

After this lecture, students will be able to:

1. Name the five freedoms in the First Amendment, and confidently explain the “*Four Estates of Power*”
2. Summarize major Supreme Court rulings on press freedom.
3. Correctly apply the law’s limits on press freedom in a series of hypothetical situations
4. Correctly explain what remedies are available to someone who feels wronged by a publisher or broadcaster.
5. Describe specific situations in which freedom of the press collides with other constitutional rights.

These skills relate to course outcome 4

This slide intended for instructors as a focusing tool, but can be shared with students to prime them. Each lecture will include a slide like this with specific lecture outcomes that refer to course outcomes.

Here is what the syllabus declares students will be able to do if they successfully complete the course:

1. Analyze key elements of news reports - weighing evidence, evaluating sources, noting context and transparency - to judge reliability.
2. Distinguish between journalism, opinion journalism and un-supported bloviation.
3. Identify and distinguish between news media bias and audience bias.
4. Blend personal scholarship and course materials to write forcefully about journalism standards and practices, fairness and bias, First Amendment issues and their individual Fourth Estate rights and responsibilities.
5. Use examples from each day’s news to demonstrate critical thinking about civic engagement.
6. Place the impact of social media and digital technologies in their historical context.

The U.S. News Media

Too Much Freedom?
Or Not Enough?

We've talked about the power of information...what about the power of the press corps that collects and distributes information: Just how much power do they have?

Let's start with a phrase from your Fifth Grade social studies class: "Freedom of the Press"

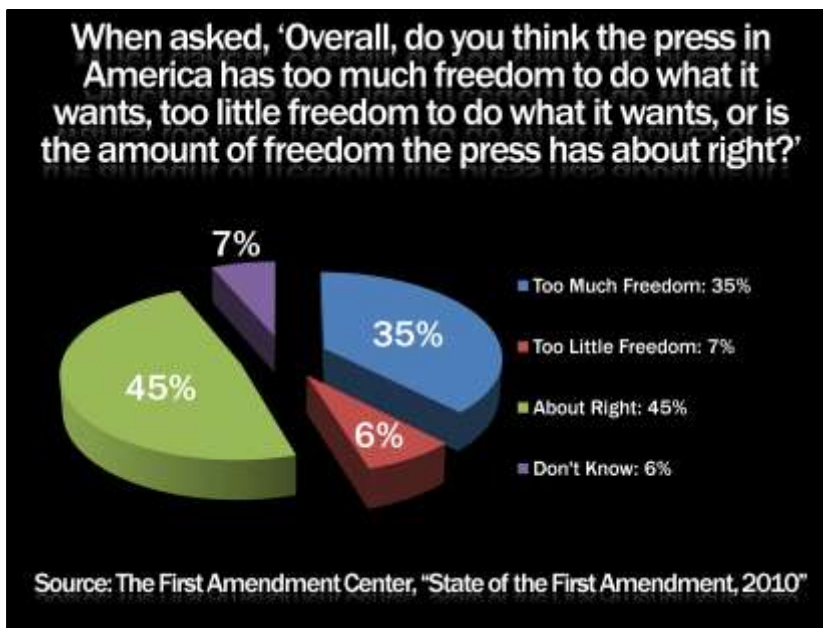
ASK: In a sentence, who can tell me what it means?

ASK: Does it mean the freedom to publish anything you want, any time you want?

...Aren't there any limitations to freedom of the press in the United States?

...In the digital age, when everyone basically owns a printing press AND the means to distribute worldwide, shouldn't there be MORE limits than there were in the past?

Let's find out.



ANIMATION: Image appears with slide, source text fades in.

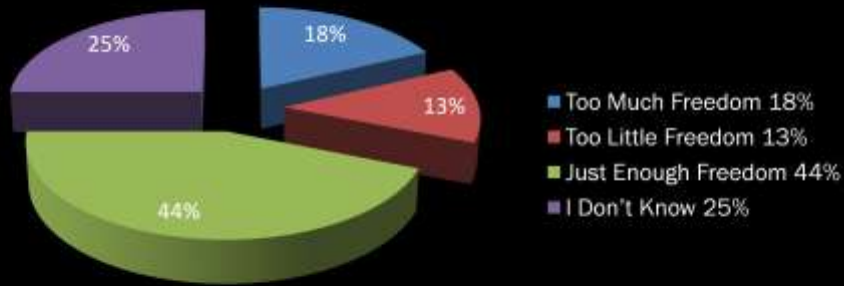
(UPDATED 1/30/2012 – they repeated the questions in 2010, but not 2011. Very little change over all.)

When asked if the press has too much freedom or too little, half of Americans say it's about right, but more than a third say the press has too much.

<http://www.firstamendmentcenter.org/madison/wp-content/uploads/2011/04/SOFA.videogames.11.10.pdf>

<http://www.firstamendmentcenter.org/sofa>

You and your peers in this course...



Source: 999 students in Fall 2012 News Literacy

UPDATED WITH Spring 2012 STATS

ANIMATION: image and title appear together, Subheading fades in.

In the questionnaires you filled out (about 2/3 of you), the breakdown was similar:

The largest group of students says the US News Media has just enough freedom, a significant fraction say “Too much” and the rest are undecided or in favor of even more freedom. Interestingly, the “Too much Freedom” percentage fell 9% since 2011.

ASK: What events might cause that attitude shift?

You Make the Call

Can the government stop you
from publishing the following stories?

ANIMATION: TEXT FADES IN

Let's take those big abstractions: Too Much, Too Little and Just Right and see if we can make them concrete with some examples.

Ready?

I'll summarize a scenario in which you are in a newsroom preparing to broadcast or publish something controversial and someone wants to stop you. The class will vote whether you can be stopped.

We'll record the overall vote and then return to the scenarios at the end of lecture to reflect on them a bit.

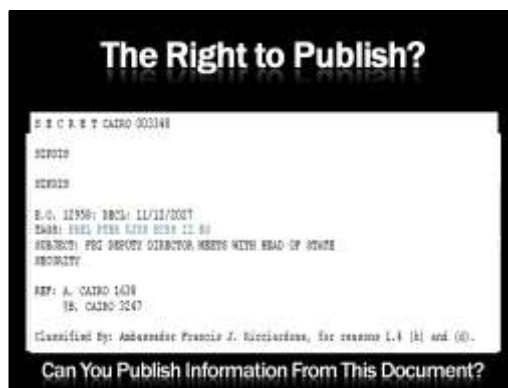


ANIMATION: Images fade in, bottom text fades in after

It is 2009. Osama Bin Laden still has not been caught. You are the Executive Producer at the nightly news at a national network.

