Exploring Iraq War News Coverage and a New Form of Censorship in Violation of the Quickly Evaporating Public Interest Requirement and Public Right to Receive Information

Robin A. Arzon

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Comments

EXPLORING IRAQ WAR NEWS COVERAGE AND A NEW FORM OF CENSORSHIP IN VIOLATION OF THE QUICKLY EVAPORATING PUBLIC INTEREST REQUIREMENT AND PUBLIC RIGHT TO RECEIVE INFORMATION

I. INTRODUCTION

Once upon a time, President Bush told Brit Hume of Fox News that he does not read newspapers because "a lot of times there’s opinions mixed in with news." President Bush’s concern is one shared by many Americans. Now, there is a more prudent, pressing concern for Americans – the media’s violation of the public interest for biased and self censored news reporting.

One might ask, what has changed? Once, the United States had a press that valued and fully exercised its role as an investigator of the government’s actions. The relationship between these social giants fostered a healthy push and pull without sacrificing the public’s knowledge of information. This natural tension between the government and the media has recently diminished. In recent coverage of the war in Iraq, the media began censoring itself at the behest of political pressure and because of the embedding process. Since the press was recognized as an institution, the public has scrutinized the press’ capability to provide it with adequate information.

3. For an analysis of the effects of the Iraq war coverage and its impact on the public interest, see infra notes 134-246 and accompanying text.
4. See Jukes, supra note 2, at xi (indicating many journalists value objective, complex reporting).
5. See id. ("For only by covering all sides of a conflict do journalists have a hope of being able to distinguish truth from propaganda.").
7. See Howard Tumber & Jerry Palmer, Media at War 13-15 (2004) (describing impetus for embedding process). "Embedding" is a process where journalists are permitted to live with military troops for an extended period of time while they are reporting. See id. at 15 (quoting Bryan Whitman, deputy assistant secretary of defense for public affairs at Pentagon).
During war, this dynamic creates tension because the need for security must be balanced with the freedom of the press.9

The problem of limited war coverage is no longer a result of the military's censorship, but also the media's self-censorship, resulting in a poor public reservoir of information.10 Critics and legal scholars ask to what extent a lack of objective, comprehensive, and inquisitive reporting compromises the public's right to know.11

Section II of this Comment begins with a brief history of U.S. war coverage.12 This Section also reviews the case law of the public right to receive information and includes a discussion of the public interest requirement for broadcasters, instituted by the 1934 Communications Act and regulated by the Federal Communication Commission ("FCC").13

Section III analyzes the recent Iraq war coverage in light of the public interest requirement and the public right to receive information.14 This Comment reviews whether censorship exists in the U.S. media and if so, if this constitutes a breach of the public interest requirement and the right to receive information.15 This Comment concludes that the U.S. war coverage was effectively censored by the


10. See Johnson, supra note 1, at E4 (recounting criticism of Iraq coverage, notably self-censorship). CNN correspondent Christiane Amanpour said the press "self-muzzled" and was intimidated by the Bush administration. See id.

11. See generally DANNY SCHECHTER, EMBEDDED: WEAPONS OF MASS DECEPTION (2003) (analyzing thoroughly embedding process and negative effects arising from process such as poor Iraq coverage). Twenty-four people from the news industry, including journalists, journalism school deans and professors, editors, and producers, wrote a letter to the major media stations citing six complaints about the coverage in Iraq. See id. at 95. The six complaints were: 1) the media's habit of highlighting tactics over political analysis; 2) failing to protest governmental control of information; 3) failure to question official stories; 4) failing to present a diversity of viewpoints; 5) the media's failure to keep a distance from the government; 6) the failure of radio to provide substantive debate. See id. at 95-96.

12. For a discussion of U.S. war coverage, see infra notes 23-69 and accompanying text.

13. For a discussion of the public's right to receive information and the public interest requirement for broadcasters, see infra notes 70-120 and accompanying text.

14. For an analysis of the recent Iraq war coverage in light of the public interest requirement and the public right to receive information, see infra notes 232-45 and accompanying text.

15. For a discussion of censorship and the factors contributing towards that censorship, see infra notes 161-97 and accompanying text.
embedding process, political pressure, market incentives, and the media itself, violating the public right to receive information and the FCC’s public interest requirement.16

Additionally, this Comment examines a problem with news coverage that introduces a new form of censorship.17 The Iraq war coverage is an example of this new breed of censorship in which the Pentagon is cooperative and the press is conciliatory, creating a dynamic that results in poor reporting, misinformation, and violations of the right to receive information.18 These consequences require scrutiny because misinformation or lack of information can cause great harm to public support, or lack thereof, for military action based on information received from the media.19

II. BACKGROUND OF U.S. WAR COVERAGE, PUBLIC RIGHT TO RECEIVE INFORMATION, AND PUBLIC INTEREST REQUIREMENT

Historically, “[t]he press’ function as a monitor of government activity existed before the conception of the First Amendment or the government of the United States.”20 The proper balance between the executive branch, what citizens need to know, and press access has been disputed since the advent of print media and this

16. For a discussion of the impact of embedding and self-censorship, see infra notes 232-45 and accompanying text.

17. See Jukes, supra note 2, at x (noting possibility of self-censorship because of embedding). While the embedding process offered close contact with the fighting in Iraq, the danger of self-censorship and its effects must be recognized. See id.

18. See Amity Shlaes, How Iraq has put a new spin on the Vietnam War, CHI. TRIB., Sept. 21, 2004, at C25 (describing Dan Rather’s use of false documents to publicly question President Bush’s national guard service on “60 Minutes”). During the dissolution of the Soviet Union, the New York Times printed the regime had ended ninety-one times in the two years before its actual fall. See Jim Lobe, N.Y. Times Hit for Stories on Iraq’s WMD, INTER PRESS SERV., Feb. 26, 2004 (noting same question of how Times got it wrong in past is currently being asked about performance of mass media on reporting of mass weapons of destruction in Iraq). Critics of the Times say it relied too heavily on uninformed sources such as the Iraqi National Congress, who opposed Saddam Hussein. See id. Some argue newspapers should apologize for “gravely misleading” the public “when hyping the WMD threat.” Id. For a further discussion on the press’ investigatory role and weapons of mass destruction, see infra note 199.

19. See generally Lobe, supra note 18 (questioning accuracy of reports and how effectively Americans were informed). Walter Lippman, twentieth century foreign-policy columnist, said, “[t]he fact remains that a great people in a supreme crisis could not secure the minimum of necessary information on a supremely important event . . . .” Id. Lippman was referencing the 1920s, but the sentiment rings true today.

20. Sinai, supra note 8, at 182 (examining press’ historical function in democracy).
debate has intensified with increased technological capabilities.\textsuperscript{21} It is necessary to look at the history of U.S. war coverage to see how coverage of the Iraq war fits within the historical progression (or regression) of war coverage.\textsuperscript{22}

A. History of U.S. War Coverage

During the French and Indian War, colonial newspapers believed that their cause was the same as their country’s.\textsuperscript{23} Americans were tied culturally, socially, economically, and religiously to Great Britain; the public recognized the importance of this war and the press’ encouragement of that war effort.\textsuperscript{24}

In the Revolutionary War, the press’ role began before the actual fighting.\textsuperscript{25} Newspapers were essential in creating the public dissent necessary to spark the revolution.\textsuperscript{26} Although news was in demand, information and raw materials were slow and difficult to come by.\textsuperscript{27} Thus, censorship was not an issue because of the slow pace of news coverage.\textsuperscript{28}

The Mexican-American War was the first war during which more modern news gathering methods were used;\textsuperscript{29} editors, however, self-censored along partisan lines.\textsuperscript{30} Again, the poor relation-

\textsuperscript{21} See Nightline View Point: Patriotism, Journalism, & War (ABC television broadcast, Jan. 17, 2003) [hereinafter Nightline] ("A free press can be a source of aid and comfort to our enemies but it is also a potent weapon in democracy’s arsenal.") (quoting anchorman Ted Koppel).

\textsuperscript{22} For a discussion of U.S. war coverage, see infra notes 23-69 and accompanying text.


\textsuperscript{24} See id. (examining cultural influences on feelings about American Revolution and its effects on war coverage).

\textsuperscript{25} See id. (recounting press involvement and importance in Revolutionary War, specifically in shaping public opinion).

\textsuperscript{26} See id. (describing newspapers’ role in public opinion of Revolutionary War).

\textsuperscript{27} See id. (noting impact of technology on war coverage during Revolutionary War).

\textsuperscript{28} See Reddin van Tuyll, supra note 23, at 229-30 (relating censorship concerns with lack of technology during Revolutionary War and War of 1812). Similar to the American Revolution, during the War of 1812, the press was politically divided because the war was with England. See id.

\textsuperscript{29} See id. at 230 (explaining relationship between logistics of Mexican-American War and news coverage).

\textsuperscript{30} See Jeffrey D. Mohl, The many shades of journalism ethics, QUILL, Apr. 2003, at 3 ("Self-censorship takes place any time a journalist or journalism organization chooses to omit relevant information from its coverage; [journalists] practice self-censorship every day, either for space reasons or other ethical considerations.").
ship between the military and the press was not an urgent issue because the war was fought far away from production.\footnote{31}

In the Civil War-era, technology had advanced enough that inaccurate or uncensored reporting could influence military plans.\footnote{32} By 1861, hundreds of miles of railways and telegraph lines linked cities, speeding the passage of information.\footnote{33} The news was delivered faster and the fighting, unlike the Mexican-American War, was close by.\footnote{34} For the first time, the press-military relationship became a component of war.\footnote{35} The extent of press censorship at that time, however, is a debated topic.\footnote{36}

The Spanish-American War, later entitled the "yellow press,"\footnote{37} was allegedly created by William Randolph Hearst as a way to increase newspaper circulation.\footnote{38} At this time, newspapers galvanized the American soldier and almost ignored military set backs, resulting in non-objective coverage.\footnote{39} Because of such positive coverage,


32. See id. at 230-31 (discussing role of press during Civil War and importance of technology in that role).

33. See id. (describing technological advancements during that time period). For a discussion of the effects of technological advancements on modern reporting, see \textit{infra} notes 189-97 and accompanying text.

34. See Reddin van Tuyl, \textit{supra} note 23, at 230-31 (noting impact of technology of war coverage during Civil War).


36. See Reddin van Tuyl, \textit{supra} note 23, at 231 (discussing level of censorship in Civil War). Both the Union and the Confederate armies tried to prohibit newspapers from publishing relevant information like unit strength and troop movement. See id. This desire was heightened because Southern papers went North and vice versa. See id. There were no established guidelines for reporters, only the understanding that if they published too much, they would be denied "front line" coverage. See id.

37. See John D. Keeler et al., \textit{Ethics, in American Journalism: History, Principles, Practices} 48-49 (2002) (describing criticisms of yellow press). During the 1890s, the discussion of the yellow press and sensationalism went hand-in-hand. See id. The "yellow press" is a term coined for the type of sensational journalistic practices that occurred during the 1890s. See id. The yellow press was criticized for making up stories, obscuring over crime and sex, and instigating the Spanish-American War with these practices. See id. at 49.

38. See Reddin van Tuyl, \textit{supra} note 23, at 231 (recounting Hearst's role in Spanish-American War). William Randolph Hearst was criticized for exaggerating and romanticizing the American soldier; these criticisms echo the modern critique of the Iraq war. See id.

