutional guarantees are worth anything, this proceeding must fail.'"[9] A similar expression was upheld by the federal judge in New York in regard to the World indictment. The Supreme Court upheld the rulings of the lower courts.

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[7]John Harrison and Harry Stein, eds., Muckraking: Past, Present and Future (University Park: Pennsylvania State University Press, 1973), p. 18.

[8]Mott, American Journalism, p. 606.

[9]Ibid.

These cases were significant to the era of muckraking journalism since the outcome was a vital mandate to the press. It not only justified the press crusade as a constitutional privilege but also reemphasized the notion that press intrusions into public matters are in effect within the bounds of their function.

It can be said then that between 1902 and 1912, the era of muckraking journalism, the press saw the manifestation of its influence on the public, and the wielding of more power. The socio-political environment was relatively calm in the sense that there was no domestic or international confrontation, but the economic and social dissatisfaction that characterized this period created a restlessness in the populace. When the press embarked on their muckraking crusade, it was actually a reflection and an overt presentation of the public sentiment. This being the case, the press received adequate public support in this crusade. This supportive nature of the socio-political environment as reflected in the public enthusiasm made official resentments, or in some cases, practical reprimands of the muckrakers virtually ineffective. This was clearly portrayed in the legal proceedings during the muckraking era.

The end of the muckraking era came in 1912, lasting almost a decade, and with it also came the end of the press honeymoon which was brought in part by the emergence of the First World War in 1914. Although by this time America had succeeded in establishing its power, the nation preferably pursued a policy of isolationism in international politics. Even when the war started and gradually intensified, the same policy of noninterference was advocated by the United States government. But both sides in the conflict, the British and the Germans, were aware of the

tremendous power of the United States and thus realized that an alignment by America to either side in this conflict had an obvious tendency to shape the outcome of the war.

It was with this realization that both Britain and Germany each sought in desperation not only to gain the support of the United States government, but also to present a favorable case to the American public opinion.

> . . . both the Allies, on the one hand, and the Central powers on the other, realized the importance of enlisting the aid of the United States, with its resources in men and goods, in this world crisis. England and Germany there upon engaged in another war--this one in America, and carried on not with armaments but with arguments.[10]

However, there was no long-run detectable effect of the propaganda warfare between the Allies and the Central powers to control the American public opinion. The reason being that, "the great majority of the American publicists showed a pro-Ally reaction to the war from the very beginning,"[11] and the German propaganda efforts did not do very much to change that opinion.

Even though a pro-Ally mood existed in America at the onset of the war, British authorities insistently made several attempts to preserve this mood or reinforce it. The British government severely censored,

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[10] Mott, American Journalism, p. 615.

[11] C. Hartley Grattan, Why We Fought (Indianapolis: Bobbs Merrill Co., 1969), p. 36. The traditional compatriot relationship between the United States and Britain required that the United States come to the aid of Britain during the First World War. To the many Americans, descendants of British immigrants, Britain was still home since they originally came from there. Thus when the Germans attacked Britain, it was considered an attack on their homeland, and an indirect attack on the United States as well. James Mock, Censorship 1917 (New York: DACAPO Press, 1972), p. 6.

curtailed and in some cases completely stopped coverage of war activities by American war correspondents. As a result of such British actions, "American press quite definitely was handicapped in its presentation of the war news by existence of wartime censorship and by Allied control of cable facilities."[12] With this severe British repression of war coverage by American press agents, "honest, unbiased news simply disappeared out of the American papers along about the middle of August 1914."[13] Frank Luther Mott making the same point notes,

> It soon became apparent, however, that the old-style war correspondence was impossible in this new-style war. The journalist was effectively hampered by official restrictions on his movements, by censorship at every point, and by the size and nature of the conflict. If he saw important fighting at the front, it was either accidental or due to an evasion of rules which was sure to result in temporary suspension of the writer's privileges. French, British, Germans, and Austrians permitted occasional visits to the various fronts by accredited correspondents under careful military escorts.[14]

In other words, although the reporter appeared to be free, his hands were actually tied.

The American press saw these British measures as unjustified since, "reflecting American opinion, the newspapers were prevailingly pro-Ally in sentiments from the beginning."[15] But to the British, of course, the perfect prosecution of the war meant that no chances be taken. This was a reiteration of the fact that when you are involved in a win or loose

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[12]Emery, The Press and America, p. 582.

[13]Harrison and Stein, Muckraking: Past, Present and Future, p. 44.

[14]Mott, American Journalism, p. 619.

[15]Ibid., p. 616.

war, extreme caution often extends into the bounds of even Allied compatriots. And, as the American press saw later, it was no different when the United States finally got involved in the war.

The involvement of the United States in the war on the side of the Allied forces, in 1917, not only reinforced the repressive measures the American press had experienced at the hands of the British, but actually created a worse restraint on the press. The one obvious fact that the press had feared all along, that "democracy faces a dilemma in wartime," came alive again.

> Founded upon the belief of citizen participation in government and of freedom of speech, press, and assembly for all citizens, when war comes those freedoms must be subordinated to the winning of the struggle, if the very government that guarantees civil rights is to continue to function, and thus assure to the citizens their constitutional privileges. In a democracy in peacetime, individuals or groups may select as many enemies as they please and struggle against them. During a war, these domestic enemies for example, nicotine, indecent dress, vested interest, labor agitations, corrupt politicians, and many others must be forgotten in the fight against the wartime enemy, namely, the foreign power or powers.[16]

The American public was already pro-Ally in sentiment and when the United States entered the war in 1917 there was no need for the American government to build a positive support in the American public opinion for the entrance. The mere involvement of the United States reinforced the pro-Ally feeling in the nation. As a result of this positive feeling in the environment, the press was not only forced to cooperate or face public condemnation, but it also meant that most of the government repressive measures to effect the cooperation of the press often received public approval.

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[16]Mock, Censorship 1917, p. 3.

> Federal law gave, in 1917, reality and legality to the belief that it is better to preserve the United States without the Constitution than the Constitution without the United States. Specifically, the guarantees of freedom of speech and freedom of the press, offered all citizens, began to slip away from the American people on April 6, 1917, when war was declared. . . . Our entry into the European struggle changed the emphasis in American thinking from life, liberty, and the pursuit of happiness, to subordination of the feelings and desires of the individual to the winning of a war. . . . Freedom of speech and freedom of the press have been the sectors in which the greatest losses have occured.[17]

This was the basic attitude that eventually allowed the kind of press censorship and restraint that the United States government handed out to the press between 1917 and 1918.

Immediately upon entering the war, the idea of press restraint was envisaged among government officials. Even President Woodrow Wilson who had always advocated a free press, and in their right, "in what he called 'pitiless publicity' for public business,"[18] realizing,

> Now that America was in the war, . . . turned to the problem of stimulating the country's morale and of educating the people to the task ahead. . . . He knew the values of using the agencies of communication. And although he wanted those agencies to remain as free as possible, he knew that some control was necessary.[19]

The official step toward a controlled press came in April, 1917, when President Wilson appointed the Committee on Public Information with George Creel, a newspaper editor, as the head. The work of the Committee amongst other things was to coordinate government propaganda efforts and

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[17] Mock, Censorship 1917, pp. 5-6.

[18] James Pollard, The Presidents and the Press (New York: MacMillan Company, 1947), p. 630.

[19] Emery, Press and America, p. 587.

also serve as liaison between the government and the press. This line-up of function gave the committee the opportunity to draw up, according to Emery, ". . . a voluntary censorship code order under which editors would agree to refrain from printing materials which might aid the enemy."[20]

The CPI also organized groups called the "Four-Minute Men," and according to the Chairman of the CPI, George Creel, it was

> . . . a specialized publicity service giving four-minute talks by local volunteers, introduced by standard introduction slide furnished by the Government, in the intermission at motion picture theatres in accordance with a single standard plan throughout the country.[21]

In other words, the "Four-Minute Men" groups were instruments devised by the CPI to arouse and maintain patriotism and support for the First World War.

The censorship measures which the CPI prescribed were voluntary on the press, which meant that news control was still left to the press. As a result of this, there was no outcry or complaint from the press and, in fact, more than three fourths of the press body observed the censorship code.

The enactment of the Espionage Act on June 15, 1917, did not see the same type of press welcome. As the war progressed, it was obvious that stronger measures were needed to effect a total compliance from the press and the general public. The Act was designed to do that and it read:

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[20] Emery, Press and America, p. 587. The Institute of Propaganda Analysis defined propaganda as, "attempts to persuade them [people] to do something that they might not do if they were given all of the facts." Vol. 1, October 1937-October 1938, p. Preface.

[21] Cedric Larson and James Mock, "The Four-Minute Men," The Quarterly Journal of Speech, 25 (February 1939):99.

> Whoever, when the United States is at war, shall willfully make or convey false reports or false statements with intent to interfere with the operation or success of the military or naval forces of the United States or to promote the success of its enemies and whoever when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of service or of the United States, shall be punished by a fine of not more than $10,000 or imprisonment for not more than twenty years, or both.[22]

The press agitation that followed the enactment of this Act was insignificant and did not last long. This was very much due to the fact that the American public did not have any reservation to the Espionage Act, hence the press could not find any public support for any negativism towards the Act. In any case, the most important fact about the Espionage Act was that it was, ". . . the first bit of legislation in more than one hundred years that gave officials the statutory opportunity to restrict freedom of speech and press, yet the newspapers took little notice of it."[23] Not so much because they liked to ignore it, but because there was nothing they could do to oppose it given the mood in the socio-political arena.

As if the Espionage Act was not enough, the government enacted the Trading-with-the-Enemy Act on October 6, 1917. The Act stipulated that:

> Whenever during the present war, the President shall deem that the public safety demands it he may cause to be censored under such rules and regulations as he may from time

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[22] Mock, Censorship 1917, p. 50.

[23] Ibid. Emery also notes that the Espionage Act was used extensively by the government. He states, "Altogether some 75 papers either lost their mailing privileges during the first year of the Espionage Act, or retained them only by agreeing to print nothing more concerning the war." Emery, Press and America, p. 594.

> to time establish, communication by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any of such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished with a fine of not more than $10,000 or imprisonment for not more than ten years, or both.[24]

Thus the passage of the Trading-with-the-Enemy Act virtually increased the censorship powers of the government by authorizing, ". . . censorship of all communication moving in or out of the United States. . . ."[25] The interesting fact was that the press did not offer any type of resistance to this latest Act, although a handful went along grudgingly. Obviously the press realized that not only did it have a minimal chance of passing through any form of resistance to these government laws, but actually faced strong public resentments given the nature of the war.

The government, on the other hand, was very willing to exploit the public support to the fullest. As a result, seven months after the passage of the Trading-with-the-Enemy Act, the government enacted the Sedition Act. The Sedition Act was primarily a reinforcement to the Espionage Act and in this sense did not vary much. It stipulated that the, "writing or publication of 'any disloyal, profane, scurrilous, or abusive language about the form of government of the United States or the Constitution, military or naval of the United States,' 'or any language,'

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[24]Mock, Censorship 1917, p. 51.

[25]Emery, Press and America, p. 594.

'intended,' 'to bring these things,' 'into contempt, scorn, contumely, or disreputs,' is punishable under this Act."[26] Very much like its predecessor, the Sedition Act did not receive much press criticism, and the obvious fact again was that with the pro-war mood that existed in the socio-political environment at that time, the press had no choice but to obey these repressive laws. Some minute minority of the press did voice their resentments against these Acts, but often any such attempt to counteract these laws was considered an attempt to endanger war efforts and brought a heavy public criticism that the whole press institution felt. Confirming this fact, Emery notes that "other papers felt the weight of public opinion against those who did not whole-heartedly support the war."[27]

The formation of the Censorship Board in October, 1917, was the culmination of the various measures towards a controlled press during the war period. The lack of any noticeable negative public response towards the enactment of these laws which in turn subdued any intended press agitation may have been responsible for this string of press restraint laws. But even then the one strong reason was the public opinion which was unquestionably pro-government during this period. With such a positive and supportive attitude from the American people, the government found it easy to apply some restrictive measures on the press, and to reprimand the press when they violate these measures.

While these laws may not be severely repressive on singular basis,

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[26]Mott, American Journalism, p. 619.

[27]Emery, Press and America, p. 594.

there is no doubt that operating together they formed a block of intense restrictions on the press. Their extreme success is also undoubtedly due to the fact "that the wartime atmosphere was favorable to restriction of civil liberties."[28] In fact,

> It was a very engrossing world in 1917, with scarcely a dull moment in which to think about long term results. So enrossing to Americans was the world scene during World War I that, apparently, they were never aware of piece after piece of federal legislation which, when fitted together made the mosaic of censorship.[29]

In other words, concern for the war overshadowed every other concern.

The Censorship Board was an official establishment designed to coordinate the press restraint laws in effect and keep a tab on the press. The Board made up of the Secretaries of War and Navy, the War Trade Board, the Chairman of the Committee on Public Information, and the Postmaster General, became the first such body empowered to regulate the press. Although the real effect of the duties of the Censorship Board remained to be questioned, the most important significance of the Board lay in the fact that it was the first time such a body ever existed.

The legal dictations during the First World War, which in most part reinforced the government's efforts to regulate the press had some effect on the success of the government in the application of the restraint laws. Several instances indicate the significance of the legal dictations. In October, 1917, the New Jersey Frei Zeitung of Newark was charged for disloyal and seditious utterances about the war. In this case the jury disagreed with the contention of the judge that it was the constitutional right

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[28] Emery, Press and America, p. 596.

[29] Mock, Censorship 1917, p. 39.

of every citizen of the United States to express his opinion about the war as far as he does not willfully obstruct enlistment and recruiting service. Another case involved the arrest and subsequent charges brought against the editors of the Philadelphia Tageblatt for editorial attacks on the President and his war policies. In this case the Supreme Court upheld the sentences on the men on March 1, 1920, after the war was over. Yet in another case in April, 1918, the editors of the Kansas City Staats-Zeitung pleaded guilty to editorial misconduct. In delivering the opinion of the court in this case, Justice Oliver Wendell Holmes stated, ". . . the First Amendment to the Constituion did not give immunity for every possible use of language."[30]

The German language papers and publications were particularly watched closely by the government for obvious reasons. Their inclination toward Germany made them receptive to German propaganda than the English papers. Although the majority of the American people were pro-Ally, the German-Americans had a subdued sentiment for their land of origin, and if the German language press was neglected they could exploit this sentiment to the advantage of Germany. With this realization, both official and public condemnation met the German language publications. For instance, on September 20, 1917, former President T. Roosevelt said, "we are convinced that today our most dangerous foe is the foreign-language press."[31]

Further stressing the point Mock notes,

> . . . worse punishment was the lot of the foreign-language press. To the descendants of earlier immigrants,

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[30]Mock, Censorship 1917, p. 144.

[31]Ibid., p. 141.

