

"Freedom of the Press" How Much is Too Much?

"Either you are
with us, or you
are with the
terrorists."

"The Obama administration
has already charged more
people (six) under the
Espionage Act for alleged
mishandling of classified
information than all past
presidencies combined."

-Salon.com



You Make The Call

Can the Government
Restrain You
Before You Publish?

You Make The Call



Could Courts Stop Henry Ford's Newspaper
From Blaming Farmers' Problems on "The Jews"?

You Make The Call



Could You Have Broadcast a Report
About the Tap on Bin Laden's Satellite Phone?


You Make The Call

MUST READS:
Five Revelations from Snowden's Newest Leak
 New report reveals how the NSA has been able to crack online encryption. "This is the golden age of spying," says one former analyst.
 By Denver Hicks (@denverhicks) · Sept. 05, 2013 · 15 Comments



Can You Publish Secret Documents?

You Make The Call



Can The Prosecutor Block Publication Of a Murder Confession?

You Make The Call



Can The Hospital Stop You From Publishing the Children's Names?

You Make The Call



Can The University Force A Grad Student to Trash Her Trashy Magazine?



Last week's Quick Quiz results

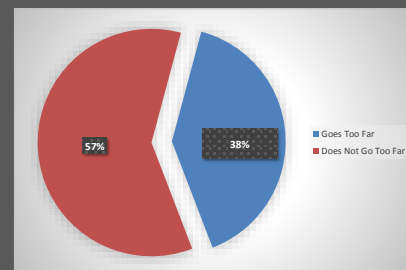
1. "Four hostile newspapers are more to be feared than a thousand bayonets," said Napoleon Bonaparte, military genius and Emperor of France.
2. On September 29, 1690, British Colonial authorities in Boston shut down the first multi-page newspaper in the Americas, which was called "Publick Occurrences Both Forreign and Domestick."

Student Questions and Comments:

After this lecture, students will be able to:

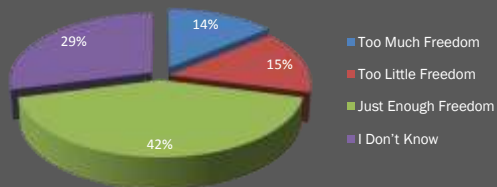
1. Identify the five freedoms in the First Amendment, and define the Fourth Estate.
2. Summarize major Supreme Court rulings on press freedom.
3. Apply the law's limits on press freedom to specific cases.
4. Explain remedies available to someone who feels wronged by a publisher or broadcaster.
5. Describe specific situations in which freedom of the press conflicts with other constitutional rights.

"Does the First Amendment go too far in protecting rights?"



Source: The First Amendment Center, "State of the First Amendment, 2014"

"In your opinion, does the U.S. news media have too much freedom or too little?"



Source: "Reality Check" 251 students in Fall 2014 News Literacy

Your Congressman often says, "Too much"

Rep. Peter King_Prosecute Glenn Greenwald.mp4

What is freedom of the press?



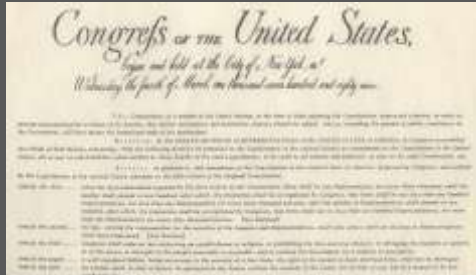
Enlightenment philosophy in America

"Printers are educated in the belief, that when men differ in opinion, both sides ought equally to have the advantage of being heard by the public; and when truth and error have fair play, the former is always an overmatch for the latter."

-Benjamin Franklin
18th Century

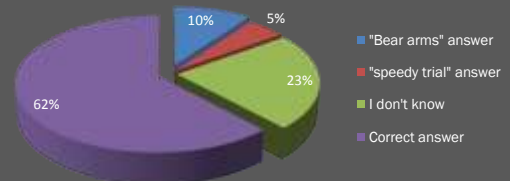


The Bill of Rights



Ratified in 1791

"Which of these is the correct language of the First Amendment?"



