

In This Hostile World, Can the U.S. Government Censor the Press?

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

"I fear four hostile newspapers..."

saion.com

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

The U.S. News Media

Too Much Freedom? Or Not Enough?

When asked, 'Overall, do you think the press in America has too much freedom to do what it wants, too little freedom to do what it wants, or is the amount of freedom the press has about right?'

Response	Percentage
Too Much Freedom	45%
About Right	35%
Too Little Freedom	6%
Don't Know	7%

Source: The First Amendment Center, "State of the First Amendment, 2010"

You and your peers in this course...

Response	Percentage
Too Much Freedom	47%
About Right	21%
Too Little Freedom	9%
Don't Know	23%

Source: 999 students in Fall 2012 News Literacy

Part Deux!

You Make the Call

Can the government stop you from publishing the following stories?

The Right to Publish?

S E C R E T CAIRO 003348

SIPDIS

SIPDIS

E.O. 12958: DECL: 11/12/2027

TAGS: FREL PTER RJUS BCPS IZ BG

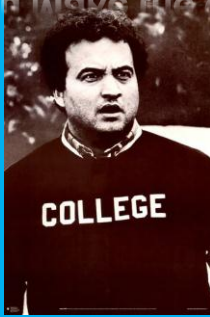
SUBJECT: FBI DEPUTY DIRECTOR MEETS WITH HEAD OF STATE SECURITY

REF: A. CAIRO 1638
B. CAIRO 3247

Classified By: Ambassador Francis J. Ricciardone, for reasons 1.4 (b) and (d).

Can You Publish Information From This Document?

You Make the Call



Can You Publish a Murder Confession?

You Make the Call



Can You Name the Victims?

You Make the Call



Can Grad Students Publish a Porn Magazine?



Housekeeping, Announcements & Notes

I fear four hostile newspapers more than a thousand bayonets



In This Hostile World, Can the U.S. Government Censor the Press?

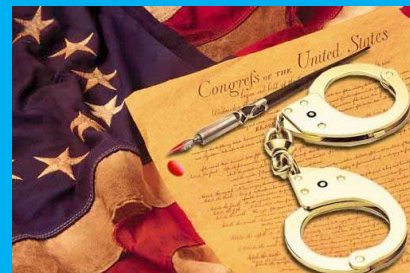
salon.com

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

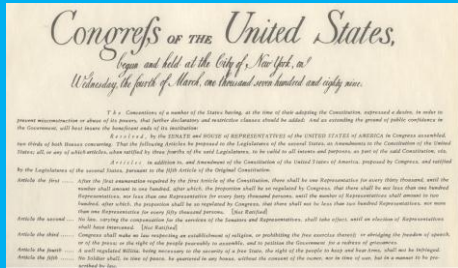


"Either you are with us, or you are with the terrorists."

What Is Freedom of the Press?



The Bill of Rights

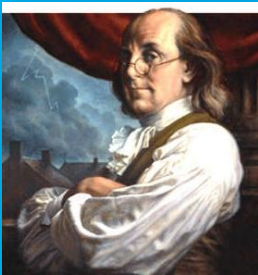


Ratified in 1791

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: “P’RAPS”)

Ben Franklin’s Apology for Printers



“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.”

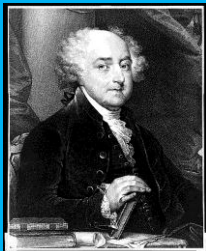
James Madison



English Common Law allowed suppression of the press, but in America, “the people, not the government possess the absolute sovereignty.”

“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.”

The Alien and Sedition Acts



President John Adams Signs Them Into Law in 1798

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.”

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 cannot stop something from being published or broadcast or posted on the Internet, except in rare instances.

But, the publisher can face consequences later.

Remedy When News Reports are False, Defamatory?



Prof. Jameson’s distinction:
“Slander is spoken. In print, it’s libel.”

There Are Two Exceptions to the No Prior Restraint Rule

National Security

SECRET MONTERREY 000472
 MEXICO
 SENSITIVE
 MEXICO
 DEPARTMENT FOR INT; DS/IS/ITA; DS/IS/WNA; DS/IC/CR
 E.O. 12958: DECL: 4/27/2017
 TAGS: MEX; DRUG; ABCO; BC
 SUBJECT: DRUG CARTEL PRODUCED VIDEOS; ALLEGES CORRUPTION AT HIGHEST LEVELS OF MEXICAN GOVERNMENT
 CLASSIFIED BY: Luis Moreno, CG, Monterrey, Department of State.
 REASON: 1.4 (b), (d)

11. (SBU) During a private meeting on April 27, the Consul General asked [redacted] statements made by the State Assistant Attorney General [redacted] Without being solicited [redacted] did register on April 24 that photographs of video evidence may surface linking State and Federal Governments to organized crime, and that the public [redacted] Public discussion ensued and focused on the question of why Fasci would make such a statement unless he already knew that the evidence existed. On April 25, State Attorney General Luis Carlos Trevino publicly recanted Fasci’s statement and said that the Assistant Attorney General had not been speaking on behalf of the Nuevo Leon State Government.