> even in time of peace, a strange tongue was a matter for suspicion in great portions of this country. In wartime, the use of the same languages the enemy employed in his native country increased many Americans distrust of them. Nowhere is there more concrete evidence of that situation than in the censuring of the foreign-language press. And it must be remembered that practically all of the German-language papers and periodicals had been in sympathy with the Fatherland before our nation entered the war.[32]

Whereas it may seem that the majority of cases mentioned above involved foreign language papers in the United States, the English language papers also had their share of the legal axe. The Milwaukee Leader was denied mailing rights by the government for interfering with the nation's prosecution of the war, a charge upheld by the Supreme Court in March, 1921. The same charges were brought against the New York Call for its' publication of June 28, 1917. The Jeffersonian of Georgia was declared non-mailable for disloyal publication. The paper sought an injunction against the government which was denied by Judge Speer in Lake Fairfield, North Carolina. In another incident, the editor of the American Socialist, Louis Engdahl, was indicted in February, 1918, for violating the Espionage Act and was sentenced to twenty years imprisonment. To strike a point of caution, the fact that the above mentioned cases went against the press does not in any way mean that the press lost all the court cases involving press freedom during World War I. It merely serves to reinstate the notion that the majority of the cases went against the press, a signification of the socio-political mood during the war.

Beyond the legal developments discussed above, there were other

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[32] Mock, Censorship 1917, p. 141.

relevant legal instances that reached the Supreme Court during the war period, which can also testify to the legal mood existing at that time. Although some of these cases again may not be directly related to the issue of press freedom, they are significant in the sense that they can further help discern the direction of the legal opinion during the war.

In 1919, the United States Supreme Court decided in Abrams v. United States[33] that the circulation of materials and utterances intended to provoke and encourage resistance to the United States in the war was not protected by the First Amendment. It was a case in which the defendant was accused of distributing circulars with the intention to incite a general strike of munition workers. In Debs v. United States,[34] the Supreme Court decided that the deliverance of a speech with the potential to oppose or obstruct the war was illegal and not protected by the First Amendment. One other interesting case that came up to the Supreme Court during this period was Schaefer v. United States.[35] This was a case in which the editors of a German language paper in the United States were charged with news falsification. The editors systematically took news from other papers and published them with omissions, additions, and changes with a deliberate intent to weaken the zeal of the United States in the war. The Supreme Court upheld the charges against the editors noting that such publications are not protected by the First Amend-

[33]Abrams v. United States, 250 U.S. 616 (1919).

[34]Debs v. United States, 249 U.S. 211 (1919).

[35]Schaefer v. United States, 251 U.S. 466 (1920).

ment. Another case worth mentioning is the Pierce v. United States[36] in which the defendants were charged with insubordination, disloyalty, and refusal to serve in the military. They circulated falsified information with the intention to interfer with the operation and success of the war.

One interesting thing about the Pierce case was the fact that the Supreme Court noted in its opinion that the fact that the information circulated could be true does not exonerate the culprit from punishment, nor is it a reason for the publication or utterance of the offensive material. In the opinion of the Supreme Court, even if the publication

> cannot be construed to cover statements that on their face, to the common understanding, do not purport to convey anything new, but only to interpret or comment on matters pretended to be facts of public knowledge . . . and with every evil purpose circulated, they are not punishable if accompanied with a pretense of commenting upon them as matters of public concern. We can not accept such a construction. . . .[37]

Obviously the delicate nature of the war period was of such a concern that the Supreme Court felt that the publication or the utterance of information with the potential to interfere in the war efforts was not protected by the First Amendment or subsequent punishment even if such information is true.

The end of the war came in 1918 with a strong conviction and hope among press participants that official change of attitude toward the press was inevitable. This, however, was not the case since the first couple of years after the war did not see such a change, to the disappointment of the press. During the war the press saw the need, although

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[36]Pierce v. United States, 252 U.S. 239 (1920).

[37]Ibid.

reluctantly, to regulate the press, but what they could not understand was the official need to retain the repressive laws after the war. During the war,

> there was an actual enemy whose defeat was necessary if this government was to continue to be able to guarantee citizens their freedom of speech, of assembly, and of the press. Also, during that struggle the government was a government of the people, "for the winning of the war." And the advent of peace did not result completely in replacing "for the winning of the war" with the traditional "for the people." What actually happened was that, "when peace came, the repressive measures, instead of being abolished, were used by federal, state and municipal officials, and were immitated by social, political and economic groups.[38]

With all amount of fairness, it could be said that the first few years after the war were trying moments again for the press since the freedom they anticipated with the end of the First World War did not really materialize.

The continuation of the repressive measure against the press right after the war could be credited to the co-orientation existing in the socio-political environment at the end of the war. In 1917 when the war was still going on, the Bolshevik revolution had just taken place in Russia as a result of which Russia removed her troops from the war. The Marxist doctrine of the Bolshevik revolution was incompatible with American democracy, and the rapid proliferation of this doctrine and the increasing influence of socialist agitators on American public opinion was beginning to cause concern among government officials. The culmination of this communist influence into the red scare called for some type of official action to contain Communism. Thus the retention of some of the

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[38] Mock, Censorship 1917, p. 213.

Acts after the war and the introduction of new ones was merely a manifestation of official concern for Communist influence into official conduct. In other words, it was a sure means of dealing with Communist doctrine and Communist aliens in the United States, in an attempt to curb their advancing potential.[39]

An earlier legal dictation in Schenk v. United States made it possible for the government to preserve the repressive measures from the war. Schenk, General Secretary of the Socialist Party, was accused of attempting to cause insubordination in the military and naval forces of the United States by transmitting non-mailable matter through the mail. The Supreme Court affirmed the decision of the lower court finding the defendant guilty. Justice Holmes, in the opinion of the court, stated:

> We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstance in which it is done. The stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hinderance to its effort that their utterance will not be endured so long as men fight and that no court could regard them as protected by any constitutional right.[40]

This legal opinion set the tone for subsequent government action,

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[39]Mott discusses the conditions existing right after the First World War and the Red-Fever in his book, American Journalism.

[40]Schenk v. United States, 249 U.S. 47 (1919).

to the disillusionment of the press. The one side effect of all these political and legal developments was the revival of mob activities against unpatriotic citizens and newspapers, and the enactment of "anti-red" laws in several states.[41] It was a tense period in the socio-political environment that called for total support of the government and its activities. In fact, the publication of Communist sentiments by a newspaper, or the utterance of the same by a citizen, or even the mere association of one with any Communist element was an abomination that received the disapproval of the government in particular and the public in general. Most often such disapproval was reflected in court opinions.

For instance, in California, Charlotte Anita Whitney and Yetta Stromberg were both convicted in 1922, the former for association with the proponents of syndicalism and the latter for paying allegiance to the "Red Flag."[42] The Supreme Court later overturned the decision of the lower court in the Stromberg case. Another similar incident took place in 1923 when the Supreme Court affirmed the decision of the lower court in the Gitlow v. New York case. Benjamin Gitlow was charged with the advocation of the principles embodied in _The Left Wing Manifesto_ which called for the overthrow of the United States government by force.[43] Again in Michigan, Charles Ruthenberg was convicted for attending the Communist national convention, and in Ohio, Judge George Canaga upheld the application of the "anti-red" laws in that state. This same type of

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[41]Emery, _Press and America_, p. 599. The offices of the _New York Call_ were raided and wrecked.

[42]Mock, _Censorship 1917_, pp. 216-217.

[43]Ibid., p. 218.

anti-Communist mood prevailed in Kansas and Oregon where involvement or mere assistance in Communist activities was sufficient ground to warrant indictments.[44]

The press was severely affected in this anti-red mood that permeated the environment after the First World War. Not only did the newspapers have to be careful about what they printed or face possible legal reprimands, they also came out losing their champion role. The usual press role as the watch-dog of the people which they gained during the muckraking era was inoperative at this time. In fact, the anti-red fever was so strong in the nation that ". . . the newspapers failed dismally to defend the civil liberties of those being questionably attacked."[45]

While the red-scare and its influence on the social, political, and legal developments in the nation did not directly affect the press, the impact of the significance of these developments was evident on press activities during this period. At a time when the mood in the environment demanded caution, civil liberties often fall prey to governmental control and legal reprimand. This was the case right after the First World War, and the press had no choice but to succumb to the prevalent nature of the public opinion during this time.

"Eventually the turbulence of the wartime period faded into the relatively complacent years of the 1920's."[46] America was beginning to

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[44]Mock, Censorship 1917, pp. 218-219.

[45]Emery, Press and America, p. 599.

[46]Ibid.

realize the new role bestowed on her as a world leader, a role acquired by her involvement in World War I which gave victory to the Allies. But, beyond that, the war allowed America to become economically viable.

> While the other industrial countries were devoting their energies to fighting, the United States stepped into their foreign markets . . . and furthermore supplied the industrial nations themselves, . . . with food, clothes, and the materials of war. . . . When the war began, America owed the world $3,000,000,000; when it ended, that debt had been wiped out and America had become the world's creditor to the tune of $10,000,000,000.[47]

The realization of this new economic order rekindled positive Americanism in the nation and led to the rejection of America isolationism in world politics.

In a stable socio-political environment the press found a chance to refurbish itself again. This new press honeymoon was even further reinforced by the consequential developments in the environment as a result of the economic progress. The one obvious tendency of capitalism, the evils of materialism, erupted again. Corruption, bribery, and administrative mismanagement became the order of the day. In fact,

> Corruption was not confined to high places; it was to be found all over America. . . . The underworld of America, having come into open to make respectable fortunes out of bootlegging, stayed in the open to intimidate juries and officials and to hold trades-men to ransom.[48]

These developments gave the press an opportunity to position itself again as the champion of the people. Many newspapers went on the rampage exposing official corruption, and, in some cases, accusing public officials

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[47] J. Hampden Jackson, The Post War World, 1918-1939 (Boston: Little, Brown and Co., 1939), pp. 362-63.

[48] Ibid., pp. 377-78.

of collaborating with the underworld. It was almost a replica of the muckraking era with official corruption again as the theme. Thus, the economic progress and the political stability of the middle and late 1920's saw a revival of the significance of the press. In general, the success of the press in reestablishing itself at this time could be credited to the relaxed mood in the environment. Even with the official corruption and underworld activities during this period, most Americans had economic satisfaction and "such was the mood of America in 1927. Business was good; no one asked for anything more than that it should continue good."[49]

The political and economic prosperity of America was interrupted in 1929 with the crash of Wall Street and the subsequent economic depression that followed. The fortunes of World War I which brought economic prosperity to the nation also brought economic misfortunes as well. While investing the riches accumulated from the war, the American

> had gambled on future prosperity and lost--lost because he had poured millions into producing raw materials until the amount produced was more than the world [organized as it was that only a minority of its inhabitants could afford to buy] could consume, and so the high prices he had hoped for had not been realized . . . he had lent millions to foreigners who were in no position to even pay the interest on the loans.[50]

It was an economic misfortune that engulfed everyone, even the newspaper industry fell victim to the depression with the loss of circulation.

In the midst of it all, the stronger papers maintained their offensive against official corruption. It was very easy for the press to

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[49] Jackson, Post War World, p. 373.

[50] Ibid., p. 377.

carry-on this crusade because of the undaunted level of public support. The depression brought along an anti-establishment air. The high rate of unemployment as a result of the increasing bankruptcy of several businesses was causing concern among the people. With this kind of mood persisting in the public opinion, any government action aimed at controlling the press would certainly receive minimal public support. The press, on the other hand, being aware of this type of mood, used it as an added impetus to foster its attacks on official ineptitude.

Official resentments were, however, beginning to set in, and many states were introducing legislation to combat press excessiveness. One such state was Minnesota which in 1925 introduced the "gag statute" designed to suppress any publication or printing considered to be malicious, scandalous, and defamatory against the State or its officials. The Saturday Press, a Minnesota weekly, had been leveling attacks on city officials for corruption and for collaborating with the underworld. The paper claimed

> that a gangster was in control of gambling, bootlegging, and racketeering in Minneapolis, and that law-enforcement officers and agencies were not performing their duties. The Chief of Police was charged with an illicit relationship with gangsters. . . . Of the officials, the one to receive most prominence was the County Attorney, Floyd B. Olsen, whom the paper charged with knowing the existing conditions, and with failure to take adequate measures to remedy them.[51]

The city sought an injunction from the district court, under the gag statute, to bar the Saturday Press from further publication, which the court granted.

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[51] Mock, Censorship 1917, p. 223.

In 1931, the Supreme Court heard the Near v. Minnesota case[52] and overturned the decision of the lower court. The Supreme Court stated that the Minnesota statute was a violation of the First Amendment and the Fourteenth, and thus unconstitutional. The court noted that by enjoining the defendants,

> from producing, editing, publishing, circulating, having in their possession, selling or giving away any publications whatsoever, which is malicious, scandalous or defamatory newspaper as defined by law, "and also" from further conducting said nuisance under the name and title of said Saturday Press or any other name,[53]

it amounted to an infringement on liberty of the press which is protected by the Constitution.

The Supreme Court decision in the Near v. Minnesota case boasted the press in their struggle for freedom in post-war America. It is difficult to ascertain precisely the influence of the socio-political environment on the legal dictations, or the combined influence of both on government activities toward the press. However, the fact remains that, although the nation was at peace at this time, the economic malaise and the political chaos from the depression had left people disgruntled, and also inspired an anti-establishment wave in the public opinion. Besides there was the added spree of corruption running among government agencies and officials which the public strictly disapproved of. In this existing condition in the mood of the nation, the resurgence of the press with an effort to combat official corruption and instill some type of positivism in the people was indulgingly welcomed. In the final analysis, it is

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[52]Near v. Minnesota, 283 U.S. 697 (1931).

[53]Mock, Censorship 1917, pp. 223-224.

very possible that the legal dictation in Near v. Minnesota was a reflection of the mood in the socio-political environment.

The inauguration of a new President in 1933 with a promising economic package, revitalized hope in the socio-political environment. President Franklin Delano Roosevelt realized that what Americans needed were drastic Federal relief programs and he did not waste time introducing such programs. Soon Americans looked to him "for immediate and dramatic action; and Roosevelt did not disappoint them."[54] The nation was not only ready for a change, but it was also willing to give every support to any official action that seemed to have the remedy for the nation's economic malaise. The introduction of the New Deal by President Roosevelt, and the welcome that greeted the program was a reflection of this public mood.

> The purpose of the New Deal has commonly been described as the three R's: Recovery, relief and reform--Recovery meaning that the capitalist system of private enterprise in business should be set on its feet again; Relief meaning that Federal aid should be given to the forgotten men, particularly farmers and unemployed; Reform meaning that the most antisocial abuses of private capitalism should be checked by Federal interference.[55]

The initial success of the New Deal, and the subsequent introduction of other programs quelled the panic in the economy for a while.

By 1937, it was obvious, however, that the New Deal was not the solution to America's problem. The huge success expected from the program did not materialize right away, and petty opposition and criticisms were mounting against the program. American businessmen felt left out in

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[54] Jackson, Post War World, p. 420.