39. See id. at 231-32 (describing lack of objective reporting during Spanish-American War).
censorship was minimal, but the ability to report was decreased by the location of the fighting.\textsuperscript{40}

News was highly censored and mostly pro-Allied during World War I.\textsuperscript{41} The U.S. War Department established complicated procedures for reporters to receive access to information and to distribute their articles to the papers.\textsuperscript{42} During World War II, the first type of "embedding" was used; reporters lived with the soldiers they wrote about. These stories, while keeping up morale at home, were monitored to prevent divulging too much detail.\textsuperscript{44} Most of the censorship was voluntary, however, because reporters believed self-censorship was in the country’s best interest.\textsuperscript{45}

Content guidelines became important during the Korean Conflict because stories were discarded for revealing too much information.\textsuperscript{46} The Vietnam War was a turning point for press-military relations.\textsuperscript{47} Technically, no censorship rules existed at this time,

\begin{itemize}
  \item[40.] See id. at 232 (describing effect of positively skewed reporting on censorship during Spanish-American War). Although there was less censorship, reporting this war was still difficult because it took place far away from the reporters, and the reports were suspect because they were so positive. \textit{See id.}
  \item[41.] \textit{See id.} (reviewing World War I press censorship).
  \item[42.] \textit{See id.} (detailing procedures military required of press during World War I). Some reporters described military officials reviewing their expense accounts. \textit{See id.} For example, a reporter for the International News Service was required to delete a $250 dinner with General John Pershing from his expense report before sending it. \textit{See id.} To weed out reporters who would not produce the military’s portrayal of the war the reporter had to:
    \begin{enumerate}
      \item Appear before the secretary of War or his designate.
      \item Swear to report the truth, but not anything that might aid the enemy.
      \item Hand write an autobiography, including an account of the correspondent’s work, experience, character and health; what he planned to do in Europe; and where he was going.
      \item Pay the Army $1,000 to cover his equipment and expenses.
      \item Post a $10,000 bond to ensure he would “comport himself as a gentleman of the press.”
      \item Agree to wear a green armband with a big red “C” on it.
      \item Pay the Army $500 if he planned to take along an assistant.
    \end{enumerate}
  \textit{Id.} (footnote omitted).
  \item[43.] \textit{See Reddin van Tuyll, supra} note 23, at 232 (noting use of embedding during World War II and type of story that arose from it).
  \item[44.] \textit{See id.} (indicating effect of World War II news stories).
  \item[45.] \textit{See id.} (describing World War II self-censorship). Censorship during World War II was voluntary and based on a “gentleman’s agreement with the censorship office.” \textit{Id.}
  \item[46.] \textit{See id.} at 233 (noting lack of guidelines for press during Korean Conflict). \textit{See Seib, supra} note 6, at 44-45 (analyzing common myths about Vietnam War).
  \item[47.] \textit{See Seib, supra} note 6, at 44-45 (discussing post-Vietnam myths and press-military relationship during Vietnam). The Vietnam War was the first conflict covered daily. \textit{See id.}
explaining the military’s wariness of the press.48 Rumors that the press coverage in Vietnam contributed to the United States’ loss created a long-standing strain on press-military relations.49

The Grenada invasion highlighted the contentious relationship between the press and the military regarding war coverage.50 This represented a low point for the press because they were not permitted access until the military action ended.51 The unhappiness resulting from Grenada led to the creation of a panel, chaired by a military general, who recommended the use of a press pool arrangement.52

The Pentagon arranged a “press pool system”53 during the Gulf War that did little to improve relations between the military and the press.54 The American public knew the war started twenty-seven minutes before the Pentagon announced it.55 This free-flowing, live reporting was short-lived.56 Despite the proliferation of coverage, the military controlled the reporters’ movements and what footage was taped.57 Some critics claim that the military cen-

48. See Tumber & Palmer, supra note 7, at 2 (stating post-Vietnam attempts to manage or control war coverage, hence development of embedding). For a discussion of the Vietnam-era, Watergate, and the Pentagon Papers scandals, see infra note 175.

49. See Seib, supra note 6, at 44-45 (recounting effects of Vietnam coverage). The underlying myth from Vietnam is that the media misreported the war and support for the war dwindled because of it, making the military effort unsustainable. See id. at 44. The idea that the media is something to be controlled has been a mainstay amongst some military officials since. See id.

50. See Tumber & Palmer, supra note 7, at 2 (describing Grenada news coverage when 600 journalists were stranded in neighboring Barbados for two days, unable to report until “action” ended).

51. See id. (explaining tension between press and military during Grenada conflict).

52. See Seib, supra note 6, at 46 (giving historical progression of reporting constructs). The press pool was a rotating group of journalists that would accompany the military. See id.


54. See Reddin van Tuyll, supra note 23, at 233 (describing press pool arrangement during Gulf War); see also Nation Magazine, 762 F. Supp. at 1562 (dismissing right of access claims until underlying constitutional issues were more clear cut). In Nation Magazine, various members of the press challenged pooling regulations in the first Gulf War. See id. at 1560-61. The press plaintiffs alleged a First Amendment right to unlimited access to foreign places engaging American military forces. See id. The court recognized the balance between need for the press to report military operations and national security concerns, but found the issues too “abstract and conjectural.” See id. at 1562.

55. See Reddin van Tuyll, supra note 23, at 234 (recounting beginning of Gulf War coverage). CNN correspondents reported live throughout the first night of the war in January 1991. See id.

56. See id. (indicating Gulf War censorship called “unprecedented”).

57. See id. (recounting beginning of Gulf War coverage).
sors wanted to shape the reality perceived at home, essentially making accurate casualty reports impossible. Because of “real time” technology, the military was reluctant to allow news coverage in Grenada and the Persian Gulf.

Different security concerns for the military exist because there is no discernible national combatant in the “war on terror.” Journalists regarded the Pentagon’s reporting rules during the Afghanistan conflict as some of the most limiting to date. The media

58. See id. (noting issue of reporting casualties and perceptions of war resurfaced recently with coffin ban); see also Censorship of war’s images proves futile, OAKLAND TRIB., Apr. 28, 2004 [hereinafter Censorship] (describing resurfacing of coffin ban after Air Force Air Mobility Command temporarily reversed denial for Freedom of Information request and gave First Amendment activist photos of coffins).

In June of 2004, the Senate upheld the Pentagon’s policy, adopted in 1991, of banning footage of soldiers’ coffins coming or going to the United States. See Censorship, supra; see also Associated Press, Ban on Coverage of War Dead Upheld, L.A. TIMES, June 22, 2004, at A13 [hereinafter Ban on Coverage] (indicating purpose of ban is to protect privacy of families). However, democratic New Jersey Senator Frank Lautenberg said this policy “prevents the American people from seeing the truth about what’s happening.” Ban on Coverage, supra, at A13. For a discussion of Al-Jazeera’s use of graphic images, see infra notes 210-15 and accompanying text.

59. See RTT, at http://www.webopedia.com/TERM/R/RTT.html (last modified Mar. 28, 2002) (defining “real time technology,” also known as “RTT”). “Real time technology” or “RTT” is technology that allows the viewer or the data receiver to process the information as the event is actually occurring. See id.

60. See SEIB, supra note 6, at xiv (noting exacerbated relationship tensions resulting from Grenada, Panama, and Gulf War reporting restrictions).

61. See Flynt v. Rumsfeld, 355 F.3d 697, 699 (D.C. Cir. 2004) (discussing different security concerns with “war on terror”). In a response to Flynt’s request for access to the troops in Afghanistan, Victoria Clarke indicated that “the highly dangerous and unique nature of [the military’s] work makes it very difficult to embed media with ground troops.” Id.; see also Hamdi v. Rumsfeld, 124 S. Ct. 2633, 2641 (2004) (“We recognize that the national security underpinnings of the ‘war on terror,’ although crucially important, are broad and malleable.”).

The “war on terror” was declared by President Bush on October 7, 2001, after the September 11 attacks on the World Trade Towers. See PAUL RUTHERFORD, WEAPONS OF MASS PERSUASION 26 (2004) (describing beginning of war on terror). The war on terror began in Afghanistan as a search for Osama bin Laden and al-Qaeda. See id. The term “war on terror” refers to the general search for those suspected of terrorist acts. See id. The term was never officially coined, but during the weeks after September 11, 2001, ABC News broadcasted eighty-six stories with the terms “war” and “terrorism,” CBS News aired ninety-six similar stories, and NBC News aired 135. See BRIGITTE L. NACOS, MASS-MEDIATED TERRORISM: THE CENTRAL ROLE OF THE MEDIA IN TERRORISM AND COUNTERTERRORISM 146-47 (2002) (recounting underpinnings of public use of term “war on terror”). The President followed suit, when he used the term “war” and “terror” in twenty-nine public appearances from September 11 until the October 7 speech. See id.

62. See Laird B. Anderson, Contention sure to persist between Pentagon, news people, THE MASTHEAD, Autumn 2004, at 4 (quoting Neil Hickey, a Columbia Journalism Review Editor, stating “journalists have been denied access to American troops in the field in Afghanistan to a greater degree than in any previous war involving U.S. military forces’”); see also OAKLAND TRIB., supra note 7, at 3 (describing military restrictions during operation in Afghanistan). The fighting in Afghanistan began on October 7, 2001, but over a month lapsed before journalists were permit-
complained of a lack of reasonable access to bases from which attacks were launched and restrictions on access to information from the Pentagon.\textsuperscript{63} In \textit{Flynt v. Rumsfeld},\textsuperscript{64} Larry Flynt argued that Donald Rumsfeld and the Department of Defense impeded his First Amendment right to have \textit{Hustler} correspondents in Afghanistan.\textsuperscript{65} Flynt alleged a constitutional guarantee of the media's right to travel with military units into combat.\textsuperscript{66} The District of Columbia Court of Appeals affirmed the district court's finding that Flynt did not have standing, and because there was no cognizable First Amendment claim, Flynt's challenges failed.\textsuperscript{67} The media's grievances reached such an intense level that Victoria Clarke, the former Assistant Secretary of Defense of Public Affairs, apologized in December of 2001.\textsuperscript{68} Despite no definitive decision regarding the media's right of access to military operations, the Supreme Court has defined the First Amendment right to receive information as fundamental to a free society.\textsuperscript{69}

\textsuperscript{63} See Tumber \& Palmer, supra note 7, at 3 (describing military restrictions during Afghanistan).

\textsuperscript{64} 355 F.3d 697 (D.C. Cir. 2004).

\textsuperscript{65} See id. at 700 (detailing Flynt's claims).

\textsuperscript{66} See id. (indicating Flynt's unsuccessful constitutional claims).

\textsuperscript{67} See id. at 698 (noting district court "refused to exercise its discretion under the Declaratory Judgment Act to declare the pertinent DOD Directive facially unconstitutional" and the appellate court affirmed).

\textsuperscript{68} See Tumber \& Palmer, supra note 7, at 3 (excerpting Victoria Clarke's letter to media). The letter stated:

We owe you an apology. The last several days have revealed severe shortcomings in our preparedness to support news organizations in their efforts to cover U.S. military operations in Afghanistan.

We have a significant responsibility to provide your correspondents the opportunity to cover war. It is a responsibility that we take seriously. Our policy remains the same as it has always been keeping in mind our desire to protect operational security and the safety of men and women in uniform, we intend to provide maximum media coverage with minimal delay and hassle.

\textit{Id.} (quoting Victoria Clarke).

\textsuperscript{69} See Wilfrid C. Rumble, Comment, \textit{The FCC's Reliance on Market Incentives to Provide Diverse Viewpoints on Issues of Public Importance Violates the First Amendment Right to Receive Critical Information}, 28 U.S.F. L. Rev. 793, 793 (1994) (recounting Supreme Court's role in establishing public right of access to information); see also Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 576-82 (1980) (holding absent overriding interest, criminal trial must be open to public). But this basic right of access has not been expanded to military operations. See Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 611 (1982) (holding state statute excluding press and public from courtroom invalid).
B. Public Right to Receive Information

In addition to First Amendment considerations and rights to media access, the Supreme Court has considered the legal rights of the public in receiving information. The analysis of this right begins with the most basic atmosphere for receiving information – the educational setting.

In Meyer v. Nebraska and Pierce v. Society of Sisters, the Supreme Court first defined the right to information in an educational setting. In Meyer, Nebraska enacted a statute making teaching any subject in a language other than English a misdemeanor. Meyer was convicted under the statute for teaching his daughter German. Applying the Fourteenth Amendment, the Court invalidated the statute because it impeded liberties guaranteed by the Constitution; specifically, the right of an individual to acquire useful knowledge.

In the same vein, the Supreme Court invalidated the Compulsory Education Act, which required that children between eight and sixteen only attend public schools, in Pierce. When a private primary school brought suit, the Court determined the statute interfered with the liberty of parents and guardians to choose how to educate their children by precluding private education.

