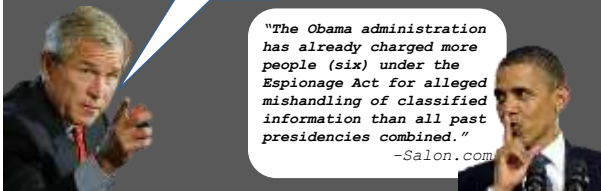


# "Freedom of the Press" How Much is Too Much?

"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?

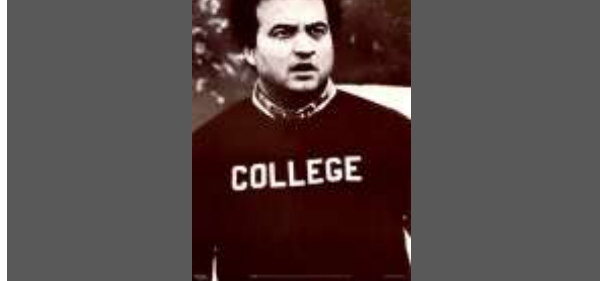
# You Make The Call

**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 Daniel Hicks (@danrhicks) · Sept 05, 2013 · 15 Comments



Can You Publish Secret Documents?

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



## Housekeeping, Announcements & Notes

### 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 Domestic."

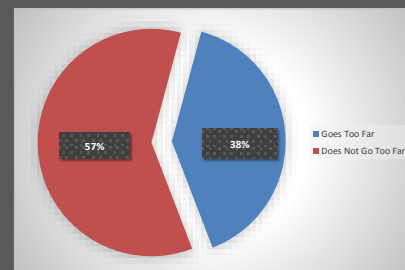
Student Questions and Comments:

### 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 in order to analyze a series of hypothetical and real-world situations.
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.

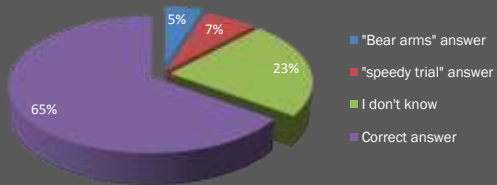
These skills relate to course outcome 4

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



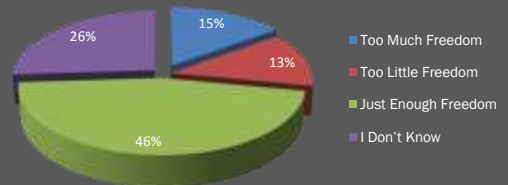
Source: The First Amendment Center, "State of the First Amendment, 2014"

### “Which of these is the correct language of the First Amendment?”



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

### “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

Like the public, this presidential contender often says, “Too much freedom”

Rep. Peter King\_Prosecute Glenn Greenwald.mp4

### What is freedom of the press?



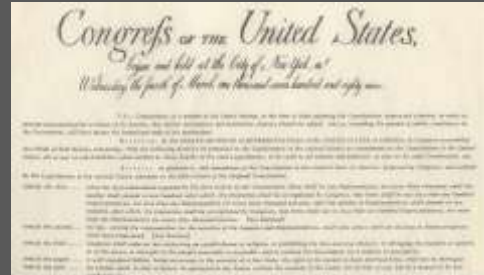
## Enlightenment philosophy in America

*"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  
18<sup>th</sup> Century



## The Bill of Rights



Ratified in 1791

## 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")**

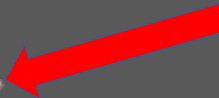
## The First Amendment

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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 precedents Define “Freedom of the Press”

Near v. Minnesota, 1931

“No Prior Restraint” concept is established

New York Times Co. v. United States, 1971

National security exception clarified  
in “Pentagon Papers” case

Miller v. California, 1973

Obscenity exception clarified

## The Supreme Court’s ‘First Great Press Case’



1931: Near v. Minnesota

## 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)

## 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.”

## Chief Justice Charles Evans Hughes Breaks the Tie



“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





## Two Exceptions to No Prior Restraint

### XXXception #1 Obscenity

#### Miller v. California, 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 "Pentagon Papers" Case

### New York Times Co. vs. The United States

#### Newspapers Publish Top Secret Government Files



*New York Times Co. v. United States (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.”*

**“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**



### 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 Spartz | on Aug 26, 2012 | 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



**Revealed: The NSA's Secret Campaign to Crack, Undermine Internet Security**

By **Julian Assange**

**U.S.**

**Secret Documents Reveal N.S.A. Campaign Against Encryption**

Documented claim that the U.S.A. has been waging a war against every person using a battery of methods that include working with industry to embed encryption weaknesses, making design changes to cryptographic software, and pushing international encryption standards to become it even weaker.

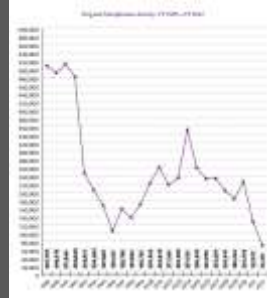
## Politicians fight back:

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 73,000 times in 2012.

## 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?

TIME | WORLD WAR ZER

OPINION TECHNOLOGY

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

by **Leno Dunham** @lenodunham

Seriously, do not forget that the person who stole these pictures and leaked them is not a hacker: they're a sex offender.

4:10 AM - 1 Sep 2014

## 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

**You Make  
The Call**

Can the government stop this?

**You Make  
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By Denver Nicksa (@denvernicksa) · Sept. 05, 2013 · 15 Comments



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**STONY BROOK UNBOUND**

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

**The Quick Quiz**

1. Name the five (5) freedoms preserved by the First Amendment.
2. Name the two exceptions to the No Prior Restraint rule. In other words, courts may stop you before you publish or broadcast when your
3. Write a question we can answer to clarify today's lesson...or a comment that will help us improve our work.

Write your name and Recitation Instructor name on your Quiz


Hand your QUICK QUIZ to your recitation instructor as you leave, and practice saying her or his name. (i.e. "Hi, Professor Schmedlapp")

**The New York Times on Trial  
Traitor or Watchdog?**



**The New York Times**

Top-Secret Actions Revealed



hus endeth the Lesson...

## **Pivot Point**

**Every other row  
Pivots to the row behind  
To discuss in groups of four**

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## **“Think Twice”**

**A Silent Minute to Absorb the Material**

## **The Role of the Press in National Security**



**Secret Documents Made Public**

**The Role of the Press in National Security**

**Assange60.wmv**

Secret Documents Made Public