[55] Ibid., p. 421.

the program. They countered that the New Deal considered the ordinary man, and did nothing to consider the plight of the businessman, the goose that laid the golden egg. The result of all these developments was the evolution of a crisis of confidence as "American investors, feeling that the whole basis of the Roosevelt recovery schemes were unsound, began to withhold their money. Certain financiers anxious to wreck the administration, withheld investments for political moves."[56]

In a thriving economy the press benefits. Healthy business generates more advertisements which in turn creates more revenues for the papers. In the 1930's the press was beginning to find itself again after the many censorship laws that kept it in the shadow during World War I. Now armed with the legal decision in Near v. Minnesota in 1931, a new sense of authority from its revived muckrakism toward official corruption in the thirties, the economic woes of the depression were threatening this success. In the economic recklessness of the period, although the press still maintained their growing influence, the decline in circulation and business was a major concern. The New Deal program of President Roosevelt did not bear the solution that the press had hoped for, and as a matter of fact ". . . from the outset the great majority of the newspapers opposed him. They disbelieved in the New Deal, they were increasingly critical of its policies and did their utmost to defeat it."[57] The grudge from the press now was more a matter of economic insecurity than anything else. This was obvious since, "of the newspapers,

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[56]Jackson, <u>Post War World</u>, p. 430.

[57]Pollard, <u>The Presidents and the Press</u>, p. 773.

discreetly controlled by advertising interest, at least 90 per cent (sic) are either bitterly hostile or coldly critical,"[58] of the New Deal program.

Regardless of the economic misfortunes brought on the press by the depression, the fact remains that at this time the press had succeeded in refurbishing, and had also gained a substantial amount of influence in the public opinion. The press had a good chance of preserving its influence and criticisms to the administration's program since the legal dictations at this time also reflected some amount of opposition as well. Amidst the huge clamour and clatter from editors, newspaper columnists, and the public, "it was obvious that once the New Deal was laid before the Supreme Court many parts of it would be condemned as unconstitutional. This was what happened in the summer of 1935."[59] The court saw a large part of the New Deal as unconstitutional, to the disappointment and anger of President Roosevelt; so much so that he in fact threatened to introduce legislation to change the composition of that body.

During the depression the nation was not involved in any form of war, either domestic or international, and, except for the social upheaval caused by the depression period itself, the nation was relatively calm. The nature of the press, government activities, public opinion, and legal dictations during this period has been discussed in detail, but a singular perusal of some of the legal instances that occurred during the

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[58] Jackson, Post War World, p. 431.

[59] Ibid., p. 429. The Supreme Court condemned the Railroad Pension Act, the Farm Mortgage Moratorium, the NIRA and some sections of the AAA.

period will help shed better light on the period.

There is no doubt that during the depression the press enjoyed a large amount of freedom to the demerit of the government. The several press attacks on official mismanagement and corruption was good for the nation, but also incurred strong official resentments. The government set out to curb this press excessiveness by introducing legislation as was done in Minnesota in 1925, and even with the declaration of such statutes as unconstitutional, the government did not relax its efforts to subdue the press. But like the Near v. Minnesota decision, the courts were still willing to prescribe a free press. This is shown in the Grosjean v. American Press Company in 1936, where the Supreme Court declared the Louisiana State licensing tax on newspapers as unconstitutional.[60] The State of Louisiana had imposed a license tax on advertising for all newspapers with a circulation of 20,000 or over. The Supreme Court noted that the tax was a violation of freedom of the press protected by the First Amendment. In the opinion of the court, Mr. Justice Sutherland stated that the excise tax on papers have

> . . . a long history of hostile misuse against the freedom of the press. The predominant purpose of the grant of immunity here invoked was to preserve an untrammeled press as a source of public information . . . and since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with concern. . . . A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves.[61]

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[60]Grosjean v. American Press Company, 297 U.S. 233 (1936).

[61]Ibid.

Another legal incident that will help highlight the legal mood of the courts during and after the depression is the Lovell v. City of Griffin case in 1938.[62] The city of Griffin in Georgia had enacted an ordinance forbidding the distribution of materials without first obtaining a permission from the City Manager. The interesting aspect of this case is the fact that the Supreme Court categorized other kinds of publications like leaflets, pamphlets, handouts, and religious tracts as the press and thus also protected by the First Amendment. In striking down the Griffin statute in 1938 as unconstitutional, the court noted:

> We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for freedom of the press was primarily directed against the power of the licensor. . . . While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty [sic] of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. Legislation of the type of the ordinance in question would restore the system of license and censorship in its baldest form. . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.[63]

Another similar incident was the Hauge v. CIO of 1939 in which a New Jersey ordinance forbidding the distribution of materials, including newspapers, was being challenged.[64] The City of New Jersey had tried to stop some Communist Party members from passing out materials in the streets. The Supreme Court found the ordinance unconstitutional since it

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[62] Lovell v. City of Griffin, 303 U.S. 444 (1938).

[63] Ibid.

[64] Hauge v. CIO, 307 U.S. 496 (1939).

violated the freedom of the press. One interesting thing about this case is the fact that even when Communist elements were involved the court felt that the First Amendment right should be extended to them as well. Reflecting back now on the legal developments that occurred during the post-war "red scare," apparently the court felt that with peace and stability now in the country there was no need to effect repressive measures against Communist advocates.

The Schneider v. State in 1939 once more exhibited the nature of legal thought that permeated the depression and the post-depression era.[65] The case involved a challenge against ordinances from the cities of Los Angeles, California; Milwaukee, Wisconsin; Worcester, Massachusetts; and Irvington, New Jersey. The ordinances in question made it illegal to pass literature or publication in the streets without prior permission from government officials. While noting that all forms of publications can be categorized as the press, the court struck down the ordinances. In the opinion of the court calling the ordinances forms of censorship, the court noted, "to require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees."[66]

Another legal development that occurred during the post-depression era was the Thornhill v. Alabama case in 1940.[67] An Alabama State statute made it unlawful to picket or loiter a place of business with the

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[65]Schneider v. State, 308 U.S. 147 (1939).

[66]Ibid.

[67]Thornhill v. Alabama, 310 U.S. 88 (1940).

intention to interfere in the operations of the business. The same statute made it also unlawful to publish facts about a labor dispute, either through a pamphlet or any other publication. The Supreme Court called the law unconstitutional, noting that it amounted to prior restraint of the press. The freedom of the press guaranteed by the First Amendment, the court noted, embraces the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment.

Although an outright cause and effect relationship cannot be established between the press, government prescriptions, public opinion, and legal dictations during the period of the 1930's, there are some apparent links that can be discerned. The United States economy blossomed from the economic gains of World War I which consequently led to the resurgence of official corruption. The press found this development a comfortable theme to plot their reactivation from the years of war repression. The subsequent press attacks on the government, and official helplessness in combating the press was a manifestation of this notion. Even the fact that some of the repressive laws from the war were still in the books did not help the government since the application of these laws was warrantless during a peace time.

The crash of the stock market and the following depression in the thirties added impetus to the press crusade against official corruption. The unemployment rate was steadily rising, the general economic well-being of the American was declining, and the end result was the spark-off of an anti-establishment air in the public. This type of mood in the socio-political environment, on one hand, added to official helplessness

in checking the press, while on the other hand, it increased public support for the press.

The increased press rampage on official ineptitude soon got to government agencies and officials. In such a wrath several states and localities started introducing legislation aimed at controlling the press. One such state was Minnesota which in 1931 introduced a "gag law" that practically amounted to a prior restraint of the press. The Minnesota statute was challenged in the Supreme Court, in the Near v. Minnesota case in 1931,[68] and the court decision in this case became the ultimate test of the abrasive rapport between the government and the press in this period. The Supreme Court found the Minnesota law unconstitutional since it was a violation of the First Amendment. This legal dictation quenched official reprimand of the press, and also served as a virtual mandate to press activities.

The linkage from and between all these developments in the depression and the post-depression era is clearly evident: the economic instability and the public disgust prevalent in the socio-political environment, the resurgence of the press after the repression of World War I, the failure of official activities to limit press excessiveness, and the predisposition of legal dictations toward the press.

The journalistic extravaganza of the press, acquired during the depression era, was cut short by the emergence of the Second World War. The war started in 1939, and although the United States did not get physically involved until 1941, the impact of the conflict was felt in

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[68] Near v. Minnesota, 283 U.S. 697 (1931).

America right from the beginning. When the Treaty of Versailles was signed in 1919 to end the First World War, there was no doubt that the terms of the Treaty constituted a deliberate imposition of perpetual subjugation on the Central powers most notably Germany. In fact, under the terms of the treaty, Germany was relieved of her colonial acquisitions, substantially disarmed, and asked to pay war reparations inconceivably beyond her fiscal capability. Well aware of the objective of the Versailles Treaty, but rid of any bargaining power as the vanquished Germany had no choice but to accept the terms of the negotiations. The bondage of the treaty soon became unbearable to the Germans who did not hesitate to make open their grievances to the Allied powers. But the German complaint fell to the defiant ears of the Allies.

It was not until 1933, when Adolf Hitler and his National Socialist Party came to power in Germany, that the Germans finally saw a way to vent their resentments. Although Hitler's jingoistic policies were not popular among all Germans, the Germans also realized that in the conditions set forth by the post-World War I environment, their options actually were limited. Hitler was probably the immediate hope they had of any type of German reaffirmation. With this realization, the positive sanctions that greeted Hitler became once more a manifestation of the fact that, "peoples who believe that they have been unfairly treated and denied sufficient living space may grow defiant and rally to a leader who promises to win justice for them by war if necessary."[69] This same situation and belief existed in Japan and Italy, the other partners in

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[69]Geoffrey Bruun and Dwight E. Lee, The Second World War and After (Boston: Houghton Mifflin, Co., 1964), p. 9.

the Central powers. "The Japanese, like the Italians and Germans, emerged from World War I with grievances and resentments."[70] What followed then was a complete German re-armament, and subsequent territorial aggrandizement by Hitler.

With the annexation of Austria, a threat hanging over Czechoslovakia, and "convinced that his opponents [the Allies] would neither combine to check him by diplomatic moves nor risk armed resistance, Hitler pressed on relentlessly."[71] When he finally attacked Poland on September 1, 1939, it became obvious to the Allies that it would take more than appeasement to stop Hitler. On September 3, 1939, both Britain and France declared war on Germany and thus the Second World War began.

President Franklin Delano Roosevelt was concerned about the outbreak of hostilities in Europe although there was no immediate noticeable effect of the war on the United States. On the other hand, the American press was concerned for an obvious reason; the imminent reappearance of censorship and press regulation if the United States got involved in the conflict. President Roosevelt shared this press concern, and in an attempt to calm down the press, "early in 1939 he twice reaffirmed his belief in freedom of the press and of opinion."[72] Such assurances did very little of course to remove the press fears, but the fact was that Roosevelt felt that since the United States was not directly involved in the war, any attempt to control the press would not only be warrantless

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[70] Bruun & Lee, Second World War, p. 9.

[71] Ibid., p. 15.

[72] Pollard, Presidents and the Press, p. 819.

but would also receive public disapproval. Roosevelt was of the opinion that the press should be thorough and fair in covering the European conflict, and one way to ensure this was to remove any fears in the press. In an apparent attempt to emphasize this point, "Secretary Early (Secretary of State), speaking for the President, issued a statement that unless and until the United States went to war, Mr. Roosevelt wanted no censorship of the press or radio in this country."[73] The Roosevelt Administration abided by this pledge, and until American involvement in the war, the press was relatively free and unharassed.

However, things changed with the Japanese raid on Pearl Harbor on December 7, 1941, and the subsequent American involvement in the war. What the press had feared all along, the reintroduction of restraint laws, became a reality. It was obvious to the administration and the press alike that "some kind of censorship was clearly necessary when the war engulfed the United States."[74] As a matter of fact, "with the organization of the country for war, newspapermen recalled that the Espionage Act and Trading-with-the-Enemy Act of 1917, were still in the statute books,"[75] and that the reactivation or even the introduction of new laws was imminent.

The Japanese attacked Pearl Harbor on December 7, 1941, and within two weeks after the attack the Congress passed the First War Powers Act. The Act gave the "President the power to establish censorship over all

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[73]Pollard, Presidents and the Press, p. 827.

[74]Ibid., p. 831.

[75]Emery, Press and America, p. 602.

communication between the United States and foreign countries--by mail, cable, telegraph, telephone, wireless, and radio-telegraph."[76] Under the Act the President created the Office of Censorship on December 19, 1941, and charged the office with the responsibility of coordinating all restraint on communication.

The establishment of the Office of Censorship did not spark off any protest from the press since the agency allowed for voluntary censorship on the part of the press. In this regard the office was merely a watchdog trying to oversee the application of the voluntary measures. One way the Office of Censorship sought to make sure that the press observed the voluntary censorship was to introduce, A Code of Wartime Practices for the American Press, which it issued on January 15, 1942. The code, ". . . carefully outlined to those who published newspapers, magazines, books, and other printed materials what would constitute improper handling of news having to do with troops, planes, ships, war production, armaments, military installations, and weather."[77] Although it was termed voluntary for the press to adhere to the official regulations, everyone knew that any violation would amount to severe reprimand from the government.

The mood of the American public no doubt had a significant influence on the activities of both the press and the government during the Second World War. The Roosevelt Administration did not have to justify American involvement in the war. The Japanese attack on Pearl Harbor

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[76] Emery, Press and America, p. 602-4.

[77] Ibid., p. 604.

provided the justification. The attack prompted a strong sense of nationalism in the public and a willingness to do whatever is necessary for their country. In this type of public mood, any attempt by anyone, even the press, to criticize or obstruct the conduction of the war was sure to receive a strong public resentment. It would be more than an abomination, it would be viewed as highly unpatriotic and even the press knew this.

The compliance of the press with official prescriptions during World War II was remarkable and almost unprecedented. Of course this was due to a number of reasons which include: the realization by the press that any excessiveness on their part could cause them to relinquish their rights and influence which they regained in the aftermath of the First World War. Secondly, the official restraint measures during World War II were not mandatory, but allowed the press room for voluntary compliance. But most importantly, the press complied with official regulations because of their own sympathy for the war. The press also realized that the war was forced on the United States by the Japanese attack on Pearl Harbor, and, like the other Americans, they had a sense of patriotic obligation to support the government.

But even with the voluntary allowance of censorship in this war, the press also realized that the Espionage and the Trading-with-the-Enemy Acts of the first war are still legal, and although the codes of the Office of Censorship were voluntary, any violation could technically still be prosecutable under those two Acts. Another thing that forced a press compliance with official prescriptions during the war was the fact that the Roosevelt Administration advocated a free press all through

its terms in office. Even when the United States got involved in the war and it became obvious that some form of press control was necessary, Roosevelt still maintained that any such control should be voluntary. In fact, when Roosevelt was announcing the creation of the Office of Censorship, he noted, "All Americans abhor censorship, just as they abhor war. But the experience of this and of all other nations has demonstrated that some degree of censorship is essential in war time, and we are at war."[78] But despite his feeling about the desirability of some form of censorship, Roosevelt was also cautious not to invoke mandatory terms. In fact, "some persons high in authority argued for a compulsory censorship law, but the President opposed this. His pronouncement of December 16, 1941 fixed the policy as one based on voluntary censorship."[79]

A concise perusal of some of the legal incidents during the Second World War period will help underline the fact that the mood in America during the war was one of total adherance, and that any press violations were not welcomed by the courts. The Chaplinsky v. New Hampshire case in 1942 was a case in which the Supreme Court upheld a New Hampshire State statute which required that no person should address any offensive, derisive, or annoying word to any other person who is lawfully in a public place or pursuing his lawful business. Chaplinsky, a member of the Jehovah Witness, was distributing religious tracts and denouncing other religions, to the discontentment of the public. Upon being confronted by the City Marshall, Chaplinsky called him "damned racketeer" and "damned

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[78] Mott, American Journalism, p. 761.