The Supreme Court’s willingness to uphold a right to information in the educational setting was expanded in Near v. Minnesota. In Near, the Court emphasized the importance of citizens’ interest to receive information regarding the operation of the government. A Minnesota statute provided for abatement, as a public

70. For a discussion of the Supreme Court cases involving the public right to receive information, see infra notes 72-105 and accompanying text.
71. For a discussion of the Supreme Court’s initial recognition of the public right to receive information, see infra notes 72-79 and accompanying text.
72. 262 U.S. 390 (1923).
73. 268 U.S. 510 (1925).
74. See Rumble, supra note 69, at 797 (discussing Meyer and Pierce in establishing right to receive useful information). The right to receive information discussed within these cases was guaranteed by the Due Process Clause of the Fourteenth Amendment because both Meyer and Pierce took place before 1925, when the Supreme Court applied the First Amendment to states. See id.
75. See Meyer, 262 U.S. at 396-97 (discussing facts).
76. See id. at 397 (indicating basis for conviction under Nebraska statute).
77. See id. at 399-403 (reviewing Court’s analysis in Meyer).
78. See Pierce, 268 U.S. at 534-35 (discussing holding).
79. See id. (discussing reasoning).
80. 283 U.S. 697 (1931).
81. See id. at 717 (citing importance of freedom of press to liberty in democracy).
nuisance, of publications that were deemed “malicious, scandalous and defamatory.” 82 The defendant’s newspaper, The Saturday Press, published stories alleging law enforcement was not performing its duties because a gangster was perpetuating gambling and racketeering in Minneapolis. 83 The articles connected certain public officers with the crimes. 84 The Court analyzed the statute under freedoms sustained by the Fourteenth Amendment. 85 The Court found the statute prohibited the press from critiquing government officials. 86 The Court concluded this critiquing may result in officials conducting themselves honorably. 87

The Court in Martin v. City of Struthers 88 struck down an ordinance because it restricted the dissemination of ideas, which is prohibited by the Constitution. 89 The appellant, a Jehovah’s Witness, had violated the ordinance by knocking on the doors of strangers in order to distribute leaflets. 90 The Court characterized the door-to-door distributors as “useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion.” 91 In determining the city ordinance was unconstitutional, the Court emphasized a citizen’s right to receive the leaflet, and more generally, the right to receive information. 92

82. Id. at 703.
83. See id. at 703-04 (indicating nature of articles published).
84. See id. (describing basis of charges against defendant under statute).
85. See Near, 283 U.S. at 713-14 (reviewing history of free press). In determining the extent of constitutional protection, the Court did a historical overview of attempted prevention of restraints on publication. See id. The Court, recounting the struggle in England, quoted Blackstone as saying, “’[t]he liberty of the press is indeed essential to the nature of a free state . . . .’” Id. at 713.
86. See id. at 713-14 (describing effects of comprehensive coverage on government officials). The Court specified:
   The importance of [freedom of the press] consists, besides the advancement of truth, science, morality, and arts . . . , in its diffusion of liberal sentiments on the administration of Government, its ready communication of thoughts between subjects . . . whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.
   Id. at 717 (quoting letter sent by Continental Congress (Oct. 26, 1774) to Inhabitants of Quebec).
87. See id. at 713-14 (noting importance and possible effect of press critiquing government).
88. 319 U.S. 141 (1943).
89. See id. at 149 (indicating holding).
90. See id. at 142 (stating facts).
91. Id. at 145.
92. See id. at 146-49 (reasoning why statute is unconstitutional and establishing right to receive information). The Court stated:
   The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a
Similarly, in Lamont v. Postmaster General, the Supreme Court construed the First Amendment to support the right to receive information as an extension of First Amendment rights. At issue in Lamont was a statute that required postal workers to separate and hold communist mail until delivery was requested by the recipient. The statute failed because, according to the Court, it was "at war with the 'uninhibited, robust, and wide open' debate and discussion that are contemplated by the First Amendment." In Stanley v. Georgia, the Court indicated it is well-established that the Constitution protects the right to receive information and ideas.

A few years after Stanley and Lamont, the Court decided Kleindienst v. Mandel. Ernest E. Mandel was a scholar residing in Belgium invited to speak at numerous symposiums and engagements about his Marxist theories. The claimants, Mandel, various professors, and U.S. citizens, brought this lawsuit when Mandel's visa was denied. Because these professors had invited Mandel to speak at various engagements, they claimed the denial of the visa was based on a statute that, as applied, violated their First and Fifth Amendment rights. The crux of the claim was that the professors were denied the freedom to engage "in a free and open academic exchange" with Mandel, violating their First Amendment

freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance. This freedom embraces the right to distribute literature and necessarily protects the right to receive it.

Id. at 143 (emphasis added) (footnote and citation omitted).

93. 381 U.S. 301 (1965).

94. See id. at 305 (indicating "use of mails is almost as much a part of free speech as the right to use our tongues . . .") (quoting Milwaukee Soc. Democratic Pub. Co. v. Burleson, 255 U.S. 407, 437 (1921) (Holmes, J., dissenting)).

95. See id. at 302-03 (discussing statute).

96. Id. at 307 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)).


98. See id. at 558 (noting Stanley was convicted under state statute that made it felony for any person to knowingly possess obscene materials). The Court held that mere private possession of obscene material was not a crime. See id. at 559.


100. See id. at 756-58 (describing Mandel's work). Mandel advocated "world communism" in his 1969 two-volume work, Marxian Economic Theory. See id. at 756.

101. See id. (indicating reason for lawsuit). Mandel was denied access to the United States numerous times by the Attorney General for activities during Mandel's last visit in 1968, which exceeded the parameters of his visa. See id. at 758-59.

102. See id. at 759-60 (detailing plaintiffs' claims).
rights to hear Mandel express his views. The Court recognized the interest of the public right to receive information, although it upheld the validity of the statute excluding aliens. This holding demonstrates one situation in which the balancing between the public interest and Congress' plenary power favor the latter. The Court, however, did emphasize and recognize the importance of the right to receive information by recapping many of the cases discussed here, and its dicta suggests the constitutional validity of this issue.

In addition to the right to receive information, Congress has also emphasized legislation in favor of public interest. The following section details the Communications Act of 1934 and the role of the FCC.

C. Communications Act of 1934 and the FCC

The Communications Act of 1934, giving the FCC the right to regulate broadcasting, is couched in the notion that a robust marketplace of ideas is necessary for true democracy. Because there are a finite number of broadcast frequencies, the FCC's purpose is to regulate these frequencies, requiring that licensees "serve the public interest, convenience, and necessity."

103. Id. at 760 (detailing plaintiffs' claims).
104. See Kleindienst, 408 U.S. at 769-70 (holding for Attorney General). The holding overturned the district court despite appellees' argument to require a waiver when a bona fide claim is presented that an American wanted to engage with the excluded aliens. See id. at 768-69.
105. See id. at 763-65 (highlighting right to receive information principles and case law). The Court briefly discussed Martin, Stanley, Lamont, and Red Lion Broadcasting as contexts establishing the right to receive information and ideas. See id. at 762-63.
106. For a discussion of legislation emphasizing the public interest, see infra notes 107-20 and accompanying text.
107. See Prometheus Radio Project v. FCC, 373 F.3d 372, 382 (3d Cir. 2004) (describing inception of FCC). The FCC regulates public broadcasters, not the Internet or cable. See id. at 400 (recounting FCC's evidence and reasoning for continuing to regulate cross-media ownership). Although the involvement of these two additional mediums may alter the dynamic of news coverage, the FCC found that they are not substitutes for the viewpoints provided by newspapers and broadcast stations. See id.

Specifically, the FCC found that "among cable subscribers (a class that already omits one-third of American households) only 30% have access to local cable news channels." Id. at 415 (citing FCC Order). The analysis was similar regarding Internet accessibility. See id. The growth of the Internet, however, has been considered a valuable addition to the dissemination of information and a separate watchdog to traditional media. See Seib, supra note 6, at xv (examining Internet's impact on new dissemination).
108. Prometheus, 373 F.3d at 383. Additionally, "[t]he FCC's delegated responsibility to foster a robust forum for national debate is unique in administrative law..."
While promoting the public interest continued to be the goal, the 1996 Telecommunications Act ("Telecom Act") departed from that initial stance by instituting a deregulatory, pro-competitive policy.\textsuperscript{109} The Reagan administration, and more recently the last FCC Chairman Michael Powell, viewed deregulation and open market theories as the best ways to diversify media coverage and achieve underlying FCC goals.\textsuperscript{110} Powell said media consolidation, and thus deregulation, is necessary to ensure media organizations are expansive enough to cover future wars.\textsuperscript{111}

After 1998, the Communications Act requires the FCC to conduct biennial regulatory reviews of its regulations to ensure the FCC rules are maintaining its commitment to the public interest in full media coverage.\textsuperscript{112} Regardless of the FCC’s regulatory stance, it always asserts that the institution of changes in policy and modification of media ownership rules are made with the public interest in mind.\textsuperscript{113}

and essential to the vibrancy of our deliberative democracy.” Id. at 435 (Scirica, C.J., dissenting in part).

\textsuperscript{109} See Blake D. Morant, Democracy, Choice, and the Importance of Voice in Contemporary Media, 53 DePaul L. Rev. 943, 975 (2004) (discussing role of media in democracy, specifically as related to race). The Telecom Act deregulation eliminated limits on the number of AM or FM broadcast stations that could be owned by one entity. See id. at 976. Also, the Telecom Act increased the cap on television station ownership to 45% of the viewer market. See id.

\textsuperscript{110} See Schechter, supra note 11, at 24 (indicating market incentives that drove news coverage like CNN’s dual news system coverage that separated domestic and international coverage); see also Johnson, supra note 1, at E4 (citing results of deregulation). See generally Prometheus, 373 F.3d at 386-88 (noting in June of 2003, Federal Trade Commission (“FTC”) passed rules that allowed one TV network to own enough stations to reach forty-five percent of nation’s viewers). Ronald Reagan was the first president in history to appoint an FCC chairman with a deregulatory goal. See Rumble, supra note 69, at 831. A large component of this stance is deference to the broadcaster’s judgment and market incentives. See id. at 832-33.

\textsuperscript{111} See Schechter, supra note 11, at 36 (explaining current FCC view of media regulation).


\textsuperscript{113} See Prometheus, 373 F.3d at 386 (recounting underlying objective of FCC actions under review).
The FCC has determined that the public interest standard of the Communications Act requires broadcasters to present vigorous debate on important public issues. Broadcasters ideally have the widest journalistic freedom commensurate with this interest.

The FCC conclusion that the standard of review applicable to its rulemaking under Section 201 of the Telecom Act is a public interest standard naturally leads to an examination of whether the conduct of media outlets is in the public interest. Specifically, the public interest review involves an analysis of whether the regulation furthers viewpoint diversity in the news. Five types of diversity are relevant to FCC policy goals: viewpoint diversity, program diversity, outlet diversity, source diversity, and minority and female diversity. Viewpoint diversity is most relevant to war coverage because it ensures that media content reflects varying perspective. The purpose of this policy is to sustain the arguably belabored idea that diversity maintains a "robust marketplace of ideas."

114. See Rumble, supra note 69, at 834 (arguing FCC deregulation does not comply with public interest objective).
115. See Prometheus, 373 F.3d at 392 (describing FCC's standard of review).
116. See id. at 395 (concluding FCC review is not only elected by FCC, but also required under § 202 of Telecom Act). For example, in 2003, the FCC decided not to retain a ban on newspaper and broadcast cross-ownership reasoning that "the ban undermines localism by preventing efficient combinations that would allow for the production of high-quality local news . . . ." Id. at 398. While the FCC maintains an interest in sustaining diversity in the media, it revoked the Fairness Doctrine, which required broadcasters to give sufficient coverage to opposing views on public issues. See Morant, supra note 109, at 966-67; see also Red Lion Broad. Co. v. FCC, 395 U.S. 367, 375 (1969) (holding broadcaster acted as public trustees and upholding constitutionality of Fairness Doctrine).
117. See Prometheus, 373 F.3d at 446 (Scirica, C.J., dissenting in part) (describing FCC standards relevant to ownership policy).

