

☆ Defenders of Liberty: The People and the Press ☆

A Lesson by Linda Weber

SUMMARY

Freedom of speech or the press did not exist in the colonies before the Constitution. British subjects were under the authority of the king, and the king punished dissenters. The king also controlled the press and censored content before it was published. After the colonists fought and won independence from England, the rules were changed when the Constitution was written.

Remembering the king's actions, the Framers designed a government with three branches and a system of checks and balances to prevent the abuse of power. They also made the federal government responsible for protecting individual liberties and accountable to a separate, but all powerful group, the People.

Thomas Jefferson viewed the press as the “only safeguard for public liberty” and an informed citizenry as “the best army” for the task. Freedom of the press was seen as vital for protecting democracy so the Framers linked it to speech and included both in the First Amendment: “Congress shall make no law ... abridging freedom of speech, or of the press...”

Experience not only made its mark on the Constitution, but it also affected judicial interpretations that followed. In World War I, the Supreme Court upheld government actions against people in the interest of national security. Over the next 200 years, the Court would continue to grapple with freedom of expression issues in wartime. All the while, a watchful press would keep the public informed and debate alive. In 1971, the Supreme Court reaffirmed freedom of the press even in the midst of a war by allowing the publication of the Pentagon Papers. It had come full circle in its views.

This lesson is based on the Annenberg Classroom video that explores the evolution of the free press doctrine, *Freedom of the Press: New York Times v. United States*.

Notes and Considerations

- This lesson presumes that students have some experience reviewing Supreme Court cases.

Snapshot of Lesson

Grades: Middle School; High School (Focus)

Subject Focus: Civics/Government

Estimated Time: 2, 50-minute classes

Alignment: National Standards for Civics and Government Grades 5-8, Grades 9-12; Common Core Standards: Literacy in History/Social Studies, Science and Technical Subjects, Grades 6-8, 9-10, 11-12

Materials/Equipment Needed:

- Annenberg Video: *Freedom of the Press: New York Times v. United States*
- Computer lab

Materials Included:

Readings and Resources

- Video transcript formatted for study
- Chapters 6 & 7, *Our Rights*—David J. Bodenhamer
- Chapter 8: *The Pursuit of Justice*—Kermit L. Hall and John Patrick
- Civil Liberties in Wartime: Timeline
- Terms from *Understanding Democracy*

Student Materials

- Civics Knowledge Self-Assessment
- Class-Prep Assignment: Behind the Scenes
- Research Tips: Supreme Court Cases and Opinions
- Student's Video Guide
- Synopsis of the Story
- Visual: Track the Story Line

Teacher Materials

- Class-Prep Assignment Key
- Teacher's Video Guide & Key
- Keys for Cases in Brief
- Visual: Track the Story Line

Standards-Level Detail

- National Standards for Civics and Government
- Common Core State Standards

Lesson: Defenders of Liberty: The People and the Press

- This is a self-contained lesson with a variety of resources and activities that can be adapted to different lengths of classes and levels of students.

TOPICS

checks and balances	freedom of the press
civic literacy	judicial process
communication and media	lawmaking process
civil liberties in wartime	rights and responsibilities of citizenship
freedom of speech	security v. liberty
democratic citizenship	structure and function of government
information literacy	Supreme Court

NATIONAL STANDARDS

Document: *National Standards for Civics and Government* (1994) Center for Civic Education
<http://new.civiced.org/national-standards-download>

Grades 5-8 Organizing Questions

The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?
 - D. What are alternative ways of organizing constitutional governments?
- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - C. What is American political culture?
 - D. What values and principles are basic to American constitutional democracy?
- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
 - E. What is the place of law in the American constitutional system?
 - F. How does the American political system provide for choice and opportunities for participation?
- V. What are the roles of the citizen in American democracy?
 - A. What is citizenship?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?

Grades 9-12 Organizing Questions

The following outline lists the high-level organizing questions supported by this lesson.

- I. What are civic life, politics, and government?
 - A. What is civic life? What is politics? What is government? Why are government and politics necessary? What purposes should government serve?
 - B. What are the essential characteristics of limited and unlimited government?
 - C. What are the nature and purposes of constitutions?
 - D. What are alternative ways of organizing constitutional governments?

- II. What are the foundations of the American political system?
 - A. What is the American idea of constitutional government?
 - D. What values and principles are basic to American constitutional democracy?

- III. How does the government established by the Constitution embody the purposes, values, and principles of American democracy?
 - A. How are power and responsibility distributed, shared, and limited in the government established by the United States Constitution?
 - B. How is the national government organized and what does it do?
 - D. What is the place of law in the American constitutional system?

- V. What are the roles of the citizen in American democracy?
 - A. What is citizenship?
 - B. What are the rights of citizens?
 - C. What are the responsibilities of citizens?
 - D. What dispositions or traits of character are important to the preservation and improvement of American constitutional democracy?
 - E. How can citizens take part in civic life?