[79] Pollard, Presidents and the Press, p. 831.

fascist." He was convicted under the statute which he challenged in court. In the opinion of the Supreme Court the First Amendment is not absolute and

> There are certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem . . . those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.[80]

Another legal incidence that could throw some light on the nature of the legal mood during the war period is the Korematsu v. United States case in 1944.[81] This case is in no way related to the press, however, its significance lies in the fact that it at least shows to what extent the courts were willing to accomodate official prescriptions. When Japan attacked the United States, there was some sense of resentment against Americans with Japanese ancestry. There was a growing fear among government officials that unless they were restricted somehow, they may indulge in espionage and sabotage. To protect such occurrances, a Civil Exclusion Order was enacted which required that all Japanese Americans from the West Coast be excluded from certain designated military zones. This Civil Exclusion Order was challenged in this case.

The Supreme Court, while showing the serious implications of the Order, upheld it any way. The court stated,

> It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. . . . All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its respon-

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[80]Chaplinsky v. New Hampshire, 315 U.S. 568 (1942).

[81]Korematsu v. United States, 323 U.S. 214 (1944).

> sibilities as well as its privileges, and in times of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes except under circumstances of direst emergency and peril is inconsistent with our basic governmental institutions. But when under conditions of modern warefare our shores are threatened by hostile forces, the powers to protect must be commensurate with the threatened danger.[82]

The same contention was tacitly noted by the Supreme Court in an opinion in an earlier case, Hirabayashi v. United States.[83] Under the same Executive Order military officials had imposed a compulsory curfew on Japanese citizens on the West Coast as a measure to avoid espionage and sabotage. In this case the Supreme Court again stated that in times of war certain civil liberties are not absolutely recognized.

Whatever may be the reason for the unprecedented press compliance with official prescriptions during the Second World War, the fact remained that the compliance was so outstanding that "several outstanding successes were chalked up to the credit of the newspaper and radio men and the Office of Censorship."[84] The result of this cooperation between the officials and the press was the minimal use of the Espionage and the

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[82]Korematsu v. United States, 323 U.S. 214 (1944).

[83]Hirabayashi v. United States, 320 U.S. 81.

[84]Emery, Press and America, p. 605. An instance of this can further be drawn from the fact that, "No hint of the successful development of the atomic bomb was published or broadcast despite the enormous activities preceding the trial explosion in New Mexico and its first use at Hiroshima. . . . Details of the massing of troops in Britain for the D-Day invasions were kept from the Germans. Editors and broadcasters loyally refrained from mentioning cross-country trips by President Roosevelt even though thousands of their readers and listeners were aware that the President had been in their locality. Atlantic coast newsmen cooperated in censoring and delaying stories about ship sinking offshore so the Germans could not accurately evaluate the near success of their 1942 U-boat campaign." Ibid.

Trading-with-the Enemy Acts, and fewer legal entanglements than during the First World War. In the final analysis, the press was not excessively free during the war, but, "Its reporting of the Second World War to the American people was, all things considered, the greatest achievement of the American press in all its history."[85] The press emerged from the war unscathed, retained its dignity and influence, and above all, preserved the goodwill and fine relationship that existed between them and the government.

Although the press complied and cooperated with the officials during the war, this press compliance was by no means universal. Some press members did violate the censorship code and often entered into activities considered to be unhealthy for the conduct of the war. Usually such violators got an official reprimand and in some cases punishment. For instance, a Wisconsin based paper, Scribner's Commentator, was indicted by a grand jury for disloyal commentary. The Postmaster General, on May 4, 1942, discontinued mailing rights for Father Coughlin's, Social Justice for carrying offensive materials. The Philadelphia Herald and the Indiana X-Ray had their mailing rights discontinued on July 3, 1942, for again carrying unwarranted information. Besides the ones mentioned above, many other subversive publications were indicted by grand juries. In fact, thirty publications were indicted by federal grand juries on July 3, 1942, all for disloyal publications. However, despite the journalistic misbehavior of these press violators who were insignificant

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[85]Mott, American Journalism, p. 741. Emery, in Press and America, states, "Coverage of World War Ii by the American press and radio was considered by most observers to be the best and fullest the world had ever seen."

and in the minority, the government maintained a positive attitude to the entire press body.[86]

The most interesting thing about press activities during the war was not only the press cooperation with official mandate, but the willingness of the press to condemn one of their own for disobedience or violation of the censorship codes. Such action illustrates that the press did realize the sensitiveness of the period and the utmost need for journalistic caution. One incident that clearly illustrates this notion, and probably the most significant case throughout the entire war period was the Kennedy episode.

On May 6, 1945, Edward Kennedy was one of the press correspondents invited to Rheims to witness the German surrender. After witnessing the signing of the peace accord between the Allies and Germany, the press correspondents were instructed not to release the information until an official announcement had been made. Kennedy, without waiting for the official clearance, filed the news with the A.P. office in London. Kennedy was relieved of his job, condemned by the government, the public, and other members of the press. The subsequent controversy from this incident was indicative of two facts: the press willingness to abide by official dictates during this period and the readiness of the press to condemn one of its members for violating the dictates. Kennedy was reprimanded officially and severely condemned by fellow correspondents for what they termed "the most disgraceful, deliberate, and unethical

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[86]Mott, American Journalism, p. 741, and Emery, Press and America, p. 612.

double-cross in the history of journalism."[87] Thus the prevalent mood in the socio-political environment during World War II was one of cooperation, compliance, and caution, which was shared by the government, the press, and the entire public.

In the final analysis, in observing the relationship that existed between the government and the press, and in detecting the impact of the socio-political environment and the legal dictations on that relationship, a discernable pattern is evidenced. When the Japanese bombed Pearl Harbor on December 7, 1941, the American public was irritated. Even before then, the American attitude toward the Allies had been positive, but in general the nation pursued an international policy of isolationism. But with the Japanese attack and the strong anti-Axis feeling stirred in the American public, there was no doubt that President Roosevelt was echoing the popular sentiment when he asked for a declaration of war on Japan thereafter. The view in American public opinion was that the war was forced on the United States and that the government had the right to do everything to defend the nation. Such a mandate from the public became a virtual guarantee to the government that whatever actions it deemed necessary to win the war were ultimately received by the public's blessing.

The press could not ignore these circumstances and was almost forced to go along with official stipulations. Anything to the contrary was sure to receive some government reprimand with complete public support. Interestingly, however, the government, well aware of the public

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[87] Emery, Press and America, p. 614. Please note that this is not the famous Senator Edward M. Kennedy.

mandate, nevertheless allowed a relatively free press to function. The government understood that the total public support for the war also acted as a hinderance on press negativism toward the war, and the press could not afford to stir public resentments. But on the other hand, the legal dictations during the war period, and the several grand jury indictments, signalled judicial willingness to condone official conduct of the war. The judicial impression could have had an effect on press activities in the sense that the court was the one place where the press could possibly have challenged any government stipulation. But, with a judicial impression predisposed toward the government, the chances of any press contention receiving a favorable treatment was remote. Thus the press realized that compliance rather than condemnation was much better.

One other very significant factor that forced the press into compliance with official stipulations was the predisposition of earlier court cases toward the government. The judiciary had in their opinions shown a strong support for the efforts of the government to win the war.

But the press compliance turned out to be better and more appealing. So much so that President Roosevelt in one of his addresses noted,

> We have had an example of objective reporting during recent weeks in the presentation of international subjects, both in the press and radio. Right here I should like to throw bouquets to the majority of the press and radio. Through a period of grave anxiety, both have tried to discriminate between facts and propaganda and unfounded rumour, and to give their readers and listeners an unbiased and factual chronicle of developments.[88]

This official appreciation did not take account of the fact that the

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[88] Pollard, Presidents and the Press, p. 822.

press may have been forced to play this role by a combination of factors beyond their control.

Suffice to say that all of these aspects put together a matrix that establishes a relationship between public opinion, legal dictations, and the issue of prior restraint of the press. All these variables operating within the socio-political environment influence and counter-influence each other into a discernable pattern of linkage, depending of course on whether the nation was at war or in peace.

> . . . the character of every act depends upon the circumstances in which it is done. The stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.
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> --Oliver Wendell Holmes

CHAPTER IV

THE PRESS IN THE NUCLEAR AGE

> The way to prevent irregular interpositions of the people is to give them full information of their affairs through the channel of the public papers, and to contrive that these papers should penetrate the whole mass of the people . . . and were it to be left to me whether we should have a government without newspapers, or newspapers without government, I should not hesitate a moment to prefer the latter.
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> --Thomas Jefferson

In 1945, the end of the Second World War brought a sigh of relief across Europe and the United States. Two major wars within two decades had definitely taken its toll on the people and the advent of peace was more than welcomed. It has been estimated that ninety million men were called upon for the war on both sides, out of which about seventeen million were killed. The civilian death toll alone may have reached ten million.[1] The press also looked forward to the end of hostilities in Europe and the reactivation of its domestic significance. The Second World War had put restrictions on press activities although the government had prescribed voluntary censorship. The fact was that the press was obligated to comply with official regulation since the continuous presence of the censorship laws in the law books was a constant reminder of the cost of noncompliance.

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[1] Geoffrey Bruun and Dwight Lee, The Second World War and After (Boston: Houghton Mifflin, Co., 1964), p. 42.

Ironically, however, the end of hostilities did not bring the anticipated peace as both the press and the American populace expected. As a matter of fact the end of World War II created and ushered in a tense and delicate moment in international relations. At the end of the war it became clear that the alliance between the United States and the Soviet Union was merely for the convenience of winning the war. The Soviet Union, more interested now in Communist expansionism, made little effort to reach a unified agreement with the other allied nations. But Communism was incompatible with American democracy and thus the Soviet Union had to be checked. The result was the emergence of the Cold War and the beginning of a massive arms build up by both nations.

The birth of the atomic age and the Cold War that developed after the end of World War II which stretched through the 1950's, had a tremendous impact on the press and the American people. For one thing, the competition between the United States and the Soviet Union, each trying desperately to outwit the other, created a tension in the socio-political environment that forced a cautious press and developed a new sense of public opinion. The reason was not far to seek. During the First World War and with its involvement in the Second, the United States had gradually emerged from isolationism as the most powerful nation and the new world leader. The Soviet Union, on the other hand, since its Revolution in 1917, had been envious of American prominence and had increased its military prowess and territorial aggrandizement.

This Russian infestation had created an added distrust for the ideals of Communism in the American public opinion. To the American mind, the ultimate goal of Communism was the eventual domination of

democracy--in America in particular. With this thinking permeating the socio-political environment and manifested in the Cold War, the press again saw its activities restricted. As Thomas Bailey notes, the individual American is always ". . . deeply concerned about anything that affects his security against foreign invasion and domination."[2] Any press coverage that fell short of American positivism received public condemnation. After all, the press, throughout its years of growth, had come to realize that "public opinion in a democracy molds the scepter," and that according to Abraham Lincoln "with public sentiment on its side, everything succeeds, with public sentiment against it, nothing succeeds."[3]

Thus, the end of World War II did not really bring tranquility to the American press. Although the war had ended, the advent of the Cold War ushered in again all the tendencies and symptoms of international confrontation. The Cold War restored the tense and sensitive environment of the Second World War which eventually disallowed the press to operate freely. The press had to be cautious about what it printed in order not to give out valuable information to the Soviets who were trying to catch up to the military strength of the United States. It was almost as if there was an invincible socio-political order forcing the press into involuntary censorship. It was a socio-political order created by the imminent dangers of foreign affairs in the Cold War era which was

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[2]Thomas Bailey, The Man in the Street: The Impact of American Public Opinion on Foreign Policy (Sloucester, Mass.: Peter Smith Co., 1964), p. 61.

[3]Ibid, p. 1.

drawing the attention of the American public. In the words of Thomas Bailey: "American indifference and preoccupation are due largely to the absence of any feeling of imminent peril. Only when a threat to our security plainly emerges do we concern ourselves virtually with foreign affairs. . . ."[4] The Cold War was one such moment and the press saw the need for caution.

The press had, however, hoped that the Cold War that erupted after World War II was just the aftermath of a high tension, with one nation envious of the might of the other. With the relaxation of tensions and the normalization of relations between the East and the West, the press will once more reactivate its standing. This wishful thinking never really materialized, with tensions becoming increasingly high and both the United States and the Soviet Union becoming increasingly powerful. This heightened tension was manifested in the Korean War in 1950 and once more an embittered press was forced into regulation. Thus, barely five years after the end of World War II, the American press plunged into another war that held the press freedom in abeyance again for some time.

The Korean War was a consequence of the settlement of the Second World War. After the defeat of Japan in World War II, the Allied powers sought to demilitarize Japanese holdings in Korea. The Soviet Union was assigned the Northern portion of the country while the United States was assigned the Southern portion for the purpose of Japanese disarmament. Ironically, however, before the Soviet withdrawal from North Korea, they

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[4]Bailey, Man in the Street, p. 123.

instituted a Communist puppet loyal to Moscow, against the wishes of America, to preserve a united democratic Korea. Thus, with a Communist North Korea and a Democratic Southern Korea, the stage was set for the eventual confrontation. On June 25, 1950, the Northern Korean forces attacked South Korea in what was considered in the United States as evidence of Communist expansionism. The United Nations and America reacted angrily, ordering North Korea to pull back their troops. With no apparent indication of North Korea heeding to this order, the United Nations summoned its forces, made up largely of United States forces, to help South Korea.

The immediate involvement of the United States in the war received broad approval from the American populace. In American public opinion, it was a war between Communism and democracy and, given the nature of the Cold War, all Communist aggression must be checked.

> Certainly the American public agreed at the time (with President Truman's involvement in the war). Russian intransigence had been evident in many places. . . . Disclosures of Soviet spy activities within the United States had added to the popular perception of Moscow as the aggressor. The dramatic suddenness of the North Korea attack reminded many of Pearl Harbor then, less than nine years ago. The President's decision made sense to most of his countrymen.[5]

Thus, the Korean War carried another significance. It showed the willingness of America to use force if necessary to repeal Communist intrusions. This significance was clearly evident in a gallup poll, taken six months after the Korean attack, which indicated that 70% of the American people not only saw the Soviets as behind the attack, but also conniving to

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[5]Francis Heller, The Korean War: A 25 Year Perspective (Kansas: Regents Press of Kansas, 1977), p. 3.

establish themselves as the ruling power of the world.[6]

Even with an apparent censorship and other forms of government repression looming above their heads, the American press supported the nation's involvement in the Korean War. Although it was a genuine support, given the press concern about the Soviet intentions in the Cold War, they could nevertheless do otherwise. With tremendous public support for the Truman Administration,[7] any press subversion was sure to arouse some resentment against the press. But another reason was the fact that the press had not yet freed itself of the censorship from World War II since the Cold War necessitated the retention of voluntary censorship and caution. As a result, it was easy for the press to accept limited publication rights during the Korean War since the intervening five years had not changed their status in any way.