Relevant to diversity is the type of news that is covered. Broadcasters' international coverage has declined since 1989, according to a study by Andrew Tyndall of ABC, CBS, and NBC evening newscasts. See Seib, supra note 6, at 3. In 1989, the nightly news on these stations provided 4,032 minutes of coverage from other countries. See id. The number dropped to 1,382 minutes in 2000. See id. After September 11 and the war in Afghanistan, the coverage rose to 2,103 minutes in 2002, but was still half of its coverage in the 1980s. See id.

118. See Prometheus, 373 F.3d at 446 (Scirica, C.J., dissenting in part) (discussing viewpoint diversity and role in FCC policy goals); see also Martin v. City of Struthers, 319 U.S. 141, 150 (1943) (Murphy, J., concurring) ("It is our proud achievement to have demonstrated that unity and strength are best accomplished, not by enforced orthodoxy of views, but by diversity of opinion through the fullest possible measure of freedom of conscience and thought.") (emphasis added).
119. Prometheus, 373 F.3d at 446 (Scirica, C.J., dissenting in part); see also N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270-71 (1964) (maintaining uninhibited debate on public issues as important to allowing minority views in public discussion).
The theoretical underlying purpose of FCC regulation, serving the public interest, shows its importance in media ownership regulation. It also amplifies the media’s daily purpose - reporting news to the public.\textsuperscript{120} The following section analyzes the Iraq war coverage in light of the public interest requirement and the public right to receive information.

### III. Analysis

The First Amendment of the Constitution states, “Congress shall make no law . . . abridging the freedom of speech or of the press.”\textsuperscript{121} The First Amendment and the ancillary Press Clause are continually upheld as staples of democracy.\textsuperscript{122} The press has been described as the “fourth branch” of the United States government.\textsuperscript{123} The rights afforded by the First Amendment give the press the ability, and some argue the duty, to monitor the government by fully reporting its actions.\textsuperscript{124}

With technological advancements and the public dependence on the media for news, the media’s functions are highly important, especially during a crisis.\textsuperscript{125} Considering the content of media is as important as reflecting on its role, broadcast media, with its over-

\textsuperscript{120} See Morant, supra note 109, at 944. In his discussion of the media’s role in a democracy, Morant posits, “[i]f media functions to secure democratic processes, then its robust nature must include both the sacrosanct right to expressive freedom and the duty to report the variety of viewpoints and perspectives that appeal to a diverse society.” \textit{Id.} (emphasis in original).

\textsuperscript{121} U.S. CONST. amend. I.

\textsuperscript{122} See Sinai, supra note 8, at 179 (recounting First Amendment and press clause basis for press’ rights).

\textsuperscript{123} See id. at 182 n.17 (noting press’ role in democracy and framers’ intent) (quoting Steven S. Neff).

\textsuperscript{124} See id. at 200-01 (describing purpose of First Amendment and role of press in democratic structure); see also Lisby, supra note 9, at 136. The article states:

Thus, an understanding of the history of press rights and laws in America is a recognition of the delicate balance the Constitution attempts to preserve between public rights and private rights, between openness and secrecy, between the tyranny of the majority and the tyranny of the minority, between the free flow of information and the restrictions on that flow for private profit.

\textit{Id.}; see also Mills v. Alabama, 384 U.S. 214, 218 (1966) (holding First Amendment supports “free discussion of governmental affairs”). The First Amendment maintains the structure of open communication which effectively allows the press the right to gather information. See Sinai, supra note 8, at 201.

\textsuperscript{125} See Morant, supra note 109, at 946 (“Perhaps media’s most utilitarian function is its tendency to inform on matters of societal import.”). In a nationwide study conducted by the University of Connecticut, sixty-five percent of respondents said they get most of their news from television. See id. at 982 (citing \textit{The News Media/Communications}, at http://www.pollingreport.com/media/hm (last visited Jan. 21, 2005) (citing Media Studies Center survey conducted by the University of Connecticut).
whelming ability to reach citizens, becomes a significant factor in forming public opinion.\textsuperscript{126}

Because the media informs the public about government action, its role in a democratic system is tantamount.\textsuperscript{127} For this same reason, censorship of the media remains a longstanding concern.\textsuperscript{128} The way the media censors its coverage is a public priority because the public depends on the media to report important information.\textsuperscript{129} The government also monitors media coverage for classified reports about its actions.\textsuperscript{130}

Censoring the content of publications is a commonplace First Amendment concern, but restricting media access to sensitive information like military operations still has not been addressed by the Supreme Court or Congress.\textsuperscript{131} Courts have generally maintained a deferential attitude towards the government interest in maintaining confidentiality for national security during war.\textsuperscript{132} Unlike strict press censorship during World War I or more recently in Afghanistan, the Iraqi press corps was subjected to basic censorship.\textsuperscript{133} The

\textsuperscript{Connecticut Jan. 11-18, 1999). Twenty-one percent of those polled in the same survey read newspapers as their main news source. See id.\textsuperscript{126}} See id. at 965 (discussing media’s influence on public debate and impact lack of multiplicity has on that debate).

\textsuperscript{127} See id. at 946 (noting critique of media cannot commence without examining industry’s role in democracy).

\textsuperscript{128} See id. at 947-55 (highlighting autonomy-based theories of democracy and importance of free speech).

\textsuperscript{129} See id. at 956 (describing media’s importance in democracy).

\textsuperscript{130} See Schenck v. United States, 249 U.S. 47, 52 (1919) (“When a nation is at war many things that might be said in time of peace are such a hindrance 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.”).

\textsuperscript{131} See Sinai, supra note 8, at 182 (noting extent of Supreme Court’s decisions regarding press access to military action). In Flynt v. Rumsfeld, Flynt’s first claim was a request for a declaration that the First Amendment guarantees Flynt “a right of access to the battlefield, subject to reasonable regulations for safety and security,” 355 F.3d 697, 700 (D.C. Cir. 2004). The court clarified that Flynt’s argument was a right to travel with the military, not simply access to information about military actions, and therefore, ruled there was no constitutionally-based right for the media to embed with the military in combat. See id. at 702.

\textsuperscript{132} See Nightline, supra note 21 (“It’s absolutely imperative to deny the enemy any information on the disposition, actions, or plans of our forces.”) (quoting unidentified U.S. military personnel). But see N.Y. Times Co. v. United States, 403 U.S. 713, 719 (1971) (“The word ‘security’ is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.”). A main and understandable concern is that reports about the war will divulge military information that will harm operations, troops, or civilians because, while reports are important to the citizens, this also makes that information available to terrorists. See id.

\textsuperscript{133} For details regarding previous war censorship, see supra notes 23-69 and accompanying text.
following section details the embedding process and follows with a discussion of the effects of that coverage.

A. Embedding: Changing the Nature of News Censorship

The Department of Defense ("DOD") Principles of Information advocate for the timely and accurate availability of information to the public.134 The first of nine DOD Principles for News Media Coverage of DOD Operations indicate "open and independent reporting will be the principal means of coverage of U.S. military operations."135 Scholars question whether this principle was a reality

134. See Sinai, supra note 8, at 190 n.72 (recounting DOD principles) (quoting Dep't of Def. Directive No. 5122.5, Enclosure 2, at 8 (Sept. 27, 2000)).

E3.1.2. Media pools (limited number of news media who represent a larger number of news media organizations for news gatherings and sharing of material during a specified activity), are not to serve as the standard means of covering U.S. military operations. However, they sometimes may provide the only means of early access to a military operation. In this case, media pools should be as large as possible and disbanded at the earliest opportunity (in 24 to 36 hours, when possible). The arrival of early-access media pools shall not cancel the principle of independent coverage for journalists already in the area.

E3.1.3. Even under conditions of open coverage, pools may be applicable for specific events, such as those at extremely remote locations or where space is limited.

E3.1.4. Journalists in a combat zone shall be credentialed by the U.S. military and shall be required to abide by a clear set of military security ground rules that protect U.S. Armed Forces and their operations. Violation of the ground rules may result in suspension of credentials and expulsion from the combat zone of the journalist involved. News organizations shall make their best efforts to assign experienced journalists to combat operations and to make them familiar with U.S. military operations.

E3.1.5. Journalists shall be provided access to all major military units. Special operations restrictions may limit access in some cases.

E3.1.6. Military PA officers should act as liaisons, but should not interfere with the reporting process.

E3.1.7. Under conditions of open coverage, field commanders should be instructed to permit journalists to ride on military vehicles and aircraft when possible. The military shall be responsible for the transportation of pools.

E3.1.8. Consistent with its capabilities, the military shall supply PA officers with facilities to enable timely, secure, compatible transmission of pool material and shall make those facilities available, when possible, for filing independent coverage. If Government facilities are unavailable, journalists, as always, shall file by any other means available. The military shall not ban communications systems operated by news organizations, but electromagnetic operational security in battlefield situations may require limited restrictions on the use of such systems.

E3.1.9. Those principles in paragraph E3.1.8., above, shall apply as well to the operations of the standing DoD National Media Pool system.
during the war in Iraq. Further, this Comment questions whether that coverage meets the standards established by the Supreme Court and the FCC for the public interest.

The process of embedding journalists in military units was the main form of coverage in the recent war with Iraq.136 The idea was proposed by the Pentagon and spearheaded by Victoria Clarke.137 Because the Pentagon faced a hostile press corps as a result of the first Gulf War and Grenada, and was aware that increased technological abilities hindered traditional censorship, embedding represented a compromise between the military’s and the media’s goals.138 Critics allege ulterior motives for embedding, such as using the media as a weapon in providing up-close reports that might demoralize the enemy and counter Al-Qaeda’s use of television.139

In order to receive embedding privileges, media organizations agreed to “security reviews, flagging of sensitive information, [and] limitations on filming dead bodies,” but there was no restriction on specific equipment.140 For Operation Iraqi Freedom, over six hundred reporters signed up for training prior to the announcement of the invasion of Iraq.141 This publicly funded “boot camp”142 helped

*Id.* It is helpful to see the Pentagon’s underlying goals when considering the embedding process and comparing them to the actual result.

136. See Tumber & Palmer, supra note 7, at 1-2 (describing details of war coverage in Iraq). The war with Iraq was the most media-covered war in recent times. See id. More than 3,000 journalists were assigned to the region. See id. The process of embedding was used by accident in the Falklands conflict of 1982; versions of embedding were used in World War II, and in Vietnam. See id. at 2 (observing use of embedding process through history of war coverage).

137. See Anderson, supra note 62, at 4 (detailing inception of embedding process during Iraq war).

138. See Seib, supra note 6, at 51 (recounting Pentagon’s plan for embedding and its inception). For a discussion of Grenada and the first Gulf War, see supra notes 50-60 and accompanying text.

139. See Seib, supra note 6, at 52-53 (analyzing Pentagon’s impetus for implementing embedding). The Air Force Colonel in charge of the Kuwait military press desk mentioned one of the pragmatic reasons to have extensive coverage was to counter the Taliban and Al-Qaeda’s use of the media for propaganda. See id. at 52.

140. See Schecter, supra note 11, at 33 (describing logistics of embedding process); see also Seib, supra note 6, at 52 (reviewing guidelines for embedding). The Pentagon guidelines did not ban specific communications equipment, but a unit commander could restrict the transmission of information in a hostile situation. See Seib, supra note 6, at 52 (reviewing guidelines for embedding).

141. See Schecter, supra note 11, at 33 (explaining prelude to Iraq war coverage).

142. See Seib, supra note 6, at 53 (recounting what was provided to embedded journalists even before formal invasion of Iraq). The embedded journalists were provided training, transportation, food, and shelter, all funded with taxpayer money. See id. Reimburse the government the fair market value of these costly services would have helped the perception that the media have an appropriate
prepare the journalists for what they would encounter living with the troops.\textsuperscript{143}

Journalists who were not part of the embedding process were called “unilaterals”;\textsuperscript{144} these journalists received little protection and support from the military.\textsuperscript{145} More than 1,800 unilaterals were considered a supplemental tier to balance coverage. But, the lack of safety and access negatively influenced the effectiveness of unilateral coverage.\textsuperscript{146}

Because of the limited coverage during the first Gulf War, media outlets jumped at the opportunity to embed reporters with the troops.\textsuperscript{147} Overall, embedding and the pre-assignment “boot camp” were received positively by the media.\textsuperscript{148} The Pentagon believed the embedding process would reduce misinformation, boost mo-

\begin{footnotesize}
\textsuperscript{143} See Anderson, supra note 62, at 4 (explaining purpose of boot camp for journalists entering Iraq); see also Schechter, supra note 11, at 31 (describing journalists’ accounts of embedding training process in November of 2002).