There Are Two Exceptions to the No Prior Restraint Rule

Obscenity



Defenses:

• Fair Comment

• Privilege

By Ivan Thomas
Letter to the Editor
 WELLSVILLE – I hope you can find other news besides Paul Ceglia and Tom Reed – both non-events.

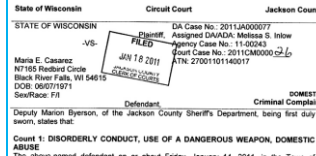
As for Paul, this little fly-by-night individual – ‘Irish eyes on Ceglia,’ I’d imagine so ... if the Irish are aware of his Wellsville reputation, they must be watching him like a hawk!

As for where he is ... who he is ... who the hell cares? A little Italian living in Ireland? With a little luck, he’ll stay there!

And Tom Reed? This pathetic gas bag. When he first came to our attention, he was



• Truth



No Prior Restraint



‘Freedom of the Press is the Right of the Press to be Wrong’
– First Amendment Attorney Alan Dershowitz

The First Amendment Empowers YOU



Citizen Watchdogs At Work



HOME ABOUT NEWS CASES PRESS CASE ELIGIBILITY DONATE

The Ariel Gomez Case

New Findings Challenge Chicago Man's '98 Murder Conviction
Students track down witnesses—who never testified—who say police persuaded them to identify Gomez as the shooter.



Student Watchdogs Help Expose 258 Wrongful Convictions

America Has No Monopoly on Citizen Watchdogs



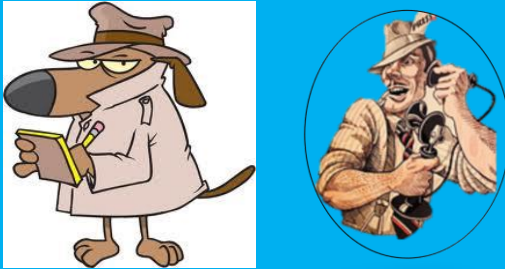
Outrage Grows Over Air Pollution and China's Response



Paratibary police officers practiced drills inside the Forbidden City during a night heavy with haze and smog in central Beijing on Monday.



The First Amendment Empowers US



Including Citizens in the News Media

Watchdogs at Work

The Washington Post
TOP SECRET AMERICA
A Washington Post Investigation



A hidden world, growing beyond control

BY DANA FREEST AND WILLIAM M. ARKIN

Watchdogs at Work

Mother Jones

Are US Nuke Secrets Vulnerable to Cyberattack?

The Department of Energy's internal watchdog has released a "very problematic" report about its cybersecurity practices.

By Dana Liebelson | The Dec. 20, 2012 3:06 AM PST



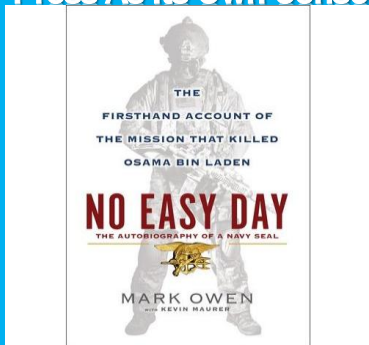
Watchdogs at Work

Los Angeles Times

Ex-SEIU local exec convicted of stealing from low-income members



Press As Its Own Censor



Naming the anonymous Navy SEAL

Press As Its Own Censor



The Bay of Pigs Invasion

Watchdog or Traitor?

Former CIA Officer Gets 30 Months in Prison for Leak

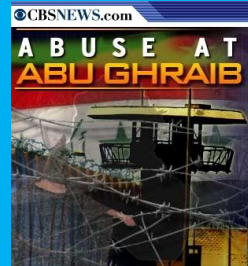


Feds: Ex-CIA Officer Was Leaker, Not Whistleblower

Jacquelyn Martin/AP Photo (2) / Jacquelyn Martin/AP Photo
abc NEWS
By MARK SCHONE
Jan. 25, 2013

By MATTHEW BARRAGAT Associated Press
McLEAN, Va. (AP) — January 24, 2013 (AP)

The Press As 'Watchdog'



CBS' Revealing Abu Ghraib Coverage

The Washington Post Exposes Secret CIA Prisons

CIA Holds Terror Suspects in Secret Prisons

Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11

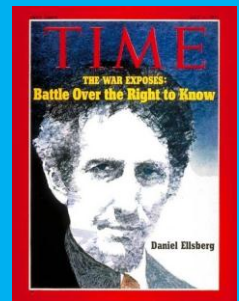
By Dana Priest
Washington Post Staff Writer
Wednesday, November 2, 2005; Page A01



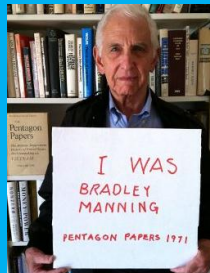
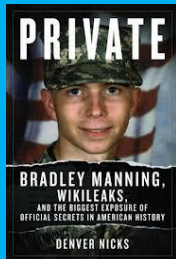
Is This What the Framers Wanted?