A young reporter finds a fascinating story: a group of UCLA students in a geography course have conducted a statistical analysis of geo information data that predicts the most likely place where Osama Bin Laden is hiding out: the Parachnir area of northern Pakistan, including Abbottabad, where the Pakistani Military Academy is. Their professor has conducted past studies that turned out to be surprisingly accurate in predicting the location of other lost items and people. You assign a Washington, DC reporter to call the CIA for comment and within 15 minutes a very angry CIA Deputy Director in charge of field operations calls to order you not to run the story because you'll waste months of field agent work in Northern Pakistan. You explain that if your reporter found out about it, it's obviously not very secret. And that itself is a story. In fact, the student work was published in a prestigious science journal already. You both say regrettable things and then he threatens to have you jailed if you air the story.

VOTE: Can the CIA go to court and stop you from



ANIMATION: Document title fades in. On click, excerpt fades in.

(secret cable dealing with an ambassador's meeting.)

Bored and over-caffeinated on Red Bull one night, you go to the WikiLeaks website and begin scanning classified documents about the U.S. forces in Afghanistan. They are written by CIA, military and other U.S. officers.

The documents, stamped "Top Secret" include detailed battle plans from last year's major operations, plus lists of Afghan citizens who cooperate with the U.S. military, and an after-action report detailing what went wrong in the campaign to drive the Taliban from Marjaq. It's interesting stuff that makes you wonder what we're doing over there.

You post the documents to your blog and comment on what is in them. When you get back from dinner, a NY State Trooper waits by your dorm door. Ten minutes later, an FBI agent arrives. An hour later, a CIA agent comes knocking. They tell you to take down the documents or you will be arrested for releasing CIA and military secrets. Can you be ordered to un-blog the documents? (<http://213.251.145.96/cable/2007/11/07CAIRO3348.html>)



ANIMATION: Image fades in

The campus is shocked by the murder of Sally Albright, a popular junior gymnast, found strangled in the “Nookie Room,” a TV lounge in the attic of her sorority...

It’s a double-shock when police interrupt a News Literacy lecture to arrest Big Man On Campus John Blutarski and charge him with the murder.

You are the Editor of the local newspaper. After lunch, you find a grocery bag hanging from your rear-view mirror. In it, a tape of Blutarski confessing he accidentally choked Albright to death while playing Twister™.

With the tape is a photocopy of his signed statement. A reporter calls Blutarski’s lawyer for comment and she who demands that you not publish the confession because she says Bluto was drunk when he was interrogated and the confession is therefore inadmissible in court.

Worse yet, he confesses he is also a Red Sox fan, which will prejudice the community, making it impossible for Blutarski to get an impartial jury of his peers. Can the courts prevent you from publishing the confession?



ANIMATION: Image fades in

A speeding Chevy Suburban T-bones a school bus, putting a dozen elementary school students in the hospital.

You are a reporter for the student TV station. You call the hospital to confirm as tip that two of the injured students are the adopted children of a popular young professor who studies the psychology of adoption. The hospital refuses, citing federal privacy law (HIPAA). But, your room-mate works as an orderly at the hospital. You call and he finds the two names on the room roster. Plus, he sees the professor pacing the hall outside the E.R. You call back the hospital, hoping to get a comment on the nature of the childrens' injuries. The spokesperson threatens legal action and demands you not air the story, saying you will have violated federal privacy law if you do.

If she finds a judge ready to hear the case right away, can the judge prevent you from airing the story?



ANIMATION: Image fades in

Two impoverished grad students decide to publish a magazine of erotic web-cam photographs submitted by students.

They sell out all 5,000 copies at \$5 per. The grad students cover the costs of their final research for doctoral dissertations on Juxtapbranchial Organ Secretions in the Lower Mollusks.

In an interview with the local TV station, one of the grad students declares that new pictures flooded in after the first issue. She promises the next issue will be raunchier and more racy than any other magazine on the racks in local stores.

All of the design and assembly work is done in the two grad students' apartment in Mt. Sinai and a printer in Babylon has ordered extra paper. The University, fearing backlash from parents and from alums, orders the students to stop. Can the students be prevented from making and distributing their magazine?

Housekeeping



**Evening Lectures for extra credit
Monday, October 1: Doors open at 8:15 p.m.,
Investigative reporter Sara Ganim**

The Stony Brook School of Journalism Presents



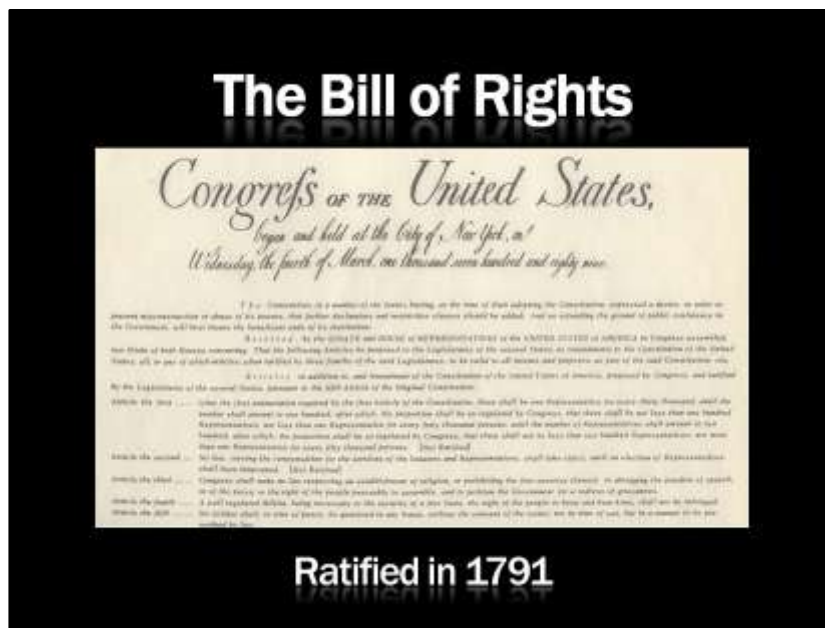
What Is Freedom of the Press?



ANIMATION: Image fades in

Return to Lecture's Main Theme: What, exactly, IS Freedom of the Press?

The First Amendment is possibly the 45 most powerful words in American history, reserving to the public some remarkable powers that on good days define us as a country and on bad days...define us as a country.



Animation: Image fades in followed by sub heading

The Bill of Rights (the first 10 amendments to the Constitution) was not universally hailed when the amendments were adopted in 1791. Three states didn't vote for ratification until 1941 and then only for ceremonial reasons (the 150th anniversary of Bill of Rights) They didn't initially work out as the founders had believed they might.