Source: "Reality Check" 251 students in Fall 2014 News Literacy

The First Amendment

"Congress shall make no law

**respecting an establishment of religion,
or prohibiting the free exercise thereof;
or abridging the freedom of
speech, or of the press,
or the right of the people to peaceably
assemble,
and to petition the Government for
a redress of grievances."**

(Mnemonic device: Are we free? "P'RAPS")

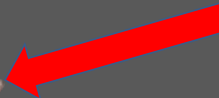
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("P'RAPS" is easier than "RSPAP")

Literally, Freedom of The Press



Not "The Press Corps"



James Madison, radical



"Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press."

"Think Twice"

A Silent Minute to Absorb the Material

John Adams, Not-so-radical



Even Revolutionaries Love to Censor
The Alien and Sedition Acts of 1798

Supreme Court Rulings Define “Freedom of the Press”

Near v. Minnesota
283 U.S. 697 (1931)

“No Prior Restraint” concept is established

New York Times Co. v. United States
403 U.S. 713 (1971)

National security exception clarified

Miller v. California
413 U.S. 15 (1973)

Obscenity exception clarified

The Supreme Court’s ‘First Great Press Case’



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

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

A Divided Court



Justice Pierce Butler:

“Permitting a scandal sheet such as Near’s to destroy the reputation, peace of mind, and even personal safety of other citizens, society is not only encouraging malice and revenge but could inflict distressing punishments upon the weak, timid, and innocent.” (dissent)

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

A Divided Court



Justice Louis

Brandeis: “Every man has a right to publish what he wishes, and if it be defamatory or libelous suffer the consequences later.”

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

Tie-Breaker: Chief Justice Charles Evans Hughes



"The fact that the liberty of the press may be abused . . . by purveyors of scandal does not make any less necessary the immunity of the press from prior restraint in dealing with official misconduct."

No Prior Restraint



Government (including the courts) cannot stop something from being published or broadcast

(except in two rare instances)

But, the Free Press can face consequences...
later.

No Prior Restraint



"Freedom of the Press is the Right of the Press to be Wrong"

– First Amendment Attorney Alan Dershowitz

What if News Reports are False and Defamatory?

"Slander is spoken. In print, it's libel."



Those Who Are Slandered or Libeled Sue News Outlets In Civil Court

Can Libel Suits Stifle The Free Press?

• Fair Comment

• Privilege



• Truth

The Woody Allen Allegations: Not So Fast

A word about this Senate hearing. To even say the Senate is "pious" is to imply that Mia was being sexual with her ex-husband/abuser after their divorce. This sort of despite the fact that Woody and Mia had the only the, foray, consensual relationship and Woody came in all over in 1982, since Mia was apparently still in love with him, 10 years earlier.

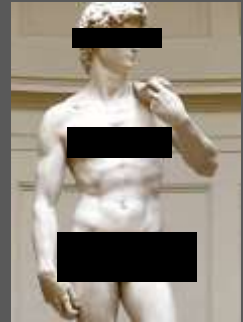
As to the overall reliability or integrity of Woody Allen. I do know that the publication was used for Allen in 2000 by director Roman Polanski when, in 1977, Allen posed as a successful entrepreneur with a fortune of \$100 million in Los Angeles that year. Allen's support of Polanski is so compelling that when he was the Oscar for best director for his 1982 masterpiece, The Piano, Mia never even suggested that the Motion Picture Academy should consider for all those countries as in following him.

Two Exceptions to No Prior Restraint

XXXception #1 Obscenity

Miller v. California 413 U.S. 15 (1973)

- "community standards" of prurience
- "patently offensive" depiction of sexual conduct
- "lacks serious literary, artistic, political or scientific value"



Two Exceptions to No Prior Restraint

Exception #2 National Security



The Running Battle for Control of Secrets

Chicago Tribune Reporter Targeted After World War II Scoop on Japanese Navy Codes

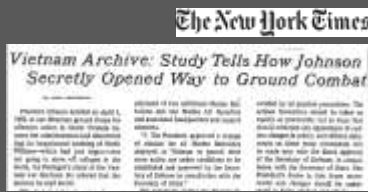
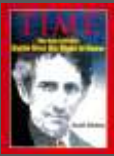


Exception #2 National Security

New York Times Co. v. United States

403 U.S. 713 (1971)

The "Pentagon Papers" Case Newspapers Publish Top Secret Files



New York Times Co. v. United States

403 U.S. 713 (1971)



Justice Potter Stewart:

"In absence of governmental checks and balances, the only effective restraint upon executive policy and power in [national defense & international affairs] may lie in an enlightened citizenry—in an informed and critical public opinion which alone can here protect the values of democratic government."