\textsuperscript{144} See Tumber & Palmer, supra note 7, at 33 (describing unilateral journalists’ role in Iraq coverage). Unilateral news coverage was often frustrated by the military and journalists’ concerns over safety. See id. Geoffrey York of the Canadian publication Globe and Mail stated, “[w]e are outsiders, powerless and marginal, lacking any propaganda value in Washington’s media strategy” when speaking about his role as a unilateral. Id.

\textsuperscript{145} See Seib, supra note 6, at 44 (examining relationship between politics and war reporting). When journalists like unilaterals try to evade military restrictions, the logistical ability to cover the war may be compromised. See id.

\textsuperscript{146} See id. at 53 (pointing out unilaterals’ perceived and actual role in coverage). At least eighteen journalists have died covering the war. See Jukes, supra note 2, at xi (noting number of journalists killed). For a discussion about the safety of journalists in Iraq, see Tumber & Palmer, supra note 7, at 37-47.

\textsuperscript{147} See Seib, supra note 6, at xiv (describing Bush administration’s plan for embedding troops). Considering the possible impact of the press’ technological capabilities during this war coverage, the DOD opted for embedding to retain some control over the coverage rather than losing it all. See id.

\textsuperscript{148} See Schechter, supra note 11, at 19. Schechter stated: When the war was over, Rem Rieder, the editor of the American Journalism Review (AJR) gushed: “It is clear that the great embedding experiment was a home run as far as the media and American people are concerned.” Military Commander Gen. Tommy Franks agreed and pledged that embedding would be used in future conflicts. Id. NBC’s Tim Russert and CNN’s Wolf Blitzer also praised the embedding process. See McLane, supra note 35, at 82-83 (noting Tim Russert stated, “when you look at all the various slices together, you had pretty close to a complete picture”).
\end{footnotesize}
rale for the troops, and keep America closely connected to the war.\textsuperscript{149}

The two main criticisms about embedding are: 1) the identification that could take place between the reporter and the company in which they were embedded, and 2) the narrow focus of the embedded reports.\textsuperscript{150} A mainstay in journalism, and particularly war coverage, is objective and honest reporting.\textsuperscript{151} Because of these journalistic goals, a natural concern was identification.\textsuperscript{152}

Identification takes place when reporters are living with and being protected by the subjects they are reporting.\textsuperscript{153} Critics of em-

\textsuperscript{149} See Anderson, supra note 62, at 4 (indicating Pentagon’s goal in instituting embedding process).

\textsuperscript{150} See Schechter, supra note 11, at 19 (describing main criticisms of embedding). Many of the “embeds” acknowledged that they ultimately identified with the troop they were covering, but added that it did not affect their coverage. See id. Former TV reporter Michael Burton remarked, “[t]he Pentagon strategists, already planning for the Iraqi war, wanted proud, positive, and patriotic coverage over the national airwaves.” Id. This goal of patriotic news coverage would be more easily realized with embeds because they identify with their subjects. See id. at 20. For a discussion of the role of patriotism in news coverage, see infra notes 224-31 and accompanying text.

Some studies found the role of coverage to be well-balanced and informative. The Project for Excellence in Journalism’s (“PEJ”) report conducted a content analysis by looking at more than forty hours of news coverage on ABC, CBS, NBC, CNN, and Fox News. See Tumber & Palmer, supra note 7, at 57 (detailing PEJ study). The study found ninety-four percent of the embedded stories were factual in nature and six out of ten reports were live and unedited accounts. See id. The report did indicate, however, that some journalists may have had trouble contextualizing the news reported. See id. at 58. More specifically, “[t]he problem is that the embedded reporter surrounded by US troops may need to be careful about adopting terminology carefully chosen by military strategists to win hearts and minds.” Id. (quoting PEJ report). For a discussion on the importance of semantics in war coverage, see infra notes 162-64 and accompanying text.

\textsuperscript{151} See SPJ Missions, at http://www.spj.org/spj_missions.asp (last visited Mar. 26, 2005) (providing ethical standards for journalists to uphold journalistic integrity in perpetuation of free press). The Society of Professional Journalists (“SPJ”) is an example of a group promulgating honest and fair reporting. A goal of the SPJ is “[t]o ensure that the concept of self-government outlined by the U.S. Constitution remains a reality into future centuries, the American people must be well informed in order to make decisions regarding their lives, and their local and national communities.” Id.

\textsuperscript{152} See Schechter, supra note 11, at 19 (explaining criticism of identification as narrow and sacrificing objectivity). Former TV reporter Michael Burton stated: Now, the story of war is seen through the eyes of the American battalions, but without the real violence. American children see more images of violence on nightly television then they do in this war, because of the deliberate editing at home. Instead, they see a fascination with high tech weapons, battle tactics, and military strategy reporting . . . .

\textsuperscript{153} See Seib, supra note 6, at 55-56 (analyzing reporters’ empathy for military troops arising from embedding). One example of identification was Lyndsey Layton’s experience for a month with fighter pilots. See id. at 56. She relayed her
bedding argue that this dynamic compromises the journalistic ideal, the need for public information, and objective reporting. Although the Pentagon's stated goal was the reduction of misinformation, critics of the most recent war coverage have gone as far as stating, "[t]he war with Iraq may indeed signal the decline of independent journalism in times of war and the loss of the adversarial role journalism once played with the U.S. government." Another problem common to embedding is a smaller picture of the entire war provided by personal interest stories. While combat is a significant part of war, other valuable areas of information during wartime include policy, economics, and even science. Commentators note the narrowing scope of news coverage, and specifically, the lack of substantive debate and viewpoints other than that of the majority. The standards of diversity or freedom of information established by the Communications Act and the Supreme Court are not sustained by the narrow news coverage arising

experience about one pilot excited from a successful bombing mission. See id. Layton asked herself whether it was fair to report on such an unguarded moment, but also asked if that was not the purpose for her embedding. See id. Layton ultimately "gingerly" handled the story, not reporting all that she saw, and in retrospect, still not knowing if she made the right decision. See id. Layton's experience is reflective of the conflicting duty as a reporter and as an empathetic embed.

Gordon Dillow of the Orange County Reporter stated embedding allows a reporter to see the fighting the same way the military does. See id. He described how this affected his reporting by saying, "when some of my marines fired up a civilian vehicle . . . killing three unarmed Iraqi men, I reported it - but I didn't lead my story with it, and I was careful to put in the context of scared young men trying to protect themselves," or "when my marines laughed about how . . . gun bullets had torn apart an Iraqi soldier's body" he put it in the context of "all-American boys hardened" by war. Id. (emphasis added).

154. See id. at 58 (examining reporters' compromised position because of embedding). Another notable effect of embedding is the appearance to Iraqis or non-Americans whom the journalists would want to interview for an objective report. See id. The visual of reporters in fatigues surrounded by American military may make it difficult to distinguish between an embedded reporter and the military, making non-American sources more reluctant to talk. See id.

155. SCHECHTER, supra note 11, at 35; see also TUMBER & PALMER, supra note 7, at 6 (describing misreporting like unconfirmed claims on first night of war that Saddam Hussein was killed, and false reports that large Iraqi convoy was moving to southern Iraq).

156. See SCHECHTER, supra note 11, at 35 (indicating expansive, 24-hour coverage with less objectivity or breadth of information provided).

157. See SEIB, supra note 6, at 60 (noting faults in embedded coverage). For a discussion of the necessity in covering the complexities of the war on terror, see infra notes 161-67 and accompanying text.

158. See SCHECHTER, supra note 11, at 37 (analyzing Iraq war coverage by major news organizations). One analogy of embedded reporting was that it was like "seeing the war through 600 soda straws - an array of tightly focused yet very narrow viewpoints." See SEIB, supra note 6, at 60. Another description of embedding was "COPS Goes to Baghdad." Id. at 59.
from embedding.\textsuperscript{159} Embedding negatively affects the media's ability to provide the context and objective information needed for covering the war on terror.\textsuperscript{160}

B. Terrorism, Technology, & Diversity - Exacerbating the Problem of Narrow News Coverage

1. The Nature of the War on Terror

Narrowing news coverage is not simply a result of embedding. The nature of terrorism also affects the media's role in reporting.\textsuperscript{161} The war on terror requires a complex portrayal of the issues, with simple concepts, such as semantics, subject to debate.\textsuperscript{162} For example, the terms "terrorist" or "terrorism" imply political violence with a negative connotation, while the terms "freedom fighter" or "revolution" present a very different picture.\textsuperscript{163} CNN uses the term "coalition forces" with respect to American troops, while Al-Jazeera refers to the same group as "invading Americans."\textsuperscript{164}

In addition to carefully choosing words and images used in reporting, choosing a sophisticated context creates additional issues. Patriotic or entertaining coverage may help ratings and market in-

\textsuperscript{159} See Seib, supra note 6, at 60 (concluding embedded coverage supplies narrow coverage). The reality television analogy is also illustrative of the dramatic spin that the embedded stories provided, lending to spectacular war coverage. See id. at 59-60.

\textsuperscript{160} See id. at xiii (“Much of [US media] coverage consists of belated reports about crises, delivered with dramatic urgency but without context.”). Seib writes about the “post-modern war” and the changing politics of war, such as pre-emptive strike defenses and intervention principles versus sovereignty. See id. He argues the recent spectrum of coverage has been limited, particularly in light of the changing face of war. See id. The lack of context and background also makes it easier for people’s emotions to be manipulated. See Johnson, supra note 1, at E4 (quoting Danny Schechter discussing media’s “weapon of mass deception”).

\textsuperscript{161} See Seib, supra note 6, at 8-9 (providing background about “war on terror” and media’s new role in this conflict).

\textsuperscript{162} See Nacos, supra note 61, at 16 (analyzing impact of certain words in current reporting). Nacos illustrates the precise nature in which journalists must discuss terrorism. See id.

\textsuperscript{163} See id. (discussing impact of word choice on news stories). Some news organizations have followed governmental leads and attempted to be consistent in their descriptions. See Seib, supra note 6, at 34. Also, some have issued guidelines such as the Washington Post indicating “language . . . should be chosen for its ability to inform readers. Terrorism and terrorist can be useful words, but they are labels . . . . Instead we should give readers facts and perhaps quotes from disputing parties about how to best characterize the organization . . . .” Id. at 35.

\textsuperscript{164} See Schechter, supra note 11, at 172 (noting difference in language affecting impact of coverage).
centives, but sacrifice an accurate context.\textsuperscript{165} While patriotic news coverage may be more readily accepted by the public, the news media has a greater obligation to analyze why terrorist attacks occur.\textsuperscript{166} Because of the amorphous nature of terrorist combatants, as opposed to a war with a specific country, the media has a greater duty to educate the public about the causes and surrounding issues of both recent and future conflicts.\textsuperscript{167} The diversity of opinions provided in news stories affects the depth of coverage.

2. Lack of Diversity

Embedding and technology affect the breadth of coverage; lack of diversity results from the editing process. The goal of a wartime administration is to rally support for military actions; some would argue the Iraq war coverage realized this goal.\textsuperscript{168} Studies by organizations, like the Project on Excellence in Journalism, found that half the stories from embedded journalists showed combat action, but not a single story depicted weapons hitting people.\textsuperscript{169} Fur-

\textsuperscript{165} See Rumble, supra note 69, at 852-53 (analyzing advertising and war coverage). During the first Gulf War, several major advertisers informed networks they did not want commercials run during war coverage. See id. at 853. Because news reporting is a business, editors and producers will naturally have advertisers in mind when making editing choices. See id. One ABC memo to advertisers indicated commercials would not be placed immediately before or after "scenes of action."’ Id.

\textsuperscript{166} See Seib, supra note 6, at 33 (noting “knee-jerk patriotism” sacrifices complex stories).