Note: A more detailed standards-level alignment related to these questions can be found in the “Standards” section at the end of this lesson plan.

COMMON CORE STANDARDS

Document: *English Language Arts & Literacy in History/Social Studies, Science and Technical Subjects*

Standards: Grades 6-12 Literacy in History/Social Studies, Science and Technical Subjects

<http://www.corestandards.org/ELA-Literacy>

Note: The activities in this lesson support learning related to the following standards. For more specifics, please refer to the Standards section of this lesson.

Reading in History/Social Studies 6-8

Key Ideas and Details

CCSS.ELA-Literacy.RH.6-8.1

CCSS.ELA-Literacy.RH.6-8.2

Craft and Structure

CCSS.ELA-Literacy.RH.6-8.4

CCSS.ELA-Literacy.RH.6-8.5

CCSS.ELA-Literacy.RH.6-8.6

Integration of Knowledge and Ideas

CCSS.ELA-Literacy.RH.6-8.7

CCSS.ELA-Literacy.RH.6-8.8

CCSS.ELA-Literacy.RH.6-8.9

Range of Reading and Level of Text Complexity

CCSS.ELA-Literacy.RH.6-8.10

Writing 6-8

Text Types and Purposes

CCSS.ELA-Literacy.WHST.6-8.1

CCSS.ELA-Literacy.WHST.6-8.2

Production and Distribution of Writing

CCSS.ELA-Literacy.WHST.6-8.4

Research to Build and Present Knowledge

CCSS.ELA-Literacy.WHST.6-8.7

CCSS.ELA-Literacy.WHST.6-8.8

CCSS.ELA-Literacy.WHST.6-8.9

Range of Writing

CCSS.ELA-Literacy.WHST.6-8.10

Reading in History/Social Studies 9-10

Key Ideas and Details

CCSS.ELA-Literacy.RH.9-10.1

CCSS.ELA-Literacy.RH.9-10.2

CCSS.ELA-Literacy.RH.9-10.3

Craft and Structure

CCSS.ELA-Literacy.RH.9-10.4

CCSS.ELA-Literacy.RH.9-10.5

CCSS.ELA-Literacy.RH.9-10.6

Integration of Knowledge and Ideas

CCSS.ELA-Literacy.RH.9-10.7

CCSS.ELA-Literacy.RH.9-10.8

CCSS.ELA-Literacy.RH.9-10.9

Range of Reading and Level of Text Complexity

CCSS.ELA-Literacy.RH.9-10.10

Writing 9-10

Text Types and Purposes

CCSS.ELA-Literacy.WHST.9-10.1

CCSS.ELA-Literacy.WHST.9-10.2

Production and Distribution of Writing

CCSS.ELA-Literacy.WHST.9-10.4

Research to Build and Present Knowledge

CCSS.ELA-Literacy.WHST.9-10.7

CCSS.ELA-Literacy.WHST.9-10.8

CCSS.ELA-Literacy.WHST.9-10.9

Range of Writing

CCSS.ELA-Literacy.WHST.9-10.10

Reading in History/Social Studies 11-12

Key Ideas and Details

CCSS.ELA-Literacy.RH.11-12.1

CCSS.ELA-Literacy.RH.11-12.2

CCSS.ELA-Literacy.RH.11-12.3

Craft and Structure

CCSS.ELA-Literacy.RH.11-12.4

CCSS.ELA-Literacy.RH.11-12.5

CCSS.ELA-Literacy.RH.11-12.6

Integration of Knowledge and Ideas

CCSS.ELA-Literacy.RH.11-12.7

CCSS.ELA-Literacy.RH.11-12.8

CCSS.ELA-Literacy.RH.11-12.9

Range of Reading and Level of Text Complexity

CCSS.ELA-Literacy.RH.11-12.10

Writing 11-12

Text Types and Purposes

CCSS.ELA-Literacy.WHST.11-12.1

CCSS.ELA-Literacy.WHST.11-12.2

Production and Distribution of Writing

CCSS.ELA-Literacy.WHST.11-12.4

Research to Build and Present Knowledge

CCSS.ELA-Literacy.WHST.11-12.7

CCSS.ELA-Literacy.WHST.11-12.8

CCSS.ELA-Literacy.WHST.11-12.9

Range of Writing

CCSS.ELA-Literacy.WHST.11-12.10

STUDENT OUTCOMES

Knowledge, skills, and dispositions

Students will . . .

- Learn about the role of the press in achieving and maintaining liberty.
- Understand how and why citizens fit into our checks-and-balances system of government.
- Learn to value citizenship and the responsibility to be informed about the government.
- Trace the development and evolution of our First Amendment right to freedom of the press.
- Recognize how landmark Supreme Court decisions are a reflection of the times.
- Think critically about how technology is used to influence belief and behavior.

Integrated Skills

1. Information literacy skills

Students will . . .

- Extract, organize and analyze information from different sources.
- Use skimming and research skills.
- Build background knowledge to support new learning.
- Use technology to facilitate learning.
- Grapple with issues related to access and use of information.