New York Times Co. v. United States

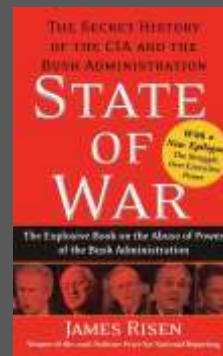
403 U.S. 713 (1971)



Justice Hugo Black:

"In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do."

Leaker Jailed Reporter Hailed



“Think Twice”

A Silent Minute to Absorb the Material

The First Amendment Empowers YOU, Dog!



Watchdogs keep government In check

Citizens Watchdogs With Free Press Rights (and Tools)



China's “Netizen” Watchdogs



The New York Times

Iconic Watchdogs

(One is Now a Stony Brook Professor)



Latter-Day Watchdogs



Rights vs. Responsible Self-Censorship



The Bay of Pigs Invasion

Rights vs. Responsible Self-Censorship

When reporters keep silent instead of scoops

by Tom Spillier | on June 2nd, 2013 | 0 comments

Foreign Policy Association



Echoes of The Pentagon Papers Case 2010: Bradley (Chelsea) Manning and WikiLeaks



Edward Snowden & The Guardian Newspaper Test the National Security Exception



Politicians fight back:

1. Jailing Reporters Who Protect Sources

Judith Miller in Jail: Principle vs. Politics

2. Tapping Reporters' Phones

Obama DOJ ordered phone tap on AP reporters

3. Refusing to Talk to Journalists Who Ask Tough Questions

Associated Press: Obama 'Limiting Press Access In Ways That Past Administrations Wouldn't Have Dared'

4. Physical Intimidation (aka "Old-School" Censorship)

'I will break you in half': Congressman threatens to throw reporter off balcony

Censorship the Old School Way

New York Congressman Threaten.video

Should everything be public?



The US Government decided to classify documents 58,794 times in 2013.

Is The Right to Know The Right to Report?



Reporters under arrest at 2008 Republican National Convention for filming protests

What about the rest of the Constitution? First Amendment Collisions:

- Privacy
- Fair Trial

Privacy on a Battlefield?



A controversial decision to publish a photo of war

Privacy on Public Streets?

Hawaii follows in California's footsteps in proposing new anti-paparazzi law

Rocker Steven Tyler leads charge

NPPA Says New California Anti-Paparazzi Bill 'Threatens First Amendment Rights'



Privacy online?



Celebrity Nude Photo Hack Exposes Flaw In How We Think About Privacy and the Cloud

Lena Dunham @lenerdunham
Seriously, do not forget that the person who stole these pictures and leaked them is not a hacker: they're a sex offender.
1:11 PM - 3 Apr 2015

A Free Press vs. A Fair Trial

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . ."

The Sixth Amendment

In the Midst of Outrage Can an Impartial Jury be Selected?



A Free Press vs. A Fair Trial

Judges have other remedies :

- Change of venue
- Gag orders
- Voir Dire
- Sequestering the Jury

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Can the government stop this?

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Could Courts Stop Henry Ford's Newspaper From Blaming Farmers' Problems on "The Jews"?

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Can The Prosecutor Block Publication Of a Murder Confession?

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By Daniel Nicks @Criminology - Sept. 16, 2013 15 Comments



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You Make The Call



Can The Hospital Stop You From Publishing the Children's Names?

You Make The Call



Can The University Force A Grad Student to Trash Her Trashy Magazine?

The New York Times on Trial Traitor or Watchdog?



Top-Secret Actions Revealed



hus endeth the Lesson...