The government realized the support of public opinion toward its activities to check Communist agitations, a support which acted as an added impetus toward the introduction of other measures like the Smith Act. The Act made it unlawful for anyone to advocate the violent overthrow of the government or to be involved in any subversive activities designed to bring about such an action. But the interesting thing is that with this support in the public opinion, the government at the onset of the Korean War preferred to allow a relatively loose press. Even with the apparent dangers of a loose press, but relying on the positive

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[6]Heller, The Korean War, p. 114.

[7]Ibid., p. 117. In a gallup poll in late August 1950, two-thirds of the citizens believed the United States had erred in projecting itself into Korean conflict.

public opinion as an inhibition. "General Douglas MacArthur, the United Nations Commander in Korea, at first left correspondents to their own devices, refusing to institute the field censorship which had prevailed during both World War I and II."[8]

The press exploited this military leeway by publishing information which officials deemed to be harmful to the conduct of the war. Besides publishing unwarranted stories about the war front, the press even extended into leveling attacks on military personnel, including General MacArthur. "There were many episodes of one kind or another that gave displeasure to the high command because of differing interpretations of such matters as 'security,' 'unwarranted criticism,' 'stories impairing morale, . . .'"[9] With no apparent change in their reporting style coming forth from the press, and rather with more criticism, "The General's answer was the institution of a full and formal censorship. . . ."[10] Thus what the press had feared all along had come to be.

The censorship measures were a lot more harsh than the press had anticipated. In fact,

> the stringent regulations imposed in January 1951 went further than any newsman would have desired. They covered not only censorship of military information, but of all

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[8] Edwin Emery, The Press and America (Englewood Cliffs: Prentice Hall, 1964), p. 616. There was field censorship during World War II as well. Emery notes that "military censorship by Navy and Army intelligence officers began on Pearl Harbor Day. . . . As the war developed, newsmen found the British Admiralty and the U.S. Navy Department most prone to suppressing news of war actions." Ibid., pp. 602-611.

[9] Frank Luther Mott, American Journalism, A History: 1690-1960 (New York: The MacMillan Co., 1967), p. 852.

[10] Emery, Press and America, p. 617.

> statements which would injure the morale of all UN forces or which would embarrass the United States. . . . The most dangerous provision of the new censorship was the one making correspondents subject to trial by court-martial for serious violations of the rules.[11]

The censorship codes required the press to turn in all materials for clearance before they could transmit it for publication.[12] To further strengthen censorship, triple examination of news was required. The news material was first screened at the Korean point of dispatch, then at the Tokyo point of receipt, and finally at the point of transmission abroad.[13]

There was no noticeable press resentment against the censorship, not only because of the support of the public opinion for the government, but also because of the positive legal mood, the only remedy the press could have sought. The Supreme Court had signalled very early in the war, and even before, its concern about Communist activity. In the Summer of 1951, the Supreme Court had upheld the constitutionality of the Smith Act, a clear sign that the court was not ready to tolerate un-American activities.[14] As the war went along and the anti-Communist

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[11] Emery, Press and America, p. 617.

[12] Mott, American Journalism, p. 854.

[13] Ibid. A few press participants were punished under the censorship laws. For instance, Bill Shinn, an AP correspondent lost his accreditation and was subsequently removed from the war front for unwarranted publication. Also Tom Lambert of the AP and Peter Kalischer of the UP were sent back to Tokyo for re-orientation. Ibid, pp. 852-853.

[14] The Supreme Court decision inspired the Truman Administration to increase its anti-subversive activities. "Officers of the Federal Bureau of Investigation began apprehending leaders of the American Communist Party for alleged violations of the Smith Act; within a month more than forty party officials were in jail, under arrest, or in flight." Heller, The Korean War, p. 151.

feeling still permeated the public opinion, several other legal decisions reinforced the inhibitions toward press excessiveness. While some of these judicial instances did not directly relate to the press, they signified the legal mood which was a perturbance to the press. More interesting, however, was the cautious diversity observed by the court in its legal opinions, in a deliberate attempt to maintain a balance between the right of the citizen and the security of the nation. While the court was not willing to recommend a co-existence with Communist aggression, it nevertheless sought to observe that the "true American" was provided with a peaceful environment. The legal incidents discussed below clearly illustrates this fact.

In 1946, in Pennakamp v. Florida, the Supreme Court overturned a Florida conviction of a newspaper for publishing comments on a pending case, as a violation of the First Amendment.[15] In the same year in Duncan v. Kahanonaku, the court overruled a Hawaiian Organic Act which authorized the Governor in cases of imminent danger to suspend the writ of Habeas Corpus or place the territory under martial law.[16] The significance of this case becomes clear when it is contrasted with an earlier court decision in Korematsu v. United States where the Supreme Court upheld such an action.[17] In Marsh v. Alabama, the Supreme Court ruled that

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[15] Pennakamp v. Florida, 328 U.S. 331 (1946).

[16] Duncan v. Kahanonaku, 327 U.S. 304 (1946).

[17] Korematsu v. United States, 323 U.S. 214 (1944). The Korematsu case was decided during World War II and the court ruled that any action by the government to seclude a particular group of people from a declared military zone was constitutional. But in Duncan v. Kahananoku the court did not agree with the need for such a martial law.

the conviction of a person by a state for distributing religious literature in a company-owned town is a violation of the First Amendment.[18] Thus, the legal mood before the Korean War was one of the preservation of civil liberties.

But with the increasing threat of Communist agitations right after World War II, and with the coming of the Korean War in 1950, the legal mood became one of stringent caution. This was exhibited in American Communication Association v. Douds in 1950 where the National Labor Relations Act was being tested.[19] The Act required labor organization officers to file non-Communist affidavits or be denied the benefits of the Act. In its opinion upholding the Act, the Supreme Court noted,

> Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive, it must have power to protect itself against unlawful conduct and, under some circumstances, against incitement to commit unlawful acts.[20]

The court further showed this concern in Dennis v. United States in 1951.[21] The Supreme Court in this case upheld the conviction of members of the Communist Party under the Smith Act for advocating the overthrow of the government by force. In Feiner v. New York in the same year, the court upheld the conviction of the petitioner for making a speech with a

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[18]Marsh v. Alabama, 326 U.S. 501 (1946).

[19]American Communication Association v. Douds, 339 U.S. 382 (1950).

[20]Ibid.

[21]Dennis v. United States, 341 U.S. 494 (1951).

tendency to engender a breach of peace.[22] The Beauharnais v. Illinois case presented the same problem as the Feiner case and once again the court ruled that dangerous or libellous utterance is not protected by the First Amendment.[23]

The one interesting case which, by and large, illustrates the concern of the courts on national security during the Korean War period is the United States v. Reynolds case in 1953.[24] The lower court had charged the United States government with refusal to tender some military investigation report about the crash of a military aircraft in a pending case. The government had claimed that the report contained important information of an electronic mechanism that could hamper national security if revealed. The Supreme Court reversed the decision of the lower court, and agreeing with the government, noted,

> . . . we cannot escape judicial notice that this is a time of vigorous preparation for national defense. Experience in the past war had made it common knowledge that air power is one of the most potent weapons in our scheme of defense, and that newly developed electronic devices . . . must be kept secret if their full military advantage is to be exploited in the national interest.[25]

Thus, in unequivocal terms the court clearly upheld the application of secrecy in the conduct of national security matters, a clear sign also that any expressive or undue disclosure of sensitive or harmful information would not be welcomed by that body.

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[22]Feiner v. New York, 340 U.S. 315 (1951).

[23]Beauharnias v. Illinois, 343 U.S. 250 (1952).

[24]United States v. Reynolds, 345 U.S. 1 (1953).

[25]Ibid.

With the end of the Korean War in 1953, and a new hope by press participants for a more relaxed attitude from the government, the press sought a return to normalicy. The Korean War had signalled to the Communist block that the Free World, especially the United States, was not willing to watch Communist expansion. While the war and other United States activities did not completely extinguish Communist agitation, it noticeably reduced their impact. In a socio-political environment divorced of acute Communist threat, positive Americanism rekindled, and American public opinion became one of "we are strong enough to stop the Communists." As a result, there was a relaxation of the public tension toward Communist activites--although by no means were their efforts neglected.

It may be of importance to note that during this period the anti-red fever was continuously rekindled by the anti-Communist advocations of Wisconsin Senator Joseph McCarthy. In 1954, McCarthy held several Senate hearings on the infiltration of Communists into government, press, and armed forces.[26] These hearings received adequate public attention and kept the anti-red fever alive in the socio-political environment. Mott notes, "these sensational hearings were tailored for publicity, and they received it in headlines and on the television screen."[27]

However, after the war it became vividly clear to the American

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[26] Mott, American Journalism, p. 842.

[27] Ibid. It may also be of interest to note that McCarthy was later criticized and discredited for excessiveness in his anti-Communist campaign. In fact, "special committees late in that year investigated what had come to be called McCarthyism and voted a censure against the Senator for violation of Senatorial ethics." Ibid.

public that Communist sentiments were in the minority in the public opinion and that the world demonstrated in Korea its determination to quell any Communist hegemony. The subsequent legal decisions in the late 1950's even reflected this development in the socio-political environment.

One case that showed the cautious but relaxed legal mood on Communist activities was the Watkins v. United States case in 1957.[28] The petitioner here was convicted for refusing to answer certain questions by the House Committee on un-American activities about his Communist involvements. The Supreme Court reversed the conviction as a violation of the Constitution. In the same year in the Yates v. United States case, the Supreme Court reversed the conviction of some Communist leaders for violating the Smith Act.[29] While still upholding the legality of the Act, the court now noted that mere advocation of the overthrow of the government was insufficient grounds for conviction. There must be an apparent possibility of the advocation consummating the act so advocated. In the opinion of the court, "the statute was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the government, and not of principles divorced from action."[30]

There were other legal instances that further reflected the relaxed mood in the judicial branch after the Korean War. One such case was the Speiser v. Randall case, where the Supreme Court overturned a California State statute denying tax exemption to people who refused to subscribe to

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[28] Watkins v. United States, 354 U.S. 178 (1957).

[29] Yates v. United States, 354 U.S. 298 (1957).

[30] Ibid.

oaths that they do not advocate the overthrow of the United States government by force, or advocate the support of a foreign government against the United States in the event of hostilities.[31] The Supreme Court saw the statute as a violation of the Constitution since it amounted to a limitation on freedom of speech. Thus, the effectuation of a judicial leeway that paralleled the status of the socio-political environment after the Korean War.

There was no doubt that the relaxed tension in the socio-political environment after the Korean War and throughout the 1950's allowed the press a chance to refurbish itself once again. Gradually, the press began again to play a more commanding role in the public opinion, a trend that caused concern in the official circles. For all practical purposes, the Cold War was still on and the government felt that even with no apparent war at hand, press excessiveness still posed a threat to national security. With a peaceful environment and no apparent excuse to put its cautious note into practical terms, the government resorted to an increased classification of documents to preserve its integrity. The press while acknowledging the need for caution in publishing certain delicate matters, on the other hand, felt that the upsurge in government classification of materials was unwarranted in some cases, and in fact amounted to a "creeping censorship."[32] As far as the press was concerned, the public had a right to know about the dealings of their elected officials. But to the government, the right of the people to know is limited in an

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[31] Speiser v. Randall, 357 U.S. 513 (1958).

[32] There were about 80 statutes which restricted disclosure of government information of one sort or another.

atomic age where two nations possess the power to destroy the entire world. Thomas Henning, discussing this contention between the government and the press, noted

> Without question, some of the present-day secrecy in the federal government can be attributed directly to the Cold War. . . . In our struggle with the world-wide forces of Communism, the national security has demanded increased secrecy about many governmental activities, particularly those involving military affairs. But not all of the restrictions on the dissemination of information about governmental activities which have occurred in recent years can be ascribed to the necessities of national security.[33]

This was the situation in the United States as the 1960's approached.

The question in the era of the 1960's was not whether an excessive press could jeopardize the national security given the delicate nature of the Cold War, or whether the government is being overzealously callous, but in each case, where the line should be drawn. As the misgivings of both sides of the issue stretched, it became increasingly clear that this issue was a question for the judicial branch to decide. The courts were aware that a knowledgeable citizenry and informed judgment were the basis of democracy, but they also realized that as the arms race and the Cold War progressed, limited information on delicate matters like military and technological innovations were also necessary to preserve the nation. Subsequently, the courts entered an era of cautious arbitration of the contention between the government and the press. Important issues, even on national security, must not be taken on face value, but must be weighed and balanced with regard to their impact on the socio-political environment.

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[33] Thomas Henning, "A Legislative Measure to Augment the Free Flow of Public Information," The American University Law Review 8 (1959):19.

A few cases reflect this note of caution in judicial opinions. In Uphaus v. Wyman in 1959 for instance, the Supreme Court upheld a New Hampshire State investigation under the States Subversive Activities Act to locate subversive people. The court noted in their opinion that the state

> sought to learn if subversive persons were in the state because of the legislative determination that such persons statutorily defined with a view toward the Communist Party, posed a serious threat to the security of the state. The investigation was therefore undertaken in the interest of self-preservation, the ultimate value of any society.[34]

Again, noting its concern for the dangers of Communist infiltration, the court upheld the conviction of the petitioner in Barenblatt v. United States in 1959.[35] The court stated "that Congress has wide powers to legislate in the field of Communist activity in this country, and to conduct appropriate investigations in aid thereof, is hardly debatable."[36]

Yet the same court in Noto v. United States, in 1961, overturned the conviction under the Smith Act that made it a crime to hold membership in an organization that advocates the overthrow of the government by force. The court maintained that the Communist Party could not be shown then to advocate a forcible overthrow and that past advocation does not necessarily mean present tendency to advocate. Thus we see the court trying to adjudicate case by case and trying to balance the cases on their imminent impact on the socio-political environment.[37]

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[34] Uphaus v. Wyman, 360 U.S. 72 (1959).

[35] Barenblatt v. United States, 360 U.S. 109 (1959).

[36] Ibid.

[37] Noto v. United States, 367 U.S. 290 (1961).

But in the overall contention, the press had an added incentive to unlimited publication in the 1960's since usually the burden of proof of the dangers of any publication lies with the government. In war times, proof is usually not a problem for the government since

> during a war the problem of information security is not so complex. The benefits are greater and clearer. Power gravitates to the national government by common consent. The national community centers its goals and efforts on winning the war. Partisanships and conflicting values, ambitions, and interests are less pronounced. Overzealous withholding of information and curbing of talk is accepted as a practical necessity.[38]

But during peacetime the demand to show reason makes it difficult for the government to limit information dissemination. However, as the 1960's went along, the press was relatively free and unharassed except for occasional resentments from the government. But the true fact that had been established up to that time was the influence of the public opinion on both the press, the government, and most importantly, even the courts.