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")

Animation: Text fades in

Five Freedoms:

- Religion,
- Speech
- Press
- Assembly
- Petition

(Mnemonic is "P'RAPS" ...AS IN "PERHAPS")

ASK: What was the big problem with the first amendment. (read it aloud)

There's no definition.

What, exactly, does "Freedom of the Press" mean?

It would take 140 years to figure it out.

Here's what it has come to mean...for now...

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."

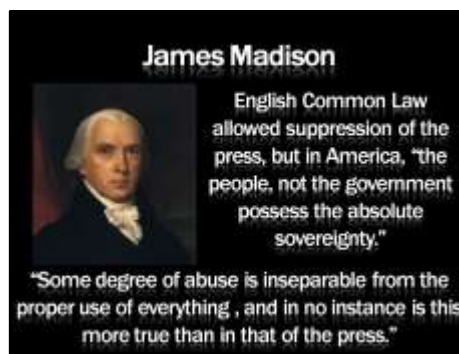
ANIMATION: Image fades in followed by quote

Tolerance for the ideas we hate was a kind of article of faith of the Enlightenment, when philosophic inquiry and the scientific method began to flower across Europe.

Franklin, an admirer of Enlightenment philosophers, steals this idea from John Milton's "Areopagitica"

"And though all the winds of doctrine were let loose to play upon the earth, So Truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?"

Sounds dangerous, doesn't it?



ANIMATION: Image fades in followed by text, then quote.

This radical idea, defended to this day by the political right and left in their own ways, is every American's intellectual inheritance, to be squandered, spent or invested as you alone see fit. Is this like the right to bear arms, another crazy idea with disastrous consequences?

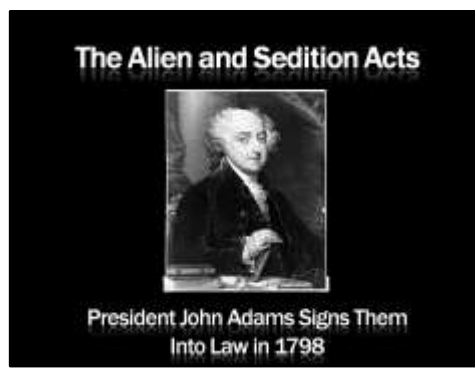
That's the point of today's lecture.

There aren't many precedents for this kind of primacy of the rights of the individual because, as we assert in this course, history is one long battle for control over information. And why would you tolerate misuse of freedom by mere individuals?

One corollary can be found in the biblical story of Abraham haggling with God. Would the vast sinning cities of Sodom and Gomorrah (Genesis 18:23-32) be saved if 50 righteous individuals could be found there? How about 40? And so on to 10. You might say that story proposes the idea that it's better to tolerate even widespread iniquity so that the individual can be free. With apologies to the faithful...that's a CRAZY idea.

Crazy regard for the individual pops up again in English Common Law. The jurist William Blackstone proposed that it is "Better that ten guilty persons escape than that one innocent suffer." Another CRAZY idea with staying power.

Yet protection of even irresponsible freedom took root with Madison's argument, was included in Pennsylvania's constitution in 1790 and in the Bill of Rights. Crazy.



Animation: Image fades in followed by subheading.

No sooner have the states ratified the Bill of Rights, than we see the first big challenge: In 1798, Congress passes four bills, called the Alien and Sedition Acts. Sponsors claimed the intent was to protect the United States from alien citizens of enemy powers and to prevent seditious attacks on the government, which was fighting an undeclared war with France. History judges them, harshly, as craven attempts to stifle critics of John Adams, who signed them into law. Twenty five people were arrested for sedition, 15 indicted, 10 convicted- almost all were political opponents of Adams. Even after this act expired in 1801 (the law was made to expire the day before the next president was sworn in) newspapers and speech were routinely censored, particularly by the States.

Thomas Jefferson, that radical firebrand, thought the Bill of Rights ceded to the individual states the power to control the press. States did.

Postmasters throughout the South were empowered to seize any mailed materials that might lead to insurrection.

During the Civil War, the rights of Abolitionists to speak out and to publish anti-slavery writings were limited.

Then in 1917, just after the U.S. entered World War I, Congress adopts the Espionage Act, which sets new, tough penalties for anyone who violates a murky set of standards: "obtaining or delivering information relating to "national defense" to a person who was not "entitled to have it"

Yikes...

Maybe that Bill of Rights stuff was too crazy, after all. If you believe effective governance requires power...and we talked last week about the battle to control information... Government can't function without some control over information, can it?

Crazy Yanks. The First Amendment was just a passing fad.



ANIMATION: LECTURER CLICKS

So now we have the First Amendment, some muddy decisions about the Espionage Act and along comes 1931 and the first great press case: Jay M. Near, the anti-Catholic, anti-Semitic, anti-black and anti-labor publisher of the (Minneapolis) Saturday Press, published a story in 1927 linking the Mayor of Minneapolis, police chief, County Attorney and other officials with gambling syndicates in the city.

City officials moved to shut down Near's paper under the Minnesota Gag Law, which permitted permanent injunctions (closure) of newspapers if they were found to be publishing "obscene, lewd, scandalous, malicious, defamatory material."

Justice Pierce Butler

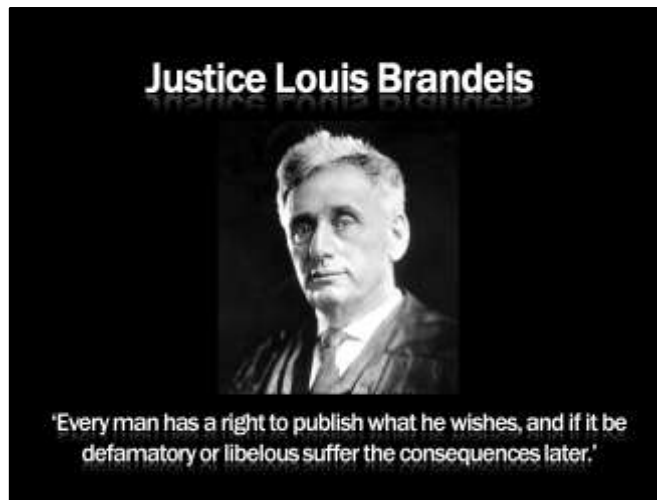


"Permitting a scandal sheet such as Near's to destroy the reputation, peace of mind, and even personal safety of other citizens, society is not only encouraging malice and revenge but could inflict distressing punishments upon the weak, timid, and innocent."

ANIMATION: Image fades in followed by text

Local court upholds the injunction and goes so far as to ban Near from publishing a newspaper under the title *Saturday Press* or any other title.
Near Appeals.