\textsuperscript{167} See id. at 8-10 (describing need for complex coverage). News coverage does not often examine the complexity of something as simple as maps. Consider, for example, that most maps only show formally recognized nations, but there are strong arguments there is a “de facto” Kurdistan. See id. at 7. Certainly a cultural identity, and arguably a state for the purposes of news coverage, twenty million Kurds are not part of most mainstream political dialogue. See id. Another topic not covered with great depth is the creation of many Middle Eastern borders by European countries, and the impact that has on ideas of sovereignty or the economic status of Middle Eastern countries. See id. at 8. Another basic question is whether coverage of the Muslim world should focus on States or the worldwide Islamic community. See id. These topics are a few examples of concepts or topics often glossed over by the press, but necessary for a varied and full discussion of terrorism and Middle Eastern politics.

\textsuperscript{168} See Schecter, supra note 11, at 19 (analyzing role of administration in war coverage); see also Tim Gopspill, Target the Media, in TELL ME LIES: PROPAGANDA AND MEDIA DISTORTION IN THE ATTACK ON IRAQ 252 (2004) (arguing military objective of embedding was to shape and control reports); Sinai, supra note 8, at 189 (discussing “forced symbiosis” that occurs between military and media resulting from armed conflict). This goal of patriotic news coverage can be more easily realized with embeds since they identify with their subjects. See Schecter, supra note 11, at 20.

\textsuperscript{169} See Schecter, supra note 11, at 20 (analyzing objectivity of Iraq news coverage). For a discussion of the importance of graphics and image in war reporting, see infra notes 210-15 and accompanying text.
ther, government and military officials dominated the guest lists on major nightly newscasts.\textsuperscript{170} The coverage was disproportionately pro-war, and the numbers show a marginalization of dissenting viewpoints.\textsuperscript{171} Specifically, sixty-three percent of all sources in stories about Iraq on major evening newscasts were current or former government employees, the majority of those sixty-three percent being U.S. officials alone.\textsuperscript{172} Additionally, only six percent of sources were skeptical about the need for war and less than one percent were associated with anti-war activism.\textsuperscript{173}

These percentages show the lack of viewpoint diversity that is necessary, according to the FCC, to maintain the public interest requirement. A comparison of U.S. coverage and non-American news media shows the lack of viewpoint diversity present in U.S. news stories.\textsuperscript{174} This indicates that the information existed, but was not reported in America.

3. Regulation

Many media watchdogs argue regulation and media ownership also influenced the intersection between reporting, investigating, and war protests. One commentator draws a comparison between media interference with the anti-war protests and the actions of the Nixon administration during Watergate and the Pentagon Papers.

\textsuperscript{170} See Schecter, \textit{supra} note 11, at 37 (stating findings from Fairness and Accuracy in Reporting study). The three-week study covered the most intense point of the war from March 20, 2003, to April 9, 2003. See id. It examined 1,617 on-camera sources in stories about Iraq on six major evening newscasts: ABC World News Tonight, CBS Evening News, NBC Nightly News, CNN's Wolf Blitzer Reports, Fox News Channel's Special Report, Fox News Channel's Special Report with Brit Hume, and PBS' NewsHour with Jim Lehrer. See id. The four largest networks are ABC, CBS, Fox, and NBC. See Prometheus Radio Project v. FCC, 373 F.3d 372, 388 (3d Cir. 2004) (indicating role of these networks in "dual network rule" because of their domination of news market). These networks are considered the "top-four" stations by the FCC. See id.

\textsuperscript{171} See Schecter, \textit{supra} note 11, at 37 (stating findings from Fairness and Accuracy in Reporting study). Conservative groups criticized alleged "liberal biases" of the US networks. See Tumber & Palmer, \textit{supra} note 7, at 5 (stating criticisms of war coverage). When anti-war protests were covered, coverage was often critical or condescending. See Seib, \textit{supra} note 6, at 79. For example, Fox referred to anti-war protestors as the "serial protestors," minimizing the impact of the demonstration as commonplace. See id. Also, CNN ran a headline in its website reading, "Antiwar Rallies Delight Iraq." See id.

\textsuperscript{172} See Schecter, \textit{supra} note 11, at 37 (stating findings from Fairness and Accuracy in Reporting study).

\textsuperscript{173} See Tumber & Palmer, \textit{supra} note 7, at 5 (quoting Fairness and Accuracy in Reporting study).

\textsuperscript{174} See id. (comparing different forms of coverage).
scandal. Viacom's denial of advertisement space to war protesters is an example of this phenomenon. Viacom is one of the top five global media groups, and it owns the largest outdoor-advertising entity in North America. MoveOn.org, a group devoted to change, wanted to put "Inspections Work--War Won't" on buses, billboards, and buildings. Viacom is the owner of significant shares of outdoor-advertisement space in Washington, Los Angeles, and Detroit. Wally Kelly, chief executive of Viacom Outdoor, in a departure from normal procedure, personally decided not to run the ads in these markets. Similarly, CNN, Fox, Comedy Central, and four New York affiliates would not air anti-war advertisements.


The Pentagon Papers were a forty-seven volume internal study, ordered by Robert McNamara, to see how the Vietnam War developed. See id. The Pentagon Papers were leaked to the networks, but the networks would not report it, perhaps because of fear of the Nixon administration. See id. The Nixon administration threatened the media twice. See id.

First was in its legal battle against the New York Times because the Times published sections of the Pentagon Papers. See N.Y. Times Co. v. United States, 403 U.S. 713 (1971). In this case, the Supreme Court held the government has a very high burden to successfully enjoin a publication and the government had not met its burden. See id. at 714. Further, in his concurring opinion, Justice Black notes how relevant the Pentagon Papers were to the national debate over Vietnam as a reason supporting the decision not to enjoin the New York Times. See id. at 717 (Black, J., concurring).

After the Nixon administration got a restraining order, the Pentagon Papers were given to the Washington Post, but it would not publish them. See Williams, supra note 175, at 196. The Post was more vulnerable to the FCC because it had broadcast holdings and was fearful of the FCC revoking its ownership of television stations. See id. Instead, the Post published articles about the Pentagon Papers but not excerpts. See id.

The second attempt to threaten the media was when Carl Bernstein and Bob Woodward investigated the Watergate scandal. See id. Some assert the more effective threat was pulling the licenses of the two Florida television stations. See id. William S. Paley, former CBS executive during Watergate, said, "[t]he Nixon administration was reminding all broadcasters that they were licensed by the government and regulated by one of its agencies, the FCC, which they thought had the power to make us 'more responsive' to the views of the man elected to the White House." Id. at 197. It may also be noted that although under pressure from the Nixon administration, the media was more willing to challenge government positions or policies than is evidenced today. See id. at 201. See generally New York Times, 403 U.S. at 713-14 (covering Pentagon Papers scandal and known as "Pentagon Papers" case).

176. See Williams, supra note 175, at 198 (recounting instances where media organizations have limited anti-war protests).

177. See id. (indicating Viacom's corporate characteristics).

178. See id. (describing Viacom's denial of advertising space to MoveOn.org).

179. See id. (detailing denial of MoveOn.org's ad campaign).

180. See id. (illustrating denial of MoveOn.org's ad campaign).
featuring celebrities by TrueMajority, another anti-war group.181 Further, CBS warned all artists before the 2003 Grammy Awards that they would be pulled off the air if they attempted to mention the war.182 In contrast with Vietnam, some writers suggest no U.S. radio station would play a major artist who recorded a protest song because of the consolidated ownership by Clear Channel and Viacom-owned Infinity.183

Another aspect of regulation that may affect news coverage is the lobbying efforts and political contributions by media groups.184 The Center for Responsive Politics shows that media companies spent eighty-two million dollars on federal lobbying and twenty-six million dollars on political contributions from 1999 to 2002.185 Media giants like AOL Time Warner and ABC parent, Disney, contributed the largest donations.186 Analysts say this evidence illustrates that contributions intensified during the months leading up to FCC proceedings.187 Some argue the media benefits from the FCC’s deregulatory stance, creating a situation where market incentives skew coverage in the government’s favor.188

181. See Williams, supra note 175, at 198 (positing that media ownership and its desire to maintain good relations with political entities censored anti-war organizations).

182. See id. (noting Sheryl Crow was only artist able to subvert CBS ban with patch on guitar strap stating “NO WAR”).

183. See id. at 199 (observing possible lack of marketability of anti-war music compared to Vietnam protest songs). Williams notes both Clear Channel and Infinity are “notoriously conservative.” See id. In March of 2003, Natalie Maines, a member of the group the Dixie Chicks, was vilified for stating at a London concert she was not proud the President of the United States is from Texas. See David Mattingly, Dixie Chicks begin tour amid controversy, CNN.com, May 1, 2003, at http://www.cnn.com/2003/SHOWBIZ/Music/05/01/dixie.chicks.tour/index.html. The group faced radio station boycotts of its music and organized rallies destroying their CDs. See id. An unnamed rock singer contacted author Tim Robbins to thank him for speaking out against the war. See Williams, supra note 175, at 199. When asked why the singer would not protest himself, he explained his fear of repercussions with Clear Channel. See id.

184. See Williams, supra note 175, at 200 (questioning effects of media contributions on coverage).

185. See id. (noting timeliness of contributions).

186. See id. (detailing contributions). AOL Time Warner contributed $15.7 million on lobbying and $6.2 million in political donations. Disney spent $16 million on lobbying and $2.8 million in contributions. See id.

187. See id. (“‘There is evidence that media conglomerates intensified their lobbying on Capitol Hill in the months leading up the vote.’”) (quoting C. Pope, Media Groups Spend Millions Lobbying the FCC, SEATTLE POST-INTELLIGENCER, June 3, 2003). 

188. See Schechter, supra note 11, at 39 (highlighting link between war coverage and FCC). Media consolidation has contributed to the number of companies controlling the media from fifty to seven in ten years. See id. For a discussion of FCC deregulation, see supra notes 109-13 and accompanying text.
4. "Real Time" Causing Real Problems

Exacerbating the problem of narrow coverage against the backdrop that broadcasters have an obligation to provide diversity and broad coverage is the technology now used to relay the news.\textsuperscript{189} As news is distributed more quickly with new technology, so is the impact it has on the viewing public.\textsuperscript{190} The ability to report breaking stories in real time intensifies the race among the networks to break news first.\textsuperscript{191} Hurried reporting decisions result in poor editing and fact-checking, and ultimately, the reporting of misinformation.\textsuperscript{192}

\textsuperscript{189} See Nightline, supra note 21 (summarizing comments of Katie Adie, BBC news correspondent, regarding effects of new technology). For a definition of "real time technology," see supra note 59.

\textsuperscript{190} See Seib, supra note 6, at 12 (noting impact of speed on public reception). Since public opinion is more immediately formed and noted, such as in opinion polls taken as coverage is delivered, policy makers feel pressure to respond more quickly to public perception of a situation. See id. The chain of immediacy has been coined the "CNN effect." See id. at 13. The influence of media coverage should not be overstated, however, as it is only one of many factors influencing policy decisions. See id.

\textsuperscript{191} See id. at 10-11 (examining speed of coverage in reporting). Because "real time" coverage is common practice, competing newsrooms monitor each other and may react immediately to preempt their competition. See id.

\textsuperscript{192} See Tumber & Palmer, supra note 7, at 22 (describing technology used by reporters). A New York Times reporter compared the 140-pound compact satellite dish he used while in Iraq with the 800-pound equipment used in Panama in 1989. See id. This makes it easier for journalists to stay mobile. See id. Broadcasters can provide their journalists with kits allowing them to capture, edit, compress, and send video with a digital camera, laptop computer, or a satellite phone. See id. One reporter indicated this blurs the line between reporter and editor, requiring "painful judgments about what to include." Id.