2. Media literacy skills

Students will . . .

- Gather and interpret information from different media.
- Use online sources to support learning.

3. Civic Literacy

Students will . . .

- Recognize the importance of knowing about and understanding government processes.

4. Communication skills

Students will . . .

- Write and speak clearly to contribute ideas, information, and express own point of view.
- Write in response to questions.
- Understand diverse opinions and points of view.
- Gather and interpret visual information.
- Develop listening skills.

5. Study skills

- Manage time and materials.

6. Thinking skills

Students will . . .

- Describe and recall information.
- Make real-world connections.
- Explain ideas or concepts.
- Draw conclusions.
- Use systems thinking to analyze interactions of parts to achieve a desired outcome
- Use sound reasoning and logic.
- Evaluate information and decisions.

7. Problem-solving skills

Students will . . .

- Discuss issues and facts.
- Analyze cause-and-effect relationships.
- Examine reasoning used in making decisions.
- Evaluate proposed solutions.
- Grapple with difficult issues and hard choices.

8. Participation skills

Students will . . .

- Contribute to group discussions.
- Work responsibly both individually and with diverse people.
- Express own beliefs, feelings and convictions.
- Show initiative and self-direction.
- Interact with others to deepen understanding.

ASSESSMENT

Evidence of understanding may be gathered from student performance related to the following:

- Class-Prep Assignment
- Responses to each part in the video guide
- Class discussion and daily assignments

VOCABULARY for the LESSON

Part 1: Civic History in Brief

abridge amendment Articles of Confederation authority banned Bill of Rights citizenry Congress constitution Constitution crime critical democracy	First Amendment Framers freedom of speech freedom of the press gag government informed integrity law parliament printing press prior restraint protest	protest literature ratified revolution revolutionaries revolutionary era revolutionary idea Revolutionary War rights seditious libel the Crown the press the public
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Part 2: Laws Cases and Controversies

<p>Words and Phrases hindsight suppress articulate check the government morale disrepute opinion</p> <p>Laws and Events World War I Alien and Sedition Acts of 1798 Sedition Act of 1918 Espionage Act of 1917 First Amendment Constitution</p>	<p>Legal and Government Terms “marketplace of ideas” case “clear and present danger” test contempt conviction Democratic-Republican dissent dissenting opinion Federalist Jeffersonian judicial review law majority opinion political party prosecuted socialist Supreme Court Supreme Court opinion draft uphold</p>	<p>People to Know George Washington Thomas Jefferson John Adams Matthew Lyon Eugene V. Debs Justice Oliver Wendell Holmes Justice Louis Brandeis</p> <p>Judicial Decisions <i>Matthew Lyon case</i> <i>Debs v. United States</i> <i>Marbury v. Madison</i> <i>Schenck v. United States</i> <i>Abrams v. United States</i></p>
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Part 3: *New York Times v. United States*

<p>Words and Phrases</p> <p>advocate checks and balances classified information “clear and present danger” standard dissent enjoin evolution in doctrine expedited hindsight imminent harm First Amendment values fourth branch of government treason leak majority manipulate policy top secret undaunted unprecedented</p>	<p>People and Organizations</p> <p>Daniel Ellsberg Alexander Haig Charles Colson Justice William J. Brennan Jr. Justice Harry Blackmun Justice William O. Douglas President Nixon Henry Kissinger New York Times Washington Post Marines</p> <p>Documents and Events</p> <p>Vietnam War Pentagon Papers</p>
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Resources for Definitions

- **Findlaw—Law Dictionary**
<http://dictionary.lp.findlaw.com/>
- **Legal Information Institute, Cornell University Law School**
Wex: All
<https://www.law.cornell.edu/wex/all>
- **National Standards for Civics and Government: Glossary**
http://new.civiced.org/standards?page=stds_glossary
- **Merriam-Webster Online**
<http://www.merriam-webster.com/>
- **Annenberg Classroom – Glossary**
<http://www.annenbergclassroom.org/terms>
- **Glossary of Legal Terms: SCOTUSblog**
<http://www.scotusblog.com/reference/educational-resources/glossary-of-legal-terms/>
- **Glossary: United States Courts**
<http://www.uscourts.gov/Common/Glossary.aspx>

LESSON OVERVIEW

This lesson is organized to support study and learning related to the 25-minute video **Freedom of the Press: *New York Times v. United States*** by providing a plan that can be adapted for classes of different lengths and students of different levels. Due to the depth of prerequisite knowledge required, this lesson divides the video into logical parts (shown below) to facilitate thoughtful reflection of the content. The parts and their titles do not appear in the video. The transcript, however, has been formatted to support the activities in the lesson.

- Day 1 Showing** { Part 1: Civic History in Brief (Start – 06:22)
Part 2: Laws, Cases, and Controversies (06:23 – 14:18)
- Day 2 Showing** ← Part 3: *New York Times v. United States* (14:19 – End)