The State Supreme Court upholds the local court's ruling and compares Near's *Saturday Press* to brothels, speakeasies, lotteries, noxious weeds, feral dogs and other threats to the public peace. In ruling on Near's 2nd appeal, the court relented a little and said Near could publish a newspaper after all, but only "*in harmony with the public welfare.*"



ANIMATION: Image fades in followed by quote

Near appeals to the U.S. Supreme Court, arguing the First Amendment guarantees his right to print his paper.

In June, 1931, The Court agreed with him on a split ruling, 5-4 against the Minnesota Gag Law. In that decision, Judge Louis Brandeis lays down the fundamental definition of U.S. free press law: *"Every man has a right to publish what he wishes, and if it be defamatory or libelous suffer the consequences later."*

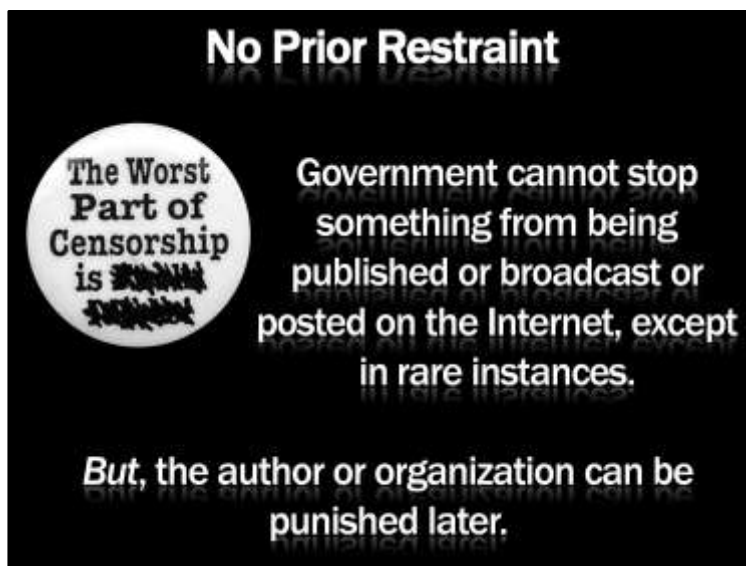
Notice it is the right of the individual, not of the press industry.

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.'

ANIMATION: Image fades in followed by quote. Chief Justice Charles Evans Hughes breaks the tie and coins a key phrase: **“Immunity from prior restraint.”** That idea... “No prior restraint” means it is almost impossible to stop the publication or broadcast of a story once a news organization has the material. And that precedent stands today.



ANIMATION: Image fades in followed by text in two successive groupings.

A judge or sheriff can't step in and block publication before the damage is done?

No.

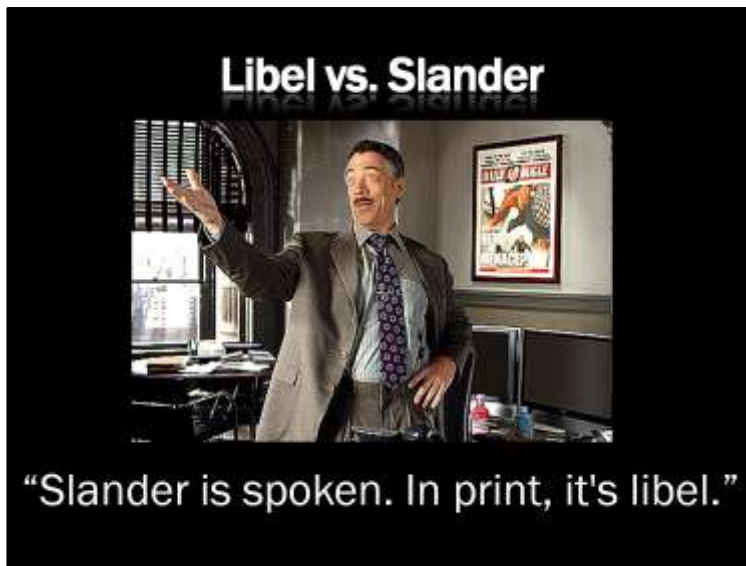
But the publisher/broadcaster/webmaster must face the consequences if the information is found to be libelous or defamatory.

Really?

I can't be stopped from printing ANYTHING

I want?

That's right... sort of.



ANIMATION: Bullet Points fade in successively.

Outside the criminal arena, the civil law of slander and libel developed to settle disputes over injury to reputations by publishers and broadcasters.

The civil courts deal out consequences to publishers who harm people by publishing falsehoods.

By the way, don't be an ignoramus about this concept.

No less of an authority than the Editor of the Daily Bugle (J. Jonah Jameson) said it best in "Spiderman," correcting a colleague who was worried newspaper was slandering someone. Slander is the defamatory stuff you spread around in conversation. Libel refers to defamation in print.



THREE-CLICK ANIMATION: EACH DEFENSE COMES UP, WITH AN IMAGE, THEN DISAPPEARS WHEN YOU CLICK AGAIN.

So...can a lawsuit silence investigative reporting? Not very often.

There is no grounds to sue for libel if:

1. The Information is true. (Honest Abe had no fears)
2. The damaging information, even if untrue or unproven, is contained in court testimony, police reports or other public documents, which the public has the right to review as a means of keeping an eye on the courts, and the press has the right to share with the public. (Up comes a document...as in a document that can be quoted, under "privilege." protection)
3. By longstanding (Common Law) tradition, you have the privilege to criticize and comment on matters of public interest without being liable for defamation, provided that the comment is an honest expression of opinion and free of malice: the intent to cause harm without legal justification or excuse. (Up comes the Onion, scurrilous parody of newsmakers and newsmen.)



ANIMATION: Image fades in followed by quote.

Why such extraordinary protection of the right to publish?

What was the rationale? What was the context in which the framers took such a radical stance?

Famous civil liberties lawyer Alan Dershowitz, of Harvard Law School, says the Near case's prohibition on prior restraint means that Freedom of the press is basically the right to be wrong.

That's what Madison said, isn't it? Some abuse is to be expected.

But the alternative, government control of publishing, is worse.

The Fourth Estate



Who is the "Watchdog"? You are.

ANIMATION: Image fades in followed by subheading.

The Bill of Rights did not declare newspaper owners and journalists a special class. Not at all.

The framers described you...US...the citizenry as a "Fourth Estate of Power," to serve as a check on the tyrannical tendencies of the other three estates of power.

What are they? The Executive, legislative and judicial branches. They reserved vast freedoms to that Fourth Estate as a protection against tyranny, which the constitution's drafters had witnessed first-hand.

Learn this and you'll know more than most journalists:
The Fourth Estate is You.

The First Amendment protects YOUR speech and dissent as a free individual. The constitution guarantees Your right to speak your mind and spread your ideas.