General Joulwan mentioned that the first time the media reports a story, it is factually incorrect. See Nightline, supra note 21 (summarizing statements of General George Joulwan and news producers). During the first week of war, Editor and Publisher published a list of fifteen stories "bungled" by the media, most dealing with the fall of cities or military successes with Iraqi resistance. See Seib, supra note 6, at 62. The list of stories misreported or poorly reported during the first week of the war were:

1. Saddam may well have been killed in the first night’s surprise attack (March 20).
2. Even if [Saddam Hussein] wasn’t killed, Iraqi command and control was "decapitated" (March 22).
3. Umm Qasr has been taken (March 22).
4. Most Iraqi soldiers will not fight for Saddam and are surrendering in droves (March 22).
5. Iraqi citizens are greeting Americans as liberators (March 22).
6. An entire division of 8,000 Iraqi soldiers surrendered en masse near Basra (March 23).
7. Several Scud missiles, banned weapons, have been launched against U.S. forces in Kuwait (March 23).
8. Saddam’s Fedayeen militia are few in number and do not pose a serious threat (March 23).
A comparison between the present-day war coverage and war coverage thirty years ago illustrates the changes in news delivery. Before, broadcasters were required to ship news reels from country to country, where they were then processed and edited. But with the immediacy of live coverage, the analysis is now done faster and judgment is often sacrificed. Newsroom editors, particularly those with twenty-four hour cable news networks, have a more complicated editorial function. Additionally, the live coverage itself gives a sense of accomplishment. When broadcasts are made from an enemy base or a capital, the substance of the information conveyed can become secondary.

While real time technology is now omnipresent at media outlets worldwide, the content of coverage still varies greatly. A comparative analysis between U.S. and international coverage shows the differences in reporting and the possible effects these differences have on the public interest and dissemination of information.

C. U.S. v. International War Coverage

The media’s role as a monitor of the government is not done as effectively without a critical eye. This is the basis of another significant criticism of the war coverage; specifically, the seeming lack of media investigation regarding “weapons of mass destruc-

9. Basra has been taken (March 23).
10. Umm Qasr has been taken (March 23).
11. A captured chemical plant likely produced chemical weapons (March 23).
12. Nassiriya has been taken (March 23).
13. Umm Qasr has been taken (March 24).
15. A convoy of 1,000 Iraqi vehicles and Republican Guards are speeding south from Baghdad to engage U.S. troops (March 25).

Schechter, supra note 11, at 107 (citing Editor & Publisher Online).

193. See Seib, supra note 6, at 10-11 (examining speed of coverage in reporting).
194. See Nightline, supra note 21 (summarizing comments of anchor Ted Koppel and ABC News President David Westin).
195. See Seib, supra note 6, at 10-11 (noting judgment is sacrificed at expense of fast news production).
196. See Nightline, supra note 21 (referencing David Westin, President of ABC News).
197. See id. (referencing Kate Adie from BBC News deeming this kind of coverage “cosmetic”).
198. See id. (interviewing various military officials and media producers/reporters about media’s role in democracy). Kate Adie from the BBC said, “[i]f there are questions to be asked about the actual intent of the war, the reason why you’ve gone to it, whether you think it is fully justified and a just war, if there are those questions, there are going to be major questions raised, I think they have to be raised by the journalists.” Id.
tion,"\(^{199}\) the "axis of evil,"\(^{200}\) and the "coalition of the willing."\(^{201}\) In retrospect, the U.S.-based media is being criticized for a lack of investigative journalism, passivity, and even appeasing the Bush administration.\(^{202}\) While the purpose of the press "[is] to serve the governed, not the governors,"\(^{203}\) this coverage resulted in an under-informed public and an entrance into a war that required closer scrutiny.\(^{204}\)

Other Western coverage differed from the United States’ coverage, particularly in the time period leading up to the war.\(^{205}\) The

\(^{199}\) See Seib, supra note 6, at 60 (indicating poor investigation of governmental inconsistencies). For example, the media would report evidence of syringes or chemical warfare protective suits as items possibly used for weapons of mass destruction. See id. More significantly, the media heavily reported evidence of Saddam Hussein’s mass graves and torture chambers; while this was good evidence for dethroning him, these were not the reasons cited by the U.S. government for entering Iraq. See id. To effectively analyze the government’s case concerning Iraqi weapons of mass destruction? Seib, supra note 6, at 156.

\(^{200}\) See Rutherford, supra note 61, at 27 (discussing initial references to Iraq war). The term “axis of evil” was supposedly coined by David Frum, a White House speechwriter. See id. It was supposed to refer to Iraq, Iran, and North Korea, countries suspected of developing weapons of mass destruction. See id.

\(^{201}\) See id. at 36 (describing debate over invasion of Iraq). The “coalition of the willing” refers to the countries supporting the U.S. military presence in Iraq. See id. More than thirty countries have contributed to the war in Iraq, but the numbers of non-American troops in the “coalition of the willing” have not been conclusive. See Coalition troops in Iraq, BBC News, July 20, 2004, at http://news.bbc.co.uk/2/hi/middle_east/3873359.stm (reporting numbers of troops in Iraq). On July 19, 2004, there were about 133,000 foreign troops in Iraq. 112,000 of those troops were American. See id.

\(^{202}\) See Seib, supra note 6, at 1 (describing media’s role in war coverage and stating news organizations should question even official versions of events in order to instigate debate necessary in democracy); see also Williams, supra note 175, at 199 (criticizing media’s Iraq coverage).


\(^{204}\) See Seib, supra note 6, at 1 (describing importance of informed public). The dynamic between the public and politicians becomes imbalanced when the public no longer has facts on which to base opinions. See id.

\(^{205}\) See Schechter, supra note 11, at 23 (highlighting differences in war coverage and ultimately perceptions of war in Iraq). A professor from Spain, Herman Gyr, noted, “[i]t is often hard to believe they are covering the same events and the gap between American and global perceptions of this war will certainly have significant repercussions for some time to come.” Id. Both Paul Krugman from the New
analysis of pre-war coverage is significant in assessing whether people believed in options other than invasion.\textsuperscript{206} While the majority of American outlets portrayed the invasion of Iraq as a necessity, other global outlets explored alternative diplomatic and economic options.\textsuperscript{207} One scholar noted, “[t]he only way to reduce harm and duration of war [in Iraq] is apply full force.” \textit{Id.} at 80. Not one network analyzed the speech’s claims. \textit{See id.} At the same time, the United Nations Security Council and General Assembly were discussing more peaceful options to solve the problem in Iraq. \textit{See id.}

Another assertion made in the President’s speech was that “[w]ar criminals will be punished,” but no networks mentioned the United States’ refusal to join the International Criminal Court. \textit{Id.} Finally, the President claimed the United States’ sovereign authority to use force without reference to Kofi Annan’s challenge of this authority. \textit{See id.}

\textsuperscript{208} \textit{Schechter, supra} note 11, at 23 (quoting Herman Gyr). A study by the German Media Tenor compared a sampling of U.S. news, the BBC, and German television. \textit{See Tumber \& Palmer, supra} note 7, at 97 (detailing study). The balance between positive and negative commentary “favored” the United States on ABC news, was “anti-coalition” in Germany, and “even-handed” on the BBC. \textit{See id.} Over time, the reporting of information became negative in Germany and more positive in the United States. \textit{See id.}

\textsuperscript{209} \textit{Seib, supra} note 6, at 116-19 (recounting world-wide news stories critical of U.S. action). While war coverage should be considered when U.S. foreign policy is examined, one must also consider foreign news coverage that suffers from the same inaccurate and narrow coverage. \textit{See generally Forcing the U.S. to re-examine itself, INDEP. BUS. WRLY., Sept. 1, 2004 [hereinafter Re-examine]} (analyzing foreign sentiment and quality of coverage). The same criticisms of U.S. media that it does not provide complex analysis or enough background can be said of anti-American sentiment or criticisms of U.S. policies that offer no alternatives or informed coverage. \textit{See id.}
The use of images powerfully influences public opinion.\textsuperscript{210} Al-Jazeera coverage showed more fatalities, updated death tolls, bloodshed,\textsuperscript{211} and anti-war protests, while American news channels highlighted press conferences and interviews with military families awaiting soldiers abroad.\textsuperscript{212} When filmmaker Jehane Noujaim\textsuperscript{213} needed footage of the iconic Jessica Lynch rescue, she went to Al-Jazeera’s video library only to find nothing.\textsuperscript{214} The absence of an initially momentous American news story such as the Jessica Lynch rescue on Al-Jazeera exemplifies the divergence of coverage leading to two very different narratives.

\textsuperscript{210} See Seib, supra note 6, at 38-39 (analyzing use of graphic images in coverage). Vivid depiction of war may give rise to opposition. See id. People worldwide interpreted the war differently and this was in part because of use of image in news coverage. See Rutherford, supra note 61, at 144 (describing reactions to endless war coverage).


\textsuperscript{211} See Seib, supra note 6, at 108 (detailing Al-Jazeera’s graphic coverage). Al-Jazeera has shown graphics of “‘blown-out brains, the blood-splattered pavements, the screaming infants, and the corpses . . . .’” Id. at 107. The editor-in-chief, Ibrahim Hilal, defends this coverage as reflective of the reality of war. See id. at 108. Reporting civilian casualties has also been controversial and almost ignored by U.S. media. See id. at 65. A Pew Research Center poll taken from April 2-7, indicated twenty-eight percent of respondents said Iraqi civilian casualties were receiving too little attention. See id. at 67. The actual numbers of the Iraqi civilian deaths are not known, but by October 2003, between 7,377 and 9,180 deaths are estimated. See Tumber & Palmer, supra note 7, at 134 (recounting estimated death count and trouble determining actual numbers).

\textsuperscript{212} See Schechter, supra note 11, at 23 (explaining differences between Al-Jazeera’s coverage of Iraq war and American coverage). From January 1, 2003, to March 12, 2003, neither ABC, NBC, nor CBS ran a story discussing the war’s impact on humanitarian concerns in Iraq. See id. at 82.

\textsuperscript{213} See Philip Kennicott, In ‘Control Room,’ The Splitting Image Of War Coverage, Wash. Post, June 16, 2004, at C01 (indicating Noujaim is director of “Control Room,” documentary about Al-Jazeera and coverage of Iraq war and what it implicates about relationships between Americans and Arabs).

\textsuperscript{214} See id. (indicating difference in coverage and emphasis showing “gulf in understanding that exists between Americans and the Arab world and the way events, big and small, connected to the war in Iraq have taken on markedly different weight, meanings and emotional import”). While editing her documentary, Noujaim noted the difference in footage of the dead and wounded that she wanted to include in the film and sanitized footage being shown in the United States. See id. In comparison, the graphic, realistic footage seemed “extremely violent,” which prompted her to ask, “is it important to show these images?” See id. One of the featured people in the film, CentCom press officer Josh Rushing, commented he did not think Americans were “getting good information” about events in the Middle East. See id. The Marine Corps says he is no longer working for CentCom and will not be permitted to make further comments. See id.
The differences between U.S. coverage and Arab and Muslim coverage on Al-Jazeera may have far reaching consequences other than a difference in editing.215 Just as the U.S. media influences public opinion, Al-Jazeera is having an effect on its thirty-five million Arab viewers.216 The United States must recognize the substantial impact of the media on the public not only at home, but also abroad, to achieve effective public diplomacy.217 Examples of two competing narratives of coverage within a U.S.-based network are aptly illustrated by the CNN in the United States and the “International” version of CNN.218 CNN America offered more patriotic coverage, while CNN International had an arguably more nuanced picture.219 The CNN coverage split is an example of news organizations “[giving] Americans the war they thought Americans wanted to see” instead of objective, more informative coverage.220

The fact that U.S. coverage differs from other outlets worldwide has significance besides showing information, opinions, and portrayals withheld from the American public. The distinction between U.S. media coverage and coverage abroad is important when one considers things like the perceptions about U.S. foreign policy,221 and reasons for entering the war in Iraq that vary between the United States and other countries because of their differing

215. See SCHECHTER, supra note 11, at 23 (comparing Al-Jazeera coverage with U.S. coverage). Al-Jazeera was founded in 1996 by the Emir of Qatar. See No Agenda, supra note 210 (recounting Larry King interview with Al-Jazeera correspondent about Arab media’s war coverage). Al-Jazeera staffs 350 journalists, with foreign correspondents in thirty-one countries, and more than thirty-five million viewers. See SEIB, supra note 6, at 15. Fox News is the most-watched cable network with 3.3 million viewers daily. NBC is the leading broadcaster with 11.3 million viewers daily. See id. at 54.

