

Focus on Freedom

NEW YORK TIMES CO. v. UNITED STATES

On June 13, 1971, The New York Times published the first of the Pentagon Papers dealing with the history of American involvement in Vietnam. Daniel Ellsberg, a Pentagon employee, had released the classified documents to the press. When the Times was about to publish the third part of the secret information, the Justice Department obtained a federal injunction against the newspaper. A similar action was taken against the Washington Post for publishing the same material. The Supreme Court rapidly reviewed records of a lower court and ruled against prior restraint of such information.

The entire thrust of the Government's claim . . . has been that publication of the material sought to be enjoined 'could,' or 'might,' or 'may' prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result. . . .

—JUSTICE WILLIAM BRENNAN, 1971

It should be noted at the outset that the First Amendment provides that "Congress shall make no law . . . abridging the freedom of speech or of the press." That leaves, in my view, no room for governmental restraint on the press.

There is, moreover, no statute barring the publication by the press of the material which the *Times* and *Post* seek to use. . . .

The dominant purpose of the First Amendment was to prohibit the widespread practice of governmental suppression of embarrassing information. It is common knowledge that the First Amendment was adopted against the widespread use of the common law of seditious libel to punish dissemination of material that is embarrassing to the powers that be.

—JUSTICE WILLIAM DOUGLAS, 1971

Justice Byron White, who believed that publication of the material might be a criminal offense, stated that prior restraint was nonetheless unacceptable:

Nor, after examining the materials the Government characterizes as the most sensitive and destructive, can I deny that revelation of these documents will do substantial damage to public interests. Indeed, I am confident that their disclosure will have that result. But I nevertheless agree that the United States has not satisfied the very heavy burden which it must meet to warrant an injunction against publication in these cases.

—JUSTICE BYRON WHITE, 1971

Examining the Document

Reviewing Facts

1. Cite the main issue in *New York Times Co. v. United States*.
2. Explain what "heavy burden" of proof the government would have to provide to enable it to restrain the publication of sensitive material.

Critical Thinking Skills

3. Drawing Conclusions How might the publication of the Pentagon Papers have affected the national debate on the Vietnam War?

STUDENT HANDOUT 19

Censorship and the Press

Read the chapter “Freedom of the Press: A Cantankerous Press Must Be Suffered” in *The First Amendment: America’s Blueprint for Tolerance* and answer the following questions.

1. What means did the British government use to control the press?
2. Why would government leaders want to control the press? What kinds of ideas would they want to suppress? Whose interests might they be protecting?
3. What arguments can you make for protecting freedom of the press?
4. What is prior restraint? What arguments might the press make against it?
5. What values and interests might be endangered or exploited if there were no limits placed on the press?
6. What limits, if any, should the government be able to place on freedom of the press? Explain your position.