Jerrold Becker, discussing the influence of the socio-political environment on the judiciary, states

> Almost without exception, modern legal philosophies recognize and concede that there are a host of pressures that influence the administration of the legal order. . . . In essence, the scholars have candidly admitted that judges, being human, are susceptible to a great deal of outside stimuli. As such, their ability to reason and decide will, to some extent, reflect these external influences.[39]

This same notion was made clear by a former member of the Supreme Court, Justice Cardozo, when he states

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[38] Wallace Parks, "Secrecy and the Public Interest in Military Affairs," The George Washington Law Review 26 (October 1957):23.

[39] Jerrold Becker, "The Supreme Court's Recent National Security Decisions: Which Interests Are Being Protected?" Tennessee Law Review 40 (Fall 1972):2.

> None the less, if there is anything of reality in my analysis of the judicial process, they (judges) do not stand aloof on this chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by.[40]

It became clear also from past developments that "the ambitious President risks his political popularity and even his job if he defies public opinion too often."[41] Interestingly, the same constraints apply to the press as well since, ". . . the security of the press depends on public opinion and the spirit of the people and of the government. If this spirit turns against the press, then its freedom is jeopardized."[42]

This notion was dramatically reinforced at the onset of the 1960's by two incidents, the Bay of Pigs Invasion and the Cuban Missile Crisis. In both incidents there was an effort by the press to impose censorship on itself on what it considered a national security matter for fear of stirring a public condemnation. It was a tense period in American diplomacy, while the press exercised its right to publish freely, but with caution.

The American people had always resented Fidel Castro's Communist inclinations, and anything that was sure to remove him from power was very welcomed. Thus, when the C.I.A. plotted with Cuban insurrectionists exiled in the United States to invade Cuba in 1961, even though the press

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[40]Becker, "The Supreme Court's National Security Decisions," p. 2.

[41]Richard Rubin, "Foreign Policy, Secrecy, and the First Amendment," _Howard Law Journal_ 17 (1972):612.

[42]Gregg Zive, "Prior Restraint and the Press Following the Pentagon Papers Case--Is the Immunity Dissolving," _Notre Dame Lawyer_ 47 (April 1972):957.

knew about the plot, it limited its publication of the affair. For instance,

> The Times in 1960 learned that an invasion force largely financed and trained by the C.I.A. was preparing to invade Cuba. A decision was made by the newspaper "not to mention the C.I.A.s" part in the invasion preparations, not to use the date of the invasion, . . . The reason given for the exclusion of these facts were those of national security, national interest and concern for the lives of the invaders.[43]

Despite its limited publication on the Bay of Pigs, President Kennedy later accused The Times of premature disclosure of security information. Ironically, Kennedy, after the invasion, was quoted as saying, "I wish you had run everything on Cuba. . . . I am sorry you didn't tell it at the time. . . . If you had printed more about the operation, you would have saved us from a colossal mistake."[44] The Bay of Pigs invasion showed a free but cautious press protecting the government and the demands of the time to avoid incurring public resentment.

The Cuban Missile Crisis of October 1962, again showed the restraint mandated on the press by the delicate nature of the Cold War and the arms race. The New York Times was aware that United States had been flying high altitude U-2 planes over Cuba which detected installations for offensive missiles in Cuba, but withheld the news on the request of the President.[45] During the whole period of the crisis, the government maintained absolute secrecy and made sure no information got to the press.

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[43] Robert Flinn, "The National Security Exception to the Doctrine of Prior Restraint," William and Mary Law Review 13 (Fall 1971):222.

[44] Ibid.

[45] Ibid.

The press did not quite like this, but the delicate nature of the crisis did not allow them any other choice but to censor their publications. The Missile Crisis was a tense period and a delicate matter that brought the world to the threshold of nuclear warfare, and put fear in the socio-political environment. As a result, public opinion would have been highly critical of any agency, including the press, that had tried to undermine the activities of the government during such a period.

As the two critical incidents in the early 1960's indicated, there was an occurring realization on the part of both the press and the government that the end of World War II brought another delicate situation that demanded restraint and caution on their activities. But there was also no doubt that the absence of any actual war left the press with the freedom they had so yearned for during the Second World War. This situation left the government helpless in applying any restrictive measures to curb press excessiveness. However, very aware of the dangers of the Cold War, and unwilling to stir public resentment by unwarranted reporting, the press applied some self-censorship. Once again the demonstration here was that public opinion in times of crisis or for that matter on extraordinary issues in general, to a noticeable extent, has an influence on press activities.

A concise analysis of some of the judicial instances in the early 1960's will help illustrate the resurgence of judicial concern for the dangers of Communism. The significance of these judicial incidents is the fact that it was at a time when the government was also showing its resentment for Communist expansion in practical terms, in the Bay of Pigs and the Missile Crisis. For instance, in Scales v. United States in

1961, the Supreme Court upheld a conviction for violating the membership clause of the Smith Act that makes it illegal to join an organization (Communist Party) that advocates the overthrow of the government.[46]

A further indication of the judicial mood was made in Communist Party v. Subversive Activities Control Board where the court upheld the Board's order to the Party to register accordingly.[47] Again, in both Wilkinson v. United States and Braden v. United States, the court upheld convictions for the refusal to answer the questions of the House of Representatives Committee on un-American Activities.[48] In Times Film Corporation v. Chicago in 1967, the court upheld the constitutionality of a Chicago Ordinance that required the submission of motion pictures for review before the showing.[49] Thus, the judicial mood in the era of the Bay of Pigs and the Missile Crisis was one of concern of national security.

But the most significant thing about the Cuban crisis era is the fact that it engendered another dimension altogether, one that stretched into the Vietnam era. Some events that occurred during the Cold War, most especially the Bay of Pigs invasion, produced a by-product. It showed the American people and the press that all secret government dealings were not necessarily in the interest of the nation. It also made them realize that at times the government may be lying to the people while

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[46]Scales v. United States, 367 U.S. 203 (1961).

[47]Communist Party v. Subversive Activities Control Board, 307 U.S. 1 (1961).

[48]Wilkinson v. United States, 365 U.S. 399 (1961) and Braden v. United States, 365 U.S. 431 (1961).

[49]Times Film Corporation v. Chicago, 365 U.S. 43 (1961).

hiding inside the cloak of national security, to camouflage some of its unwarranted activities. The result of this realization was a clamour from both the press and the public for more exposure into government activities. The government classification measures, more extensive in the military, were ridiculed by both the press and the public as a deliberate policy intended not to secure national security, but to hide government follies from the public. While there is no doubt that

> . . . some of the present-day secrecy in the federal government can be attributed directly to the Cold War. . . , and that in the . . . struggle with the world wide forces of Communism, the national security has demanded increased secrecy about many governmental activities, particularly those involving military affairs,[50]

but also the evident miscalculations of the government in certain incidents, especially in the Bay of Pigs, has shown that national security is not always the vital reason.

The development and the realization of apparent government fallibility by the public introduced a new sense of resentment toward the government. This public mood allowed for an excessive press constantly probing into government activities. The argument from the press now was that the people had a right to know, and that a well informed citizenry was necessary for the perfection of decision making in a democratic society.

> In order for voters to be able to understand military issues in elections, to evaluate the merits of policy alternatives and to assess correctly the performance and positions of leaders, it is necessary that reporters, military specialists, public affairs groups, individual congressmen and others have access to the facts.[51]

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[50] Henning, "A Legislative Measure," pp. 19-20.

[51] Parks, "Secrecy and Public Interest," p. 34.

With this notion permeating the public opinion, it was reinforced by the earlier investigations of the House Government Information Subcommittee and Senate Subcommittee on the Air Force, all revealing excessive government withholding of information. Further, ". . . the annual reports of the Freedom of Information Committee of the American Society of Newspaper Editors, as well as other newspaper organizations, such as Sigma Delta Chi, the American Newspaper Publishers Association, and numerous others," also produced supporting evidence.

The title had changed and the press, riding high with the support of the public opinion, began to search for information in government secluded areas and printing such information despite official agitations. Interestingly also the judicial body in the aftermath of the Cuban crisis realized the dangers of an excessive government as was reflected in the judicial decisions following the Cuban affairs. In 1963, in Gibson v. Florida Legislative Committee, the Supreme Court overruled the conviction of the petitioner for refusing to divulge membership records of his organization to officials investigating the infiltration of Communists into organizations.[52] In Bantam Books v. Sullivan, the court overruled a Rhode Island Commission that recommended the prosecution of distributors that carry objectionable books, calling it, ". . . a system of prior administrative restraint. . . ."[53] In Yellin v. United States, the court overturned the conviction of the petitioner for refusing to answer the

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[52]Gibson v. Florida Legislative Committee, 372 U.S. 539 (1963).

[53]Bantam Books v. Sullivan, 372 U.S. 58 (1963). The Sullivan here was the Executive Secretary of the Rhode Island State Commission responsible for checking obscene publications. The Commission is the appellee in the case.

questions of the House Committee on un-American Activities.[54]

Further evidence of the judicial concern for excessive government was indicated in New York Times v. Sullivan when the court struck down a suit against the paper by a government official.[55] In its opinion, the court stated that there is ". . . a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[56] In Aptheker v. Secretary of State[57] the court declared unconstitutional the segment of the Subversive Activities Control Act that denied passports to officials of the Communist Party. Although some of these cases are not directly related to the press, they, however, help establish the tempo of the judicial mood, and thus we can ascertain its correlation with events in the socio-political environment.

This was the situation of things in the socio-political environment when the United States got involved in the Vietnam war in 1964 which, if anything, made the situation worse. The general American public had resented the United States' involvement in the war from the very beginning.

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[54]Yellin v. United States, 374 U.S. 109 (1963).

[55]New York Times v. Sullivan, 376 U.S. 254 (1964). L. B. Sullivan was an elected Commissioner of the City of Montgomery, Alabama. He was the Commissioner for Public Affairs supervising also the Police Department. Sullivan claimed that he was libelled in an advertisement that appeared in the New York Times of March 29, 1960. The advertisement had accused the Police Department of wrong actions against student protestors in a civil rights movement.

[56]Ibid.

[57]Aptheker v. Secretary of State, 360 U.S. 72 (1959).

To the American public it was one more evidence of government miscalculation, like the Bay of Pigs. It was nothing more than an interference in the internal affairs of another country, the people thought, and did not justify the thousands of American young men sent to die in that Asian hinterland. Even the government's insistence that it was fighting for freedom and democracy did very little to change the public view.

As the war in Vietnam escalated and with no indication of an American withdrawal, the American public took their case to the streets. There were numerous rallies, teach-ins, demonstrations and protests of one form or another, all geared toward opposing the war. In fact, there were some practical attempts to obstruct recruitment and troop trains. For instance, on August 5 and 6, 1965, the Vietnam Day Committee and the Oakland S.D.S., both opposed to the war, sponsored attempts to block troop trains. In another incident, demonstrators passed out leaflets to troops proclaiming: "Peace Corps--not Marine Corps," "Why are they sending you there?" and "You haven't killed yet--don't."[58] The significance of these actions lay in the fact that they amounted to actual interference with the conduct of the war, an action punishable under Acts like the Espionage and the Sedition Act. But then given the anti-belligerance mood in the social environment, the government was ineffective and helpless in attempting to recall these Acts.

As the Vietnam war escalated and the anti-war mood escalated as well, public confidence in the administration of President Johnson subsequently declined. In fact, "poll after poll showed a steady decline in

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[58] Thomas Powers, The War at Home: Vietnam and the American People, 1964-1968 (New York: Grossman Publishers, 1973), pp. 82-83.

Johnson's popularity and an equally steady increase in dissatisfaction with the progress of the war."[59] As an eventual result, the press had a chance for a limitless discussion on the war; often probing and publicly discussing even delicate and sensitive aspects of the war, thanks to the anti-government feeling in the socio-political environment. The press was accepting and running anti-war advertisements in their papers, and a typical one which appeared in the May 22, 1965, issue of the New York Times read, "The killing of Americans and Vietnamese will not stop unless opponents of this war and of the bankrupt foreign policy which it reflects can turn their dissent into real political power."[60] Other press anti-war action included condemnation of certain war actions like the one which appeared in the New York Times of December 25, 1966, accusing United States of bombing civilian targets in North Vietnam.[61] The Washington Post also printed some criticism of the government war policies, and the New York Review of Books and the New Republic published articles that supported draft resisters.[62]

As the anti-war movement was taking a different turn in America, this time prospective draftees were burning their draft cards and immolating themselves, a different kind of movement was taking place in

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[59] Powers, War at Home, p. 119.

[60] Ibid., p. 126.

[61] Ibid., p. 171.

[62] Other publications like The Ladies Home Journal, The Akron (Ohio) Beacon-Journal, New Yorker, Life, The Washington Free Press and other popular papers often accepted and published articles not supportive of the war.

Vietnam itself.[63] In February 1966, Vietnamese Buddhist were revolting against their home government and the United States. The demonstrators invaded the United States embassy in Saigon carrying placards that read, "Down With U.S. Obstructions," and burned a U.S. Army jeep, dragged an American civilian and his Vietnamese girlfriend off a motorbike and severely beat and roughed up several American soldiers on leave. . . ."[64] Such actions reinforced the situation in the United States and preserved the anti-war fever until, in fact, the end of the war in 1974.

Thus considered from all angles, the Vietnam war was a government commitment that lacked full national support, and the effect throughout the war was evident. There was a total restlessness in the socio-political arena as the press, in particular, and the public, in general, continuously thwarted government war efforts, ironically often committing the same acts that were severely punished in the previous wars.

The success and the intensity of these disturbances in the socio-political environment during the war period received some impetus from the judicial body. The Supreme Court clearly demonstrated during the Vietnam war period that although it was concerned about the national security, it was more concerned about the dangers of an excessive government on the rights of the people. For instance, in 1965 in Dombrowski v. Ffister the court voided a Louisiana Subversive Activities and Communist

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[63]Powers, War at Home, p. 87. Norman Morrison burnt himself on November 2, 1965 on the steps of the Pentagon, and on November 9, Roger LaPorte set himself on fire at the United Nations. Ibid.

[64]Hugh Mulligan, No Place to Die: The Agony of Vietnam (New York: William Morrow, 1967), p. 237.

Control Law because it had a chilling effect on the First Amendment.[65]

The judicial concern for excessive government was also reflected in Elfbrandt v. Russell.[66] Here the court voided an Arizona State law that required state employees to take an oath to support the Federal and State Constitutions and to be punished for joining the Communist Party. In DeGregory v. New Hampshire the court overturned the conviction of the petitioner for refusing to answer certain questions on his Communist Party affiliations.[67] These cases clearly parallel the mood in the socio-political environment, which was one of a curtailed government.

The mistrust and resentment toward the government from the Vietnam war did not end with the war in 1974, but as a matter of fact outlasted the war. The American people felt betrayed by their institutions, and it was a wound that even the end of the war did not heal. There were still severe criticisms of the government from both the press and the public in the socio-political environment. Although resentful of these criticisms, the government was helpless in any attempt to check it. The public opinion was so anti-Vietnam that during the war when the government had a reason to check undue criticisms they could not do it, let alone when the war was over.

Even the judicial instances after the Vietnam war, still to a significant extent, reflected the predominant opinion in the socio-political environment. In 1967 in Keyishian v. Board of Regents the

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[65] Dombrowski v. Ffister, 380 U.S. 479 (1965).

[66] Elfbrandt v. Russell, 384 U.S. 11 (1966).