Newspapers, Radio, TV and the Web are merely the vessels through which citizens' ideas are distributed.

When they wrote "Freedom of the Press," the framers literally meant Gutenberg's contraption...Not the Press Industry.
...literally the mechanism of reproduction for mass distribution of ideas and information.

That function of the Fourth Estate is sometimes referred to as the watchdog function.

And in that role the Press Industry, or News Media, are merely full-time citizens with no superior rights, but with the full time job of exercising every citizen's right to gather and distribute.

As such, they are granted broad protections, but only because they are the mechanisms by which citizens distribute their ideas.

So, what does the press acting as watchdog look like?

The Fourth Estate



Who is the "Watchdog"? You are.

Screenshot: video still showing bystander recording detainment and pepper-spraying of peaceful Occupy Wall St protesters: <http://www.theatlantic.com/politics/archive/2012/07/14-specific-allegations-of-nypd-brutality-during-occupy-wall-street/260295/>

Date of event: Sept 24, 2011

Date of article: July 25, 2012 [see next slide]

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When they wrote "Freedom of the Press," the framers literally meant Gutenberg's contraption...**or in this case, your digital camera....**Not the Press Industry.

...literally the mechanism of reproduction for mass distribution of ideas and information.

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The Fourth Estate



[This is the story that goes with the screenshot on the previous slide, <http://www.theatlantic.com/politics/archive/2012/07/14-specific-allegations-of-nypd-brutality-during-occupy-wall-street/260295/>] [Conor Friedersdorf, author]

The point here is that citizen journalism/documentation can get picked up by mainstream media and used to lead watchdog journalists into deeper investigations. For instance, during the Occupy Wall St protests, footage shot by bystanders and protesters of police brutality provided source material for an eight-month study by law clinics at NYU, Fordham, Harvard and Stanford that conclude excessive force was used that violated International Law. These results then circulated to mainstream media like the Atlantic here – who also perform a Watchdog role.

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Here's another example. [segue to slide on Innocence Project]



At Northwestern University, law students and journalism students team up to investigate death row cases and then publish their findings on this website. They have found dozens of cases in which police or prosecutors abused their powers by lying or hiding evidence. In others, DNA evidence has proven it was impossible for the convicted person to have committed the crime. In all, the Innocence Project has won 258 exonerations.

Here in New York State, a debate is brewing about DNA evidence that gets to the heart of your Fourth Estate role. Tough-on-crime lawmakers, want to require DNA testing of all convicted criminals so that the evidence can be used to close unsolved cases where evidence has been collected.

Other legislators say that's fine, but only if defendants have easy access to the DNA database and other evidence that may, just like in Illinois, help clear them.

Again, it boils down to the question of who will be the watchdog on the actions of the police, prosecutors and other agents of the legislative, executive and judicial branches.

The Press As 'Watchdog'

The Seattle Times Special reports

Home | News | Business & Tech | Sports | Entertainment | Living | Homes | Travel | Opinion | Jobs | Autos | Classifieds | [Subscribe](#)

Monday, April 28, 2014 - Page updated at 11:24 AM

METHADONE AND THE POLITICS OF PAIN

More deaths | Politics of pain | A troubled state



State pushes prescription painkiller methadone, saving millions but costing lives

To cut costs, Washington steers Medicaid patients to a narcotic that costs less than a dollar a dose. The state insists methadone is safe. But hundreds die from it each year — and more than anyone else. It's the poor who pay the price.

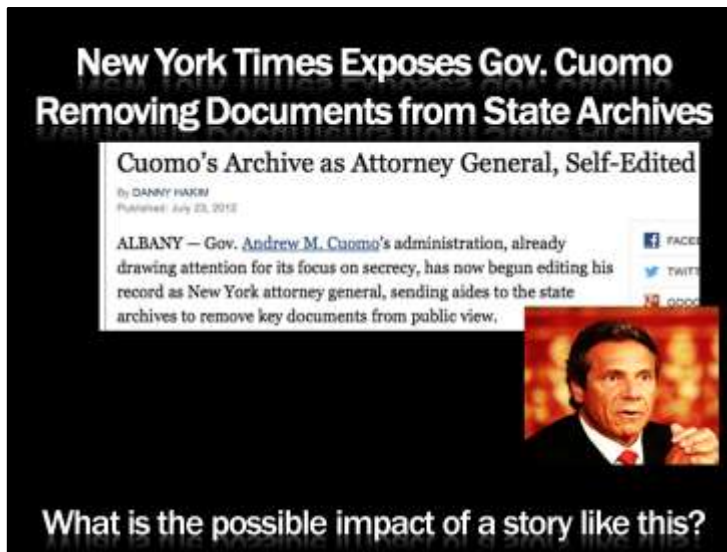
MORE IN THE SERIES:

- Update: 'Fentanyl' pain drug now called last resort
- Update: State plans emergency warning on risks of methadone
- Video: Methadone's toll
- Timeline: State defends methadone as death star
- Silent deaths: access documents
- How we did it: our analysis
- Seattle Times methadone investigation wins 2014 Pulitzer Prize
- Times awarded Hedden King Award for Investigative Reporting

PHOTO BY MIKE BASSIL / THE SEATTLE TIMES

Sara Taylor, mother of former King County 911 dispatcher Angeline Burrell, describes her daughter's battle with disabling chronic pain and her eventual death from methadone. At left is Taylor's husband, Dale.

In this story, The Seattle Times discovered Washington State was prescribing methadone to chronic pain sufferers because it is a cheap painkiller – without warning recipients of its deadly side effects. Furthermore, panel members recommending what drugs could be prescribed had conflicts of interest. Hundreds of patients had died, yet the State denied methadone was dangerous when this story broke. But – as pressure spread due to this story – the State eventually caved and revised its policy.



July 2012: New York Times reports that Gov. Cuomo has sent staff members to the State Archives to remove from public view documents from his tenure as Attorney General (2007-11). Cuomo claims the documents were placed there mistakenly, and that they contain sensitive information that should not be allowed for public consumption. The State Archives, for its part, seemed to be the fall guy. This story, along with some others, have been the basis for attacks on the New York Times and Albany Times-Union by the Cuomo administration for “gotcha” journalism.

<http://www.nytimes.com/2012/07/24/nyregion/cuomo-is-editing-his-years-as-state-attorney-general.html?pagewanted=all>

The Press As 'Watchdog'



New York Times uncovers sexual harassment scandal involving Assemblyman Vito Lopez

Jeff's edits:

August-September 2012: New York Times uncovers a new political scandal in Albany!