The Pentagon Papers Case

Daniel Ellsberg
Leaks Secret
Defense Documents



2013 WikiLeaks and the National Security Exception To No Prior Restraint



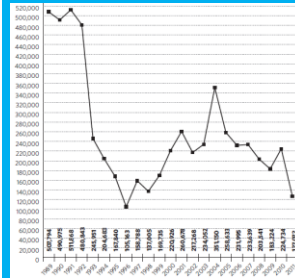
Other Conflicts

- The Right to Know
- The Right to Know vs. Privacy
- A Free Press vs. A Fair Trial

Limitations on Press Freedom Press arrests



The Right to Know?



The US Government decided to classify documents 127,072 times in 2011.

Is The Right to Gather News Limited?



Ye\$, It i\$.

The Right to Know vs. Privacy



A controversial decision to publish a photo of war

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



USA TODAY NEWS

Fair trial in Delhi rape case may be impossible

10:54p.m. EST January 25, 2013

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

A Free Press vs. A Fair Trial

Judges have other remedies :

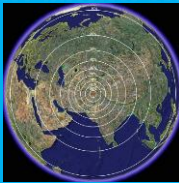
- Change of venue
- Gag orders
- Voir Dire
- Sequestering the Jury

Part Deux!

You Make the Call

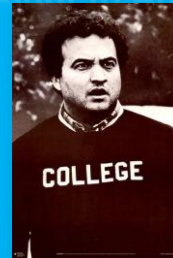
Can the government stop you from publishing the following stories?

You Make the Call



Can You Publish a Study That Gives Away Osama Bin Laden's safe house?

The Right to Publish?



Popular Student Charged With Murder Confesses

The Right to Publish?



Do You Name the Victims?

The Right to Publish?



Can You Publish Information From This Document?

The Right to Publish?



Grad Students Publish a Porn Magazine

The Role of the Press in National Security



Secret Documents Made Public

The Role of the Press in National Security



Secret Documents Made Public

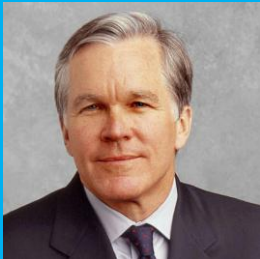
The Role of the Press in War

Bank Data Is Sifted by U.S. in Secret to Block Terror



Samantha Siv/Agence France-Presse - Getty Images
Stuart Levey, an undersecretary at the Treasury Department, in a file photo. He said the program "has provided us with a unique and powerful window into the operations of terrorist networks."

The Role of the Press in War



Keller Explains His Decision



The Role of the Press in War



Lawmaker Wants Times Prosecuted
 By Devin Barnett
 Associated Press
 Monday, June 26, 2006; Page A02

The chairman of the House Homeland Security Committee urged the Bush administration yesterday to seek criminal charges against newspapers that reported on a secret financial-monitoring program used to trace terrorists.

Rep. Peter T. King (R-N.Y.) cited the New York Times in

Long Island Congressman Peter King
Wants Reporters Jailed

The New York Times on Trial for Treason



The New York Times

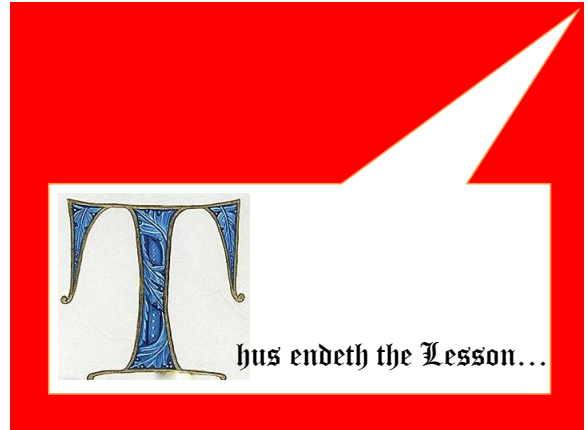
Innocent or Guilty?

In-class debate:

Wikileaks, The Times & Manning



Protected by the First Amendment?



The Fourth Estate



Who is the "Watchdog"? You are.

The Fourth Estate



14 Specific Allegations of NYPD Brutality During Occupy Wall Street

Jul 25 2012, 10:00 AM ET #60



An investigation undertaken by law firms at NYU, Fordham, Harvard, and Stanford has concluded, after eight months of study, that the NYPD abused Occupy Wall Street protesters and violated their rights on numerous occasions during the early protests that unfolded out from Zuccotti Park. Their report, "Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street," was released online to become an impetus against institutionalized force.

A Free Press vs. A Fair Trial



Watchdogs or Traitors?

We Don't Need No Stinking Warrant: The Disturbing, Unchecked Rise of the Administrative Subpoena



Meet the administrative subpoena (.pdf). With a federal official's signature, banks, hospitals, bookstores, telecommunications companies and even utilities and internet service providers — virtually all businesses — are required to hand over sensitive data on individuals or corporations, as long as a government agent declares the information is relevant to an investigation. Via a wide range of laws, Congress has authorized the government to bypass the Fourth Amendment — the constitutional guard against unreasonable searches and seizures that requires a probable-cause warrant signed by a judge.

The First Amendment Protects Even This?