[67] DeGregory v. New Hampshire, 383 U.S. 825 (1966).

Supreme Court voided a New York loyalty law that required teachers to certify that they do not belong to the Communist Party.[68] One significant case during this period was the United States v. Robel.[69] The appellee was a member of the Communist Party working for a ship yard, and since the ship yard was a defense facility, he was convicted under the Subversive Act. The Supreme Court overruled the conviction as a violation of the First Amendment stating, "it would indeed be ironic if in the name of national defense, we would sanction the subversion of one of these liberties . . . which makes the defense of the nation worthwhile."[70] Thus, ironically, here the court weighed the individual's right above national security. In other words, the government did not have the warrant or the mandate to do everything in the name of national security.

In Time v. Hill[71] the court continued to maintain stronger protection for the press. In the opinion of the court, it stated,

> we create grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in a news article . . . particularly as related to nondefamatory matter.[72]

In Pickering v. Board of Education the Supreme Court extended the right of criticism to even public employees.[73]

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[68]Keyishian v. Board of Regents, 385 U.S. 589 (1967).

[69]United States v. Robel, 389 U.S. 258 (1967).

[70]Ibid.

[71]Time v. Hill, 385 U.S. 374 (1967).

[72]Ibid.

[73]Pickering v. Board of Education, 391 U.S. 568 (1968)

The most controversial case, and by far the most significant in the aftermath of the Vietnam War was the New York Times v. United States.[74] It was controversial because it capped the judicial arbitration that hindered the government and put the press one step forward. It was significant because it was ". . . the first time the United States sought to enjoin a newspaper from publishing information in its possession."[75] It was the ultimate test between national security and the First Amendment right of a free press.

It all started in June 1971 when the New York Times started publishing the "History of the U.S. Decision-Making Process on Vietnam Policy." The Federal government sought to enjoin the publication of the papers on the grounds that it could cause irreparable damage to the national security. One June 30, in a 6-3 decision, in nine different opinions, the Supreme Court ruled against the issuance of the injunction for the government. This case had a landmark dimension that reflected not only the public disgust with the Vietnam war, but the judicial readiness to check official ineptitude if need be. The court disagreed with the contention of the government that the President has the right to impose prior restraint on the press in order to deal effectively with foreign nations and to conduct the military operations of the United States.

The Pentagon papers case reinforced the freedom the press had been enjoying since the Vietnam war, and thus constituted a stumbling block

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[74] New York Times v. United States, 403 U.S. 713 (1971).

[75] Rubin, "Foreign Policy, Secrecy, and First Amendment," p. 584.

to further attempts by the government to restrict the press after the war. But even with such a condition existing in the socio-political environment, the threat of Communism and the temptations of an excessive press were still very much alive within official circles. But the Pentagon papers case had set a precedent that dictated the course of the other events for the rest of the 1970's. With a judicial blow and strong public resentment that practically disarmed its anti-press measures, the government had no choice but to use other subtle ways to hold the press in check.

The stand off between the press and the government after the Pentagon papers case ended in 1979 when once again press freedom was tested against national security. This time the Federal government sought to enjoin a Wisconsin based magazine, The Progressive, from publishing an article on the hydrogen bomb. Although the basic contention in this case was similar to the Pentagon papers case, this case, however, produced other dimensions.

In the first place, it was over five years since the Vietnam incident and the American public was gradually settling down. Both the public and the press, and even the judiciary as demonstrated in this case, had come to realize that the imminent dangers of the arms race and the threat of Communist expansion was rapidly increasing. Regardless of past government miscalculations, this was a time when the government needed help and understanding from the people in checking Communist encroachment. The increased complexity of the relationship between the Soviet Union and the United States is now demanding more caution on the part of the press.

This notion actually came through in some earlier cases involving the C.I.A. and some of its former employees, Victor Marchetti and Frank Snepp. Both employees had signed agreements promising, upon leaving the agency, to submit any publication on the C.I.A. for a prepublication review. This was a tactic employed by the C.I.A. to safeguard its covert operations. Marchetti refused to submit his book, and instead challenged the C.I.A. rule. The federal court found Marchetti guilty, and ordered him to submit his book for review. He subsequently published a "reviewed" edition in 1974.

Snepp, on the other hand, went ahead and published his book without a prepublication review submission. The federal court found him guilty also and ordered that a Trust be set on the profits from the book. The Supreme Court, upholding the trial of the lower court, stated that the C.I.A.'s regulation was necessary since it served to ". . . protect intelligence sources and methods from unauthorized disclosure."[76]

The Snepp case showed the new concern expressed by the judiciary in the aftermath of Vietnam, and the increasing complexity of the arms race. The case showed a readiness and a willingness by the courts to uphold national security above the First Amendment if need be, in a delicate period marked by delicate issues. In the opinion of the Fourth Circuit in 1979, ". . . the danger to national security arising from an unauthorized publication of classified material is so great that we

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[76]Carl Heck, "C.I.A. Speech Restrictions," Harvard Civil Rights 14 (Fall 1979):708.

think that little proof of a probable future violations is required to justify injunctive relief.[77]

Thus, when the Federal government sought to enjoin The Progressive, the Federal Judge, Robert W. Warren, in issuing the injunction stated,

> A mistake in ruling against The Progressive will seriously infringe on cherished First Amendment rights. A mistake in ruling against the United States could pave the way for thermonuclear annihilation for us all. In that event, our right to life is extinguished and the right to publish becomes moot.[78]

This was the first time a federal court judge imposed prior restraint on the press for national security reasons, and certainly the delicate nature of the issue and the delicate nature of the time had everything to do with it. In fact, other press participants, reflecting the popular mood in the public, suggested that The Progressive limit its publication on the hydrogen bomb. The Washington Post editorial urged ". . . that that magazine instead publish a laundered version of the piece."[79] Other ". . . journalists have been apprehensive about testing the prior restraint issue in a case where such devastating consequences might be predicted."[80] Clearly then, there was a demonstration of concern by both public and press participants on the H-bomb case, which was, in turn, reflected in the judicial dictation of the court.

> Freedom of speech and of the press is measured by tolerance of the public, not of the law.
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> --James Mock

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[77]Heck, "C.I.A. Speech Restrictions," p. 708.

[78]David Gelman, et.al., "A Case No One Wanted," Newsweek (April 9, 1979):101.

[79]Ibid.

[80]Ibid.

CHAPTER V

CONCLUSION

> When matters of national security arise in a war situation or a near war situation, there is not the slightest question about what course the press should follow. Editors cannot have the information or specialized knowledge that would allow them to dispute an official determination that the country's safety might be jeopardized. . . .
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> --John F. Kennedy

This study sought to discern a relationship between the socio-political environment (as determined by the predominant public opinion) and prior restraint of the press (as determined by judicial decisions). A pattern of influence and counter-influence is established between these factors. The socio-political environment holds and maintains different levels of opinion involvement, and these levels of opinion involvement maintain parallel levels of press indulgence which, in turn, are evident in judicial decisions. These levels of opinion involvement, thus, are accounted for by events in the socio-political environment, which for the purposes of this study will be called "spurring elements." A spurring element is any action, incident, or activity in the socio-political environment that is significant enough to account for a noticeable reaction, belief, or point of view in the public opinion.

The public involvement which is accounted for by a spurring element, for the purposes of this study, will be characterized as a "level of intensity." Thus, a level of intensity is the reflection of public

reaction, belief, or point of view toward a spurring element. This contention being the case, the examination of the relationship between the factors under investigation in this study indicates that a spurring element can account for a positive or a negative level of intensity, which means that the public mood or reaction to the spurring element or issue is either favorable or unfavorable respectively.[1]

It thus follows that the course of press activities at any one period in the socio-political environment is a factor of the spurring element operating in the environment at that particular time. It also depends on whether the spurring element is responsible for whether the level of involvement is positive or negative toward the spurring element or issue. An examination of the relationship between the socio-political environment and press activities has shown that in situations where a spurring element accounted for a positive level of intensity, a favorable attitude from the press on that issue advanced the activities of the press, while a negative attitude inhibited press activities. Alternatively, if a spurring element accounted for a negative level of intensity in the public opinion, but with a positive attitude from the press, press activities are usually inhibited.

Another interesting revelation of this study is the fact that judicial dictations more often paralleled the level of intensity in the socio-political environment. This relationship being the case, judicial

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[1]A spurring element accounts for a positive level of intensity when the action of the government towards the spurring element is paralleled by the public reaction to the same element. But if the reaction of the public counteracts government action toward the same element, then the spurring element has accounted for a negative level of intensity in the socio-political environment.

decisions, the determinant of the course of press activities, will advance or inhibit press activities in the same manner that the level of intensity in the public opinion does. Now drawing from specific instances examined in this study, the matrix of relationships explicated above is evident.

At the beginning of the Twentieth Century, America was undoubtedly the strongest nation in the world, despite the steady acceleration of Soviet military power after its revolution in 1917. The absence of any domestic or international strife except for public clamour over social imbalance, created a stable environment in the country, which, of course, advanced press activities. The muckraking era that lasted from 1902 to 1912 clearly illustrated this. The press was able during this period to amass a strong influence on the public opinion and the government as indicated in this study.

The muckraking era produced fruitful results. It saw legislation introduced to correct numerous social ills and imbalances in the class structure resulting from industrialization. The subsequent enactment of the anti-trust laws and the social security were the result of this movement. The press undoubtedly was very effective during the muckraking era due to the fact that their activity was a reflection of the public feeling during that period. Thus, we see the presence of a supportive spurring element in the environment allowing the press the chance to advance itself.

With World War I, however, acting as a spurring element, and accounting for a positive level of intensity in the public opinion, since most Americans were pro-Ally, the situation changed in 1917. The result:

repressive measures against the press that received public and judicial support. The enactment of such government policies like the Espionage Act, the Trading-With-The-Enemy Act, and the Committee on Public Information was a reflection of this notion. As noted in the examination of this period, some of the judicial incidents like the New Jersey Frei Zeitung, the Milwaukee Leader, the New York Call, and the Jeffersonian press cases all helped to underscore the judicial inclination toward the positive level of intensity existing in the public opinion during the First World War period.

The end of the First World War did not relax the level of intensity existing in the nation from the war. The reason was that the Communist Revolution that took place in 1917 induced an anti-red fever in the United States, and this fever maintained a positive level of intensity in the socio-political environment.[2] The press, in turn, reflected this attitude in their publications. This level of intensity operating in the environment was paralleled in the judicial opinions as well. As the 1920's approached, however, the anti-red fever subsided, the reason being the realization in the public mind that America was still stronger than the Soviet Union, and that Soviet intransigence was not yet detrimental to American security. But the illustration here again was that a spurring element, the anti-red fever, accounted for a positive level of intensity in the socio-political scene, which subsequently restricted the press.

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[2]The government's attitude in the socio-political environment during this period was anti-Communist, thus the level of intensity was positive since the public opinion supported the government.

The beginning of the 1920's saw another stable environment that gave the press a chance to advance itself. The freedom the press enjoyed during this period was indicated in their relentless attacks on the government and its policies, and the fact that the government could not curtail such criticism. This was the situation when the Depression started in 1929. The Depression, reinforced the anti-government impression in both the press and public opinion, and gave the press more reason to criticize the government. The actual test of official ability to restrict the press during this period came in the Near v. Minnesota case in 1931,[3] where the Supreme Court voided a Minnesota State gag-law. The matrix of relationships operating between the factors of this study during the Depression era again upholds the contention of this study that a negative level of intensity advances the press if the press is negative toward the spurring element.[4] In this case, the Depression acting as a spurring element accounted for a high level of anti-government feeling in

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[3]The Near v. Minnesota case in 1931 (discussed in Chapter 3) was the first case of prior restraint of the press to reach the Supreme Court.

[4]The contention here is that if the government feels negative toward an issue in the socio-political environment, a similar feeling in the public opinion will advance the activities of the press only if the press itself maintains a similar feeling on that issue. In other words, the public opinion is the pivot on which the government action and the activities of the press are balanced. Which ever way the public opinion tilts, and depending on whether it is positive or negative, will determine the fate of either the government or the press. This is the way it works: If the government is positive, and the public opinion is also positive on the same issue, then the press will be advanced if it is also positive on the same issue, and inhibited if it is negative. But if the government is positive, with a negative public opinion on the same issue, then the press will be advanced if it is negative, and inhibited if it is positive. The same effects will take place also in combinations where the government is negative, but with a match or dys-match, between the public opinion and the press.

the public opinion. The activities of the press during this time were advanced since the press in turn had maintained a negative attitude toward the government. The court opinion, as demonstrated in the Near case, reflected the level of intensity operating in the socio-political environment.

By 1941 with the Japanese bombing of Pearl Harbor, and the subsequent American involvement in the Second World War, the situation in the socio-political environment changed. There was a strong public support for the government when America entered the war and the reason was evident. When Japan bombed Pearl Harbor on December 7, 1941, there was no doubt in the American public opinion that the only course open to the United States was to get involved in the war. The general consensus in the country was that the war was forced on the United States and that the nation had to defend itself.

The activities of the press were again severely restricted during the Second World War, with the introduction of repressive measures on the press. The press was censored and their publication curtailed. Once again a spurring element, the bombing of Pearl Harbor by Japan, accounted for a positive level of intensity in the socio-political environment, as indicated by public opinion. This positive level of intensity in turn helped the government apply its restrictive measures on the press, with the full consent of the American public. The judicial opinions paralleled this level of intensity as indicated by the court cases during this time.

Some of the legal incidents discussed in this study, like Bridges v. California in 1941, Murdock v. Pennsylvania in 1943, and Korematsu v.

United States in 1944, all portray the inclination of the courts toward the positive level of intensity permeating the socio-political environment during the Second World War. Thus the positive level of intensity, spurred by the Japanese attack on America, accounted for a pro-government attitude in the public opinion which limited any excessive press freedom.

Interestingly, the positive level of intensity was much higher in the Second World War when compared with the First World War. Although America fought World War I "to make the world safer for democracy," and the same principles were involved in the Second World War, the actual circumstances surrounding American participation in the Second were different. The Japanese attack on Pearl Harbor was considered by most Americans to be a direct challenge to American sovereignty, and demanded retaliation. This circumstance accounted for a higher level of positive intensity in public opinion.[5]

A comparison of repressive measures by the government during the First and the Second World War also reflected the difference in the level of intensity in the socio-political environment. For instance, during the First World War, the government introduced the Espionage and the Trading-With-The-Enemy Acts, and instituted the Committee on Public Information--all measures to curb excessiveness in the nation. But, during

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[5]The point here is that there was a stronger reaction in the public opinion during the Second World War, more than the reaction during the First World War. The reason being the fact that there was a more justifiable reason to fight the Second, thus a stronger sense of commitment permeated the public opinion. The Japanese attack justified a direct and immediate American involvement in the Second World War and the public reacted in that manner. Edwin Emery, The Press and America (Engelwood Cliffs: Prentice-Hall, Inc., 1964), pp. 600-614.

the Second World War, more stringent measures were introduced. The War Powers Act gave the President broad censorship powers. The creation of the Office of Censorship and the introduction of A Code of Wartime Practices for the American Press further illustrated a higher level of intensity sufficient to tolerate such repressive measures.