August 25: first news that Brooklyn Assemblyman Vito Lopez (D) under investigation for sexual harassment of female employees, and that Assembly Speaker Sheldon Silver had

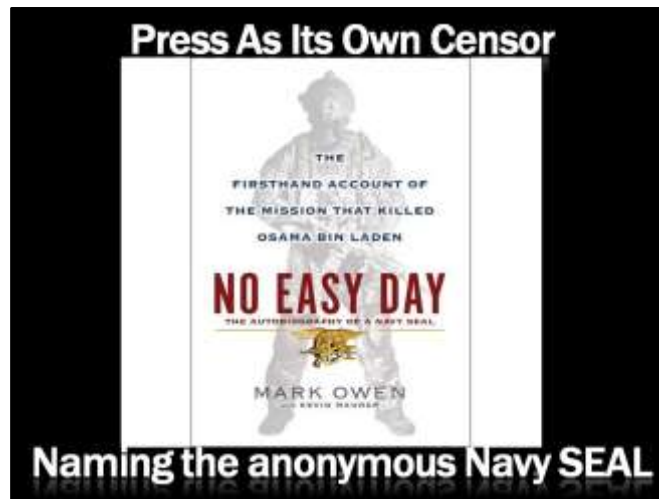


ANIMATION: Images fade in together, followed by subheading.

NY Times editor and columnist James Reston knew about the plans for the invasion of Cuba but did not publish the information, fearing he would jeopardize the operation or even cause deaths. He later says that might have been a mistake . And President John F. Kennedy, who oversaw the fiasco, once said he wished Reston had blown the lid. It might have saved the U.S. from embarrassment.

ASK: Could Reston have really published the information? What do you think?

Maybe because of incidents like this, the Fourth Estate has become bolder about prying into military matters, challenging decision-makers.



Jeff's edits: This is my nominee to replace the scientific controversies surrounding bird flu research.

24 hours after the announcement that this book, No Easy Day, would be published anonymously by a member of the Navy SEAL team that killed OBL, Fox News announced the author's real identity, which was confirmed by the Pentagon:

<http://www.nytimes.com/2012/08/24/business/media/bin-laden-raids-firsthand-chronicler-is-unmasked.html?ref=books>

A week later, the Pentagon threatened to sue the publisher and the author for potential violations of government non-disclosure agreements:

Exposing Our Spies' Secrets

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

BY DAVID KRISHTO 08/28/12 9:08 AM



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?

This Article, published (8/28/12) in Wired Magazine, uncovers how the Federal government (using Administrative subpoenas) is avoiding the use of warrants signed by judges.

<http://www.wired.com/threatlevel/2012/08/administrative-subpoenas/>



TWO-CLICK ANIMATION: SEE THESE NOTES

Over time, two exceptions to No Prior Restraint have been recognized. They are rarely used because the U.S. Supreme Court essentially ruled that any prior restraint is presumed to be unconstitutional and therefore requires extraordinary circumstances.

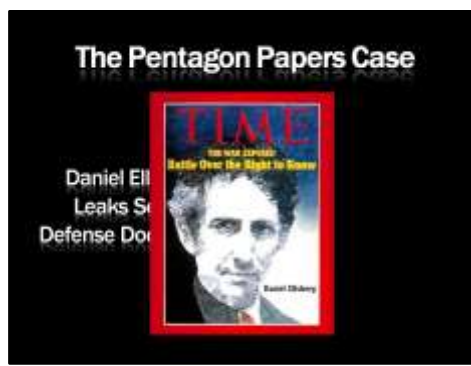
CLICK TO BRING UP CENSORED "DAVID" statue

Some forms of speech enjoy no constitutional protection "Fighting words," obscene speech, and sexually explicit depictions of children fall within this category. In Free Press cases, the courts have been willing to tolerate prior restraint of "obscene" material. Each community is permitted to enforce standards of obscenity and to prevent publication of material it deems outside "community standards."

CLICK TO BRING UP CENSORED DOCUMENT

The second exception is national security. To succeed with this exception, the would-be censor must show that publication of a piece of information would result in direct, immediate and irreparable damage to the nation and its people.

Let's look at the case that established the national security exception's standards, the so-called "Pentagon Papers" case, (New York Times Co. v. United States)



ANIMATION: Image fades in, moves right and text appears.

The Pentagon Papers, officially titled **United States–Vietnam Relations, 1945–1967: A Study Prepared by the Department of Defense**, was a top-secret history, (45 volumes!) first brought to the attention of the public on the front page of the New York Times in 1971. Daniel Ellsberg, a White House military analyst and veteran of the Viet Nam ground war, was shocked to find that that Presidents from Truman to Johnson had systematically lied, not only to the public but also to Congress. Seeking to end what he said was an unjust war, he leaked a copy to the New York Times, which prepared to publish significant portions of it.

The Nixon administration sought an injunction, saying the release of classified material was a matter of national security. The courts enjoined the Times after it published the first batch of material. But editors stayed one step ahead by sharing copies with other newspapers. Right after the Times, the Washington Post ran a story from the Pentagon papers and after that the Boston Globe and then Newsday. The news media stayed one step ahead of the courts and publication continued uninterrupted, with the public learning what it had not known about the way we got into that war.

The U.S. Supreme Court two weeks later ruled (9-0) in favor of the Times, saying the bar “must be very high,” to support a national security exemption... it only can do so when “immediate and irreparable damage to the country” would be done.



ANIMATION: Wash. Post capture fades in, followed by sat. image, then image of prisoner. Subhead follows fade in of last image.

In 2005, Washington Post reporter Dana Priest documented a secret program by which the CIA and other US agencies were shipping prisoners of wars to prisons in countries where there are no restrictions on torture.

ASK: Does this rise to the level set by the Pentagon Papers case?

What is the impact?

Was the Post justified in deciding to expose this?

The Role of the Press in National Security



Secret Documents Made Public

What about WikiLeaks founder Julian Assange?

He harvests stolen documents, documents from recycled hard drives and materials leaked to him by unknown players in global politics.

He's not even a citizen of the U.S.

Can he be stopped under the No Prior Restraint ruling and the national security exception?

Here's part of what he told "60 Minutes".

The Role of the Press in National Security

Assange60.wmv

Secret Documents Made Public

(AFTER VIDEO RUNS)

“...Disregard for U.S. traditions...”

What do you think he means by that?

Is he comparable to Daniel Ellsberg?

Is he a journalist and does that matter?

The Role of the Press in War

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



Samantha Su/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."

ANIMATION: All elements fade in together. June, 2006, the New York Times reports that within weeks of the September 11, 2001 attacks, the Bush administration talked a Belgian wire transfer company into allowing counter-terrorism officials to study financial records from a vast international database and examine banking transactions involving thousands of Americans and others in the United States. The purpose was to track terrorists by following their money. But U.S. officials were operating without the kinds of warrants usually required for such wire-tapping.