216. See SEIB, supra note 6, at 16 (noting Al-Jazeera’s impact).

217. See id. (describing impact of globalized news). Recognizing the importance of the media’s influence, France has moved to establish an international news channel to compete with CNN and the BBC. See id. at 105-06. French president Jacques Chirac emphasized reaching out to the Muslim world and conveying its opposition to the war in Iraq. See id. France hoped to use this to gain long term influence. See id. at 106.

218. See SCHECHTER, supra note 11, at 23 (mentioning structure of CNN coverage abroad and in United States).

219. See id. at 23-24 (describing planning of two CNN coverage programs because of “self-congratulatory” approach of domestic coverage). But see TUMBER & PALMER, supra note 7, at 57 (describing report from Project for Excellence in Journalism stating that embedding is wonderful too although it can be used poorly).

220. See SCHECHTER, supra note 11, at 23-24 (noting creation of CNN pandering to public opinion in United States and abroad).

221. See Ré-examine, supra note 209 (discussing how war coverage and international opinion causes U.S. self-reflection). While war coverage should be considered when U.S. foreign policy is examined, one must also consider foreign news coverage that suffers from the same inaccurate and narrow coverage. See id.
news coverage. The distinction is also important when considering public opinion at home and abroad, as well as future foreign policy.

Another problem with war coverage is the excessive self-censorship that occurs. While censorship by the government has commonly been discussed, self-censorship is not as visible. When considering market incentives, ratings, political pressures, or ethical considerations, journalists may censor their own work. As seen with rock groups who protested and became labeled as unpatriotic, the media is pressured both by public opinion and/or military officials and the government to present the news in the light most favorable to the United States during war. President Bush has stated numerous times, "[e]ither you are with us or you are with the terrorists." This lends itself to a polarized mentality and frames news stories in that "with us, or against us" view. Polarized news coverage results in skewed, narrow coverage that attempts to cater to a patriotic audience. This sacrifices

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222. See Seib, supra note 6, at xvi (stressing importance of public diplomacy post-9/11). Public diplomacy is how other countries view the United States and how the United States informs and engages foreign publics. See id. at 126. This has taken a more important role after the September eleventh attacks. See id. at xvi.

223. See id. at xv (explaining how Al-Jazeera can affect global public opinion). The domination exercised by Western news stations is affected by the advent of Al-Jazeera. See id. The impact of Al-Jazeera’s coverage is an important consideration when gauging global public opinions. See id.

224. See generally Mohl, supra note 30, at 3 (addressing self-censorship in its everyday and problematic contexts).

225. For a discussion on the Dixie Chicks and concerns about public perceptions of patriotism, see supra note 183 and accompanying text.

226. See Seib, supra note 6, at 32 (discussing role of patriotism in reporters’ decisions in covering news).

227. See id. at xv, 32 (positing patriotism influences war coverage). Another PEJ study taken a few days after September eleventh showed sixty-nine percent of Americans, up from forty-three percent months earlier, believed that journalists “stand up for America.” Id. ABC news survey research indicated that fifty-six percent of people polled believed the news should support the government and thirty-six percent believed it should question it. See id. at 30. These polls indicate a public which might not be receptive to critical news, making a journalist’s job that much harder.

228. See Nightline, supra note 21 (quoting President Bush).

229. See Johnson, supra note 1, at E4 (commenting upon criticisms of media being too liberal or too conservative).

230. See Seib, supra note 6, at 66 (reporting poll percentages of audience receptiveness to critical news coverage). During the first days of war in Iraq from March 20-22, eighty percent of people polled by Pew Research Center rated the news as excellent or good. See id. Twenty-three percent of people said the coverage was too critical of how the United States was handling the war, and nine percent thought the coverage was not critical enough. See id. During April 2-7, thirty-nine percent thought the war was receiving too much coverage at the expense of domestic issues. See id. at 67. Forty percent said anti-war sentiment was receiving
journalistic integrity and the media’s role as conveyors of information.231

D. Impact of Problematic News Coverage

The 1949 FCC Report states the basic purpose of mass communication in a democracy is to develop "an informed public opinion through the public dissemination of news and ideas concerning the vital public issues of the day."232 An analysis of the Iraq war coverage begs the question: does it pass a threshold test of informing the public?

The media and news reports are equally socially important because of their ability to shape public opinion.233 The same emphasis the Supreme Court placed on education in Meyer and Pierce can be applied to the media in modern times because it has become an educational setting.234 The Court in Near makes it clear that the media is a conduit of information.235 The newspaper enjoined in Near was providing the public with news and more importantly, critiquing the government, a purpose the Court supports as valid.236 Reporting varying viewpoints results in greater dissemination of in-

too much coverage, while sixty-nine percent preferred neutral coverage. See id. Twenty-three percent wanted pro-American reporting. See id.

231. See id. at xx, 32 (examining effect of patriotism on news coverage). The "intellectual diversity" that positively influences a democracy can be "squeezed out" with narrow coverage that can stem from polarized, patriotic coverage. Id. at 32. Kate Adie, chief news correspondent of the BBC news, commented that U.S. media is much more concerned with patriotism than its British counterparts. See Nightline, supra note 21. She said this is problematic because a tension arises between a reporter doing their job properly by asking questions, sometimes being critical, about military operations, and being completely patriotic. See id. She thinks both would not or could not be done. See id. (describing U.S. focus on patriotism and possible problems in journalism).


233. See Nightline, supra note 21 (acknowledging media’s importance in war coverage and public opinion). U.S. Defense Secretary Donald Rumsfeld said, "it strikes me that how the press handles this new conflict [in Iraq] will also contribute to the success of it." Id. Rumsfeld’s comment implicates two things: 1) that the media has an important role in public perception of the war, and thus, its opinion of it; and 2) because of this, the government has a considerable stake in news coverage.


235. For a discussion of the facts and analysis of Near v. Minnesota, see supra notes 80-87 and accompanying text.

236. For a discussion of the facts and analysis of Near v. Minnesota, see supra notes 80-87 and accompanying text.
formation, as reflected in the Supreme Court decisions in Martin and Near and FCC standards.²³⁷

Enriching public discourse through dissemination of information is in the public interest and a role necessarily assumed by the media.²³⁸ The fact that the media today is comprised of much more than newspapers does not excuse its recent unsatisfactory performance in critically examining the government’s actions; a role that the courts in Near, Martin, Lamont, and Stanley emphasized.

One scholar describes the media’s important role stating, “[g]iven its dominance in terms of audience, broadcast media has become a critical news source that overwhelmingly influences public debate. Moreover, the owners of media sources and their agents control this debate through their discretionary choice of information that is disseminated.”²³⁹ The importance of news coverage places an obligation on broadcasters to use careful judgment in what they show.²⁴⁰

It seems skewed coverage, narrow stories, misinformation, and undiversified opinions will not satisfy the informational role the media must assume. Further, the status of this coverage will leave the American public, particularly those who rely solely on American news services, without a true comprehension of current events or an understanding that other countries may very literally be seeing a different picture.²⁴¹ Considering the media’s role in a democracy and in shaping public opinion, decent coverage becomes essential to the public interest, particularly amidst the changing nature of

²³⁷. For a discussion of the decisions in Martin v. City of Struthers and Near, see supra notes 80-92 and accompanying text.

²³⁸. See Nightline, supra note 21. ABC News President David Westin said, “[o]ur role as journalists in this constitutional democracy is to give people the information they need to know in deciding whether we go to war and how we execute a war . . . Because, ultimately, it’s up to the people to decide what to do.” Id.


²⁴⁰. See Seib, supra note 6, at 32 (describing journalists as part of “machinery of war”). The famous image of the toppling of Saddam’s statue without further explanation would lead a viewer to think throngs of Iraqis were uprising in Baghdad. See Jukes, supra note 2, at xi (noting alternative view of Saddam statue event). From a different camera angle, one could see very few Iraqis and the toppling done with the help of an American military vehicle. See id.

²⁴¹. See No Agenda, supra note 210 (recounting Larry King interview with Al-Jazeera correspondent about Arab media’s war coverage). Gen. Hugh Shelton, former chairman of the Joint Chiefs of Staff, remarked Al-Jazeera’s coverage may be deemed distasteful by some American standards but, “[h]e think[s] it helps sometimes to listen to the way the news is being reported by others around the world, and that gives you a perspective of how maybe the other side, maybe the Iraqis are viewing the actions of the United States.” Id.
war. 242 Similar to the door-to-door leaflet distributors in Martin, the media is a conduit of information designed to further free discussion. 243 This purpose and duty of the media is compromised when the dynamic of news coverage does not allow itself to be objective or provide complete coverage. The Martin court emphasized the right to distribute information, "to every citizen wherever he desires to receive it" as "clearly vital to the preservation of a free society." 244

Additionally, in the Communications Act, Congress and the judiciary's emphasis on the public interest is clear. The Communications Act, the Telecom Act, and the biennial reports all have one underlying purpose: the public's interest in remaining informed. The FCC's actions have been scrutinized and criticized as a reason why media coverage is in its current state. While there are many components to the equation of why the public interest is being violated, the emphasis should not be on finger pointing, but instead on raising consciousness.

While the right to distribute information is often contested during war, unlike the Afghanistan war coverage, the Iraq war coverage was not riddled with censorship rules from the Pentagon. 245 Instead, the media in Iraq self-censored by reporting slanted and narrow coverage, limited opinions, and even misinformation. When the media self-censors during war for reasons other than justified concerns of national security, such as political pressure, market incentives, or pandering to public opinion for ratings, it violates the public right to receive information and the public interest requirement.

IV. Conclusion

The coverage of war is a process with a prelude and an aftermath. The significance of international coverage did not end with Bush's symbolic proclamation of "mission accomplished." 246

242. For a discussion of the difference between the war on terror and other wars, see supra notes 61, 161-67 and accompanying text.
243. For a discussion of the Supreme Court's analysis in Martin v. City of Struthers, see supra notes 88-92 and accompanying text.
245. For a discussion of censorship during the Afghanistan War and legal challenges to that censorship, see supra notes 61-69 and accompanying text.
246. See Dana Bash, White House pressed on 'mission accomplished' sign, CNN.com, at http://www.cnn.com/2003/ALLPOLITICS/10/28/mission.accomplished/ (Oct. 29, 2003) (describing President Bush's address aboard USS Abraham Lincoln on May 1, 2003). President Bush made a speech with a sign behind him emblazoned with "MISSION ACCOMPLISHED." See id. The speech and events surrounding it represented the "symbolic end" to the war in Iraq. Id. This public pronouncement was criticized as demonstrative of the administration's "unclear
prehensive coverage has been important as long as the media informed people’s view of the world. The public is not only concerned with opinionated news, but also news that gives the public enough objective, complete, and accurate information to become informed about complicated and important issues. Only this level of performance will satisfy the public’s right to receive information.

While the FCC public interest requirement only applies to broadcasters, its implementation clearly categorizes the media as a forum requiring scrutiny because of its public importance. Accepting the Iraq war coverage as commonplace will only further evaporate the public interest standard upon which media should base their reporting.247 The climate fostering the disparate portrayal of opinions and sound bites make the dearth of substantive news more apparent. “Media literacy”248 is no longer a novel concept and it is now the public that should scrutinize with a critical eye.

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sense of how dangerous the postwar conflict in Iraq would be.” Id. The Bush administration claimed the banner was the Navy’s idea. See id.

247. See Rumble, supra note 69, at 855 (“As citizens of this country, we must decide what information we require in order to ensure that we maintain our vital roles as governors in American self-government.”). Rumble suggests amending the Communications Act of 1934 and generally revitalizing FCC requirements. See id.

248. See Definition of Media literacy, at http://www.wordiq.com/definition/Media_literacy (last visited Mar. 26, 2005) (defining media literacy and theorists behind it). Media literacy is defined as “the skill of understanding the nature of communications, particularly in regard to telecommunications and mass media. See id. The skill entails knowledge of the structural features of the media, and how these might tend to influence the content of the media.” Id. Some of the proponents of media literacy have been Marshall McLuhan, Noam Chomsky, and Jean Baudrillard. See id.