The legal incidents that occurred during the Second World War, when compared with the First World War, also showed the higher level of intensity that permeated public opinion during the Second World War. The one case, and by far the most significant during the Second World War, that illustrated the higher level of intensity was Korematsu v. United States. The very fact that the court was willing to uphold the government's requirement that all Americans with Japanese ancestry be put in military camps or restricted from certain designated areas was an indication of how far the court was willing to go in supporting the government. It was a decision that raised some resentments, but the positive level of intensity operating during this period allowed the court to make such a controversial decision.[6]

In the examination of the relationship between the socio-political environment and the press, it is clear that the significance of a spurring element determines the level of intensity in public opinion which, in turn, compliments the type and style of control or freedom for the press as shown by judicial opinions. The comparison between the First

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[6]The high level of positive intensity, in other words, a stronger support for the government from the public, allowed the government to effectively apply even controversial laws like the seclusion of American-Japanese during the war period, which was upheld by the Supreme Court. Korematsu v. United States, 323 U.S. 214 (1944).

and the Second World Wars substantiates this pattern.

An analysis of the second period of this century, which covered 1945 to 1980, also confirmed the presence of a relationship between the socio-political environment and the freedom of the press. The post World War II environment was marked by tension generated by the delicate relationship between the United States and the Soviet Union. As revealed in Chapter 4, this tension culminated in the Cold War. American public opinion became suspicious of Soviet intentions as they spread Communist doctrine across the world. The one immediate effect of the Cold War was that a cautious press prevailed in the aftermath of the Second World War. The journalistic tranquility the press had hoped for with the end of the war thus eluded them. The Cold War, acting as a spurring element, maintained a positive level of intensity in the public opinion and thus restricted press activities.

The actual manifestation of the hostility between the United States and the Communist forces was in Korea in 1950. When North Korea attacked the South on June 25, 1950, both the United States and the United Nations saw this as one more evidence of Communist hegemony, and ordered their troops to help South Korea. As the examination of this period showed, this move by the United States received public approval, obviously because of the anti-Communist sentiments in the public opinion. The result was that the press again saw its activities severely restricted as the censorship laws were put into effect.

The analysis of the Korean War period provided another opportunity to observe the relationship between the socio-political environment and the freedom of the press. The Cold War, acting as a spurring element,

unleashed an anti-Communist feeling in the environment. The government's decision to fight the Korean War was only a reflection of this anti-Communist sentiment, hence the government received the public support and approval. This positive level of intensity allowed the government to apply restrictive measures against the activities of the press. The enactment of the Smith Act and other censorship codes that made correspondents subject to court-martial for serious violations exemplified this fact.

The judicial decisions also reflected the positive level of intensity existing in the socio-political environment. In 1951, the Supreme Court upheld the constitutionality of the Smith Act, an indication of the court's inclination. There were other cases that showed the judicial concern for Communist adventurism. In American Communication Association v. Doud (1950), the court upheld the National Labor Relations Act that required labor organizations to file non-Communist affidavits. In Dennis v. United States (1951), the court upheld a conviction for the making of a speech with the tendency to breach the peace. These cases showed the concern of the court during the Korean War.

The end of the Korean War (1953) brought a somewhat relaxed mood to the socio-political environment. America had demonstrated its ability to check Communist imperialism, and thus alleviate some of the fear in the public opinion. This change was comforting to the press since they now saw a chance to return to normalcy. The cases discussed in Chapter 4 showed this relaxation in the judiciary in the aftermath of the Korean War. For instance, in Watkins v. United States (1957), the court reversed the conviction of the petitioner for refusing to answer the

questions of the House Committee on un-American Activities. In Yates v. United States (1957), the court reversed the conviction of some Communist leaders for violating the Smith Act. In Speiser v. Randall (1958), the court overturned a California State statute denying tax exemptions to people who refuse to subscribe to oaths. Such cases reflected a relaxation in the judicial opinion which paralleled the condition of the socio-political environment.

The 1960's witnessed some important issues and incidents that had a significant impact in the socio-political environment, particularly on the press and public opinion. One of the first incidents was the Bay of Pigs Invasion in 1961, when the United States aided exiled Cuban insurrectionists in an attempt to invade Cuba. The Cold War was still on and the activities of Fidel Castro in Cuba was a concern to the American public. In fact, most Americans wanted Castro and his Communist sympathizers out of Cuba.[7] Thus, Castro's Communist predisposition, acting as a spurring element, induced a positive level of intensity in the public opinion.

The effect of the positive level of intensity during the Bay of Pigs forced the press to be cautious in their publications. Such caution was evident in the fact that the _New York Times_ knew beforehand that the C.I.A. was training an invasion force for the Cuban attack, but withheld that information. With public opinion opposed to Castro, the press would have been criticized by the public if they had revealed the information on the attack. Thus, the Bay of Pigs incident illustrated a spurring

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[7]The point that the American public, and even the press, wanted Castro out of Cuba was made clear in Chapter 4.

element accounting for a positive level of intensity in public opinion, which in turn had a controlling effect on the activities of the press. The government's action in the invasion attempt was a reflection of the popular feeling in the nation and the press had to go along.

The Cuban Missile Crisis of 1962 was another significant incident that showed the relationship between the socio-political environment and the freedom of the press. The Cold War and the arms race had led the United States and the Soviet Union into some covert operations, with each nation trying to learn about the other's military advantages. As a result, the United States had been flying high altitude U-2 planes over Cuba, which detected the silos for Soviet offensive missiles. The interesting thing about this incident is the fact that the New York Times knew in 1962 that the United States had been flying these planes but did not publish it.

The government kept a low profile and preferred to negotiate in secret with the Soviets. Such secret negotiation was necessary because of the delicate nature of the crisis and the press maintained a low profile on the issue as well. It was evident that public opinion would have been highly critical of any one, including the press, who tried to undermine the activities of the government. Thus, the delicate nature of the time, acting as a spurring element, accounted for a positive level of intensity in the public opinion, which forced the press into journalistic caution. The result, of course, was that it allowed the government to carry on its anti-Communist campaigns with the blessing of the press.

The judicial decisions examined in this study, during the Cuban episodes, reflected the predominant attitude in the socio-political

environment: the Communist menace justified journalistic caution. For instance, in Scales v. United States (1961), the Supreme Court upheld a conviction under the Smith Act which made it illegal to join an organization, like the Communist Party, which advocated the overthrow of the government. In Communist Party v. Subversive Activities Control Board in the same year, the court upheld the Board's order to the Communist Party to register. In two other cases, Wilkinson v. United States and Braden v. United States, both in 1961, the court upheld convictions for refusal to answer the questions of the House of Representatives Committee on un-American Activities.

It is evident from this review of the early 1960's that the Cold War, reinforced by both Cuban incidents, acted as a spurring element that accounted for a positive level of intensity in the public opinion. This positive level of intensity, further reflected in government and judicial actions, had a chilling effect on the activities of the press. Once again a pattern of influence emerges between the socio-political environment and the activities of the press.

The most interesting incident of the 1960's, and by far the most illustrative of the relationship between the socio-political environment and the press was the Vietnam war which started in 1964. While most of the wars discussed in this study spurred a high level of positive intensity, and restricted the activities of the press, the Vietnam war afforded a chance to see alternatively how a significant spurring element can account for a level of intensity, but in this instance a negative one. The level of intensity being negative had a different reaction on the press and even the judiciary. The Vietnam war also showed that all wars do not

automatically spur a positive level of intensity; in other words, public opinion does not automatically support all wars. When a negative intensity is the case, which means that the public opinion is non-supportive, government efforts to pursue a war, or for that matter, to control the press is often ineffective.

Even with an anti-Communist feeling still permeating the socio-political environment, the Vietnam war was very unwelcomed in the United States. The government had claimed that the war was simply an attempt to check Communist hegemony, but the experiences of the Bay of Pigs invasion in 1961 had left an impression in the public mind that not all government actions were necessarily geared toward protecting national security. As far as the American public was concerned, the Vietnam war was one more demonstration of government fallibility and the people rose in strong opposition to the war. As this study has shown, the press freely criticized the war and often printed information that was injurious to war efforts. The press was able to get away with such publications because of the negative level of intensity of public opinion, and the government was hampered in its attempts to control the press.

In the Vietnam war era, the war was a spurring element that accounted for a negative level of intensity in the socio-political environment. The negative intensity can be seen in some of the publications during the war. For instance, demonstrators freely passed out pamphlets that read, "Peace Corps--not Marine Corps," and "You haven't killed yet--don't." Various newspapers, such as the _New York Times_ and the _Washington Post_ published advertisements and articles criticizing the war. Such actions amounted to an obstruction of the war effort, and in

other times would have been severely punishable. But, given the negative level of intensity on the Vietnam war, the press could express such opinions.

As this study also showed, the judicial decisions during the Vietnam war era reflected the negative level of intensity in the socio-political environment. In 1965, in Dombrowski v. Ffister, the Supreme Court voided a Louisiana State Subversive Activities and Communist Control law. There were other cases for this period, such as Elfbrandt v. Russell in 1966, and the DeGregory v. New Hampshire in the same year, where the court reversed the convictions of the petitioners for refusing to answer questions about their Communist affiliations. Another significant case was the United States v. Robel in 1967, where the court allowed a member of the Communist Party to work in a defense facility.

But the most controversial case and one which had the strongest impact on the socio-political environment was the New York Times v. United States in 1971. In this case, the court declined to grant an injunction sought by the federal government to enjoin the New York Times from publishing the "Pentagon Papers." The Pentagon Papers case was the culmination of the negative level of intensity in the socio-political environment which characterized the Vietnam war era.

The analysis of the Vietnam war illustrates a relationship operating between the press, the government, and public opinion. A spurring element can account for either a positive or a negative level of intensity in the public opinion, and the effect of the socio-political environment on the press depends then on the nature of intensity operating in the socio-political environment at any given time. In the case of the

Vietnam war, the level of intensity was negative, and the effect was an excessive press during that period.

It should be noted that in general, the nature of the level of intensity can only inhibit or advance the activities of the press depending on the attitude of the press toward a particular spurring element or issue. In the case of the Vietnam war, the press published some negative statements about the war, which, of course, paralleled the negative level of intensity in the socio-political environment.

The question of national security and freedom of the press, another illustration of this relationship, came up again in 1979, but this time under different circumstances. By this time, it had become increasingly apparent to the majority of the American people that the arms race between the United States and the Soviet Union was a delicate issue that required journalistic caution from the press in order to help the government maintain a military advantage over the Soviet Union. In other words, the press in its bid to preserve its freedom, should also employ caution in its publications to avoid exposing sensitive government policies and programs. Since the Second World War, devastating weapons have been produced by both the United States and the Soviet Union, like the atomic and the hydrogen bombs, and the dissemination of these weapons, with the potential to destroy the entire world, have become a major concern to the American people and the whole world.

This reality created a sense of caution in the socio-political environment in the aftermath of the Vietnam war. Even though the environment was stable, a condition that usually advances press activities, the delicate nature of international relationships fostered a cautious

attitude upon the press. Some members of the press did not see the need for this sense of caution, especially in the absence of any domestic or international strife. They felt that their freedom should not be compromised in the absence of national emergency. But the government felt that the nature of the Cold War demanded restrictive journalism.

These were the feelings on both sides of the issue when the hydrogen bomb issue arose in 1979. The federal government sought an injunction against The Progressive, a Wisconsin based magazine, to stop them from publishing information about the H-bomb. The sense of journalistic caution during this period, as indicated in this study, was reflected in the court's decision when Federal Judge Robert Warren stated, "A mistake in ruling against The Progressive will seriously infringe on cherished First Amendment right. A mistake in ruling against the United States could pave the way for thermonuclear annihilation for us all. In that event, our right to life is extinguished and the right to publish becomes moot." In fact, other members of the press who were also concerned about excessiveness had requested The Progressive to limit its publication on the H-bomb, a reflection of the public opinion. The H-bomb case illustrated that the Cold War and the arms race, acting as spurring elements, maintained a positive level of intensity in the socio-political environment. This positive intensity placed a chilling effect on the activities of the press during this period.

The C.I.A. case in 1979, again showed the sense of journalistic caution permeating both the public opinion and the judiciary in the aftermath of the Vietnam war. Frank Snepp and Victor Marchetti were ordered to submit their publications on the C.I.A. to that agency for a pre-

publication review, a procedure which they argued, violated the freedom of press. The importance of national security and the court's concern for the dangers of an excessive press was made clear in its opinion when it stated that the pre-publication review was needed, ". . . to protect intelligence sources and methods from unauthorized disclosures."[8]

The significance of both the H-bomb and the C.I.A. cases is that it again illustrated the relationship between the socio-political environment and the issue of press freedom. As seen in the analysis of both incidents, two spurring elements accounted for positive levels of intensity in the public opinion, which subsequently influenced the activities of the press. For instance, the delicate nature of the relationship between the United States and the Soviet Union, acting as a spurring element, accounted for a positive level of intensity in the public opinion. This supportive attitude was necessary in order to help the government combat the Communist menace. The overall result was a chilling effect on the press and a restriction of their activities.

In the final analysis, this study has provided some answers to the questions originally set forth. An examination of the relationship between the socio-political environment and the issue of press freedom in the Twentieth Century clearly shows a discernable pattern. As illustrated, public opinion reacts favorably or unfavorably toward a significant issue or incident in the socio-political environment. In other words, a significant spurring element in the environment accounts for a positive or a negative level of intensity in the public opinion,

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[8]Carl Heck, "C.I.A. Speech Restrictions," Harvard Civil Rights 14 (Fall 1979):708.

depending on whether the public reacted favorably or unfavorably, respectively.

However, depending on the spurring element and the level of intensity operative in the socio-political environment, as demonstrated in this study, the socio-political environment does influence the activities of the press. In addition, the judicial mood most often reflects the nature and level of intensity operating in the socio-political environment at any particular time. It should be noted that after a particular spurring element has accounted for a certain level of intensity in the public opinion, that level of intensity can either advance or inhibit press activities depending, to a great extent, on the press reaction or attitude to the spurring element or issue.

For instance, if a significant issue or incident in the socio-political environment accounts for a positive level of public involvement, chances are that a positive attitude from the press toward the issue or incident will accord the press a public support. This public support, of course, will allow the press to advance itself. On the other hand, if an issue in the socio-political environment accounts for a positive level of public involvement, but with a negative attitude from the press, chances are that the press will be inhibited in its activities by public resentments. This analysis can, of course, operate in a reverse manner, in which case a negative level of public opinion involvement, combined with a positive press attitude, will restrict press activities. Or in the alternative case, in which a negative public opinion involvement, combined with a negative press attitude on the issue will advance the activities of the press.

Suffice is to say then that the matrix of relationships between the elements in this study, the socio-political environment and the freedom of the press, react in discernable patterns under specific conditions and circumstances. In other words, one of the elements with a particular nature, reacting with the other element with a similar or a different nature, under a specific condition will produce a predicated response. The fundamental tenet of this study is thus substantiated.

> Public opinion is stronger than the legislature, and nearly as strong as the Ten Commandments.
>
> --Charles Dudley Warner

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