The Role of the Press in War



Keller Explains His Decision

ANIMATION: Image fades in followed by sub heading

Civil Libertarians are outraged, saying this is a clear example of abuse of executive power in war time.

President Bush is outraged, saying the New York Times has given away the crown jewels of the U.S. counter-terror program. Here is New York Times Editor Bill Keller describing his meeting with the President.



Keller.wmv

NEWS FELLOW: LINK (INSERT) VIDEO TO THIS SLIDE AND SELECT “START AUTOMATICALLY”

AFTER: What right does some ink-smearing wretch from a newspaper have to stand up to the President this way? Who elected him? He’s not the Commander in Chief...he’s just a citizen. What do they call those people? The Fourth Estate....Hmph.

The Role of the Press in War



Lawmaker Wants Times Prosecuted

By Devin Barrett
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

ANIMATION: All elements fade in together. Here's what the Administration's supporters in the Congress think of the Fourth Estate.

Put 'em in Jail.

There's the watchdog role, says Long Island's congressman... and then there's disloyalty.

So, that's a simple outline of the major issues raised by exercise of the Freedom of the Press.

But there are other conflicts, too.

Other Conflicts

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

ANIMATION: Bullet points fade in together

From the beginning, the constitution's framers understood that freedom of the press was meaningless if the public didn't have the right to demand information from its servants in government.

Apart from espionage, what about just day-to-day workings of any federal agency? Do you have a right to know salaries and budgets and purchasing contracts? (yes)

What about the Sixth Amendment's guarantee of a fair trial? Which amendment is more powerful?

Can freedom of the press collide with your right to be tried in front of an impartial jury of your peers?

What about your personal privacy? Can a news photographer zoom her lens in on your apartment and take pictures of what's going on behind your closed door? There is no constitutional right to privacy, but still...

Limitations on Press Freedom Press arrests



Your right to know is guaranteed in theory, but even in the U.S. reporters are jailed while doing their jobs.

Journalist Amy Goodman, (on the right in zip-tie handcuffs) is host of the syndicated program "Democracy Now!" Goodman and two of her producers (Nicole Salazaar and Sharif Abdel Kouddous) were among an estimated 40 to 50 journalists arrested while they were filming and reporting on street protests outside the 2008 Republican National Convention in St. Paul, Minnesota.

"When journalists are arrested, it is not only a violation of the freedom the press, but of the public's right to know," Goodman said in a statement. "When journalists are handcuffed and abused, so is democracy. We should not have to get a record when we put things on the record."

Courts agreed and the cities of Minneapolis and St. Paul agreed to pay \$90,000 in fines. The U.S. government agreed to pay \$10,000 because a Secret Service agent stripped press credentials off Goodman and her producers.

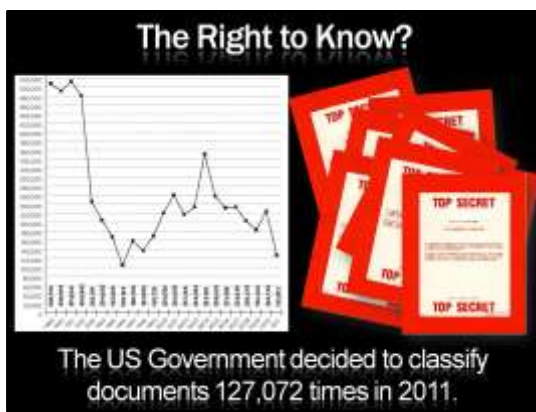
Under the settlement, St. Paul and Minneapolis have agreed to develop a policy and training for police officers on how to avoid infringing on the First Amendment rights of journalists who cover big protests.

The settlement was reached with the aid of U.S. Chief Magistrate Judge Arthur Boylan in St. Paul.

Goodman and About 800 demonstrators and bystanders were arrested during the convention. Authorities eventually dropped all charges against the arrested journalists and many of the protesters and bystanders.

<http://www.foxnews.com/politics/2011/10/03/reporters-arrested-at-2008-republican-convention-reach-settlement/#ixzz1IAeiUQUM>

http://www.huffingtonpost.com/2011/10/03/amy-goodman-settles-lawsuit-2008-republican-national-convention-arrest_n_992431.html



ANIMATION: Image fades in, followed by each bullet point successively.

In 1980, the U.S. Supreme Court reinforced the idea that newsgathering is constitutionally protected.

“The First Amendment protects the public and the press from abridgement of their right of access to information about the operation of their government,” the court said in *Richmond Newspapers Inc, v. Virginia*.

This is all well and good, but the U.S. government is deciding to classify documents a remarkable number of times. While the number of times that government officials have decided to classify a document or set of documents has, on the whole, decreased over the last 5 years, the Government still decided to classify documents 127,072 times!”

Whatever the reason, that’s a lot of information about government you aren’t allowed to know.

Aren’t those documents the deepest darkest secrets of government?

How many Americans have security clearance to read such documents?

One Dozen? One Hundred? One Thousand? One Hundred Thousand? A half-million?

How about 854,000? (Washington Post)

Update (N. Golden, Fall 2012)



There's a difference between the Right to Know and the Right to Gather.

We use dollar signs in place of S to underline how costly it was for British tabloid reporters to learn there are limits to the right to gather. Just because you can digitally steal information, doesn't mean you are allowed to.

But once the information is out there, you have a right to know it and to publish it.

Rupert Murdoch's News Group Newspapers apologized and paid more than \$1 million in damages to 37 victims who settled their lawsuits in the tabloid phone hacking scandal in Britain. Cases in the U.S. are still under investigation, but reporters and editors of Murdoch newspapers have admitted they hacked the phone mail accounts of celebrities like Actor Jude Law, Singer Charlotte Church and Princess Diana's former butler Paul Burrell. Information obtained that way was accurate and timely, but no court will protect the theft of personal information.



What about privacy?

Does the First Amendment give you the right to make my death public?

Lance Corporal Joshua Bernard, 21 of New Portland, ME, was on patrol in Dahaneh, Afghanistan in August of 2009 when a Taliban RPG hit him.

An Associated Press photographer, who had been with the patrol all day, took a picture of his comrades tending to him in the field. Bernard died in the hospital. The photographer finished her time with that military unit and put together an extensive report with dozens of photos for distribution to AP clients worldwide. AP made a courtesy call to the family to alert them that the photo would be part of an AP report on the war. The father strongly objected, saying it would dishonor the memory of his son. AP respectfully listens, but says the photo is integral to reporting on what happens in war. Fatal injury is a daily reality and while the AP does not set out to photograph dying soldiers, that will occasionally be part of the coverage. The Secretary of Defense calls the AP's chairman to argue for holding it.

AP distributes the photo. Does the First Amendment protect that? (yes)

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

ANIMATION: Quote fades in, followed by subheading

What happens when two parts of the Bill of Rights collide?

You have a right to read about how the courts are conducting the public's business. But doesn't pre-trial reporting on a case influence potential jurors?

A Free Press vs. A Fair Trial



This is from the ABC video of an interview with George Zimmerman, in which Zimmerman walks through his version of events. : <http://abcnews.go.com/US/george-zimmermans-reenactment-trayvon-martin-shooting/story?id=16616864#.UD-5RUS5KIY>

It is embedded in a story questioning whether Zimmerman can now have a fair trial due to media coverage like this.

<http://ipv6.news.yahoo.com/blogs/lookout/george-zimmerman-fair-trial-sanford-215405106.html>



<http://theinterrobang.com/2012/04/better-headlines-george-zimmerman-arrested/>



<http://en.paperblog.com/george-zimmerman-man-who-shot-trayvon-martin-sets-up-website-for-defence-as-grand-jury-cancelled-180082/>

George Zimmerman: Man Who Shot Trayvon Martin Sets up Website for Defence as Grand Jury Cancelled

Photo credit: <http://www.flickr.com/photos/68146720@N05/7005067963>

A Free Press vs. A Fair Trial

Judges have other remedies :

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

ANIMATION: Bullet points all fade in together

Courts have given it some thought and here's what can be done to balance the competing First and Sixth Amendment claims.

It turns out the First Amendment kind of trumps the Sixth. There is no prior restraint on publishing information about trials.

But, judges have remedies to reduce the likely impact.

- A judge can move a trial to another geographic area, to harvest jurors unlikely to have read or heard about the case.
- Gag orders can keep lawyers from grandstanding
- * Cameras are often banned from the courtroom during pre-trial hearings.

* Lawyers and judges quiz prospective jurors in a process called voir dire, to see if they are impartial.

If coverage of a trial is intense, a judge can order sequestration, which is when jurors are kept out of the public eye and away from newspapers, radio and TV. Kind of a long-term News Blackout.

"We don't want to discourage citizens from being well informed. They can be on the jury provided they will be fair and decide the case on what they hear in the courtroom."

- Chief Justice John Marshall on empanelling an impartial jury



ANIMATION: TEXT FADES IN

So that's a First Amendment law course crammed into an hour...

Let's go back to our hypotheticals.

What do you think now?

Ready?

I'll summarize a scenario in which you are in a newsroom preparing to broadcast or publish something controversial and someone wants to stop you. The class will vote whether you can be stopped.

We'll record the overall vote and then return to the scenarios at the end of lecture to reflect on them a bit.



ANIMATION: Images fade in, bottom text fades in after

It is 2009. Osama Bin Laden still has not been caught. You are the Executive Producer at the nightly news at a national network.

A young reporter finds a fascinating story: a group of UCLA students in a geography course have conducted a statistical analysis of geo information data that predicts the most likely place where Osama Bin Laden is hiding out: the Parachnir area of northern Pakistan, including Abbottabad, where the Pakistani Military Academy is. Their professor has conducted past studies that turned out to be surprisingly accurate in predicting the location of other lost items and people. You assign a Washington, DC reporter to call the CIA for comment and within 15 minutes a very angry CIA Deputy Director in charge of field operations calls to order you not to run the story because you'll waste months of field agent work in Northern Pakistan. You explain that if your reporter found out about it, it's obviously not very secret. And that itself is a story. In fact, the student work was published in a prestigious science journal already. You both say regrettable things and then he threatens to have you jailed if you air the story.

VOTE: Can the CIA go to court and stop you from

The Right to Publish?



Popular Student
Charged With Murder Confesses

ANIMATION: Image fades in, followed by subheading.

SLIDE: Blutarski's confession.

Can the court stop you from publishing it?
No. The judge has plenty of other remedies and the courts start from the presumption that an attempt at prior restraint is unconstitutional.

The Right to Publish?



Do You Name the Victims?

The names of the young accident victims.

Can you publish?

Yes. There is no constitutional right to privacy that trumps First Amendment free press protections.

The Right to Publish?



Can You Publish Information From This Document?

ANIMATION: Image fades in

Your blog's post containing Classified documents.

Can the CIA force you to take them down and stop you from adding more?

Under the Ellsberg case, probably not.

On Espionage or other grounds? Who knows? You'll have to watch the Bradley Manning case.

The Right to Publish?



Grad Students Publish a Porn Magazine

ANIMATION: Image fades in, followed by subheading.

The grad student's Do-It-Yourself porn magazine...

Can the University, or the local prosecutor, stop publication of Issue #2?

(Maybe. Remember, we said it would be raunchier than anything else on local shelves. By definition, that exceeds community standards.)



OPTION #1 FOR THE DEBATE IN NEXT CLASS

ANIMATION: All elements fade in together.

SET UP THE IN-CLASS TRIAL DEBATE:

June 23, 2006 NY Times: Under a secret Bush administration program initiated weeks after the Sept. 11 attacks, counterterrorism officials have gained access to financial records from a vast international database and examined banking transactions involving thousands of Americans and others around the world.

Your assignment for recitation this week is to read the materials on the S.W.I.F.T. case and then prepare to debate if it was Watchdog Journalism...or Treason.

You will write 5 talking points on each side of the question and prepare to be randomly selected to argue the case.



OPTION #2 FOR THE DEBATE IN NEXT CLASS

ANIMATION: All elements fade in together.

SET UP THE IN-CLASS TRIAL/ DEBATE:

Bradley Manning, calling himself a whistle-blower, leaks a vast archive of documents to WikiLeaks, purporting to document misdeeds by the U.s. in Afghanistan.

Julian Assange shares them on the Web.

American newspapers like the New York Times comb the documents, remove names of U.S.

collaborators and publish reports from the files.

Does the First Amendment protect the Times? How about Manning? How about WikiLeaks founder Assange?

Your assignment for recitation this week is to read the materials and prepare to debate whether the first amendment protects it or not.

Assignments:

1. Read S.W.I.F.T. articles and chapter three of *"The Elements of Journalism."* Write talking points for a debate in recitation, citing chapter and articles.
2. OR...Read Wikileaks articles and chapter three of *"The Elements of Journalism."* Write talking points for a debate in recitation, citing chapter and articles.
2. "War, Terrorism & National Emergencies"
(In digital textbook)
(Read, think, write. Due next Lecture)

ANIMATION: Title fades in, followed by text.

Each lecturer must modify this slide, based on which topic they are doing: SWIFT or WikiLeaks



hus endeth the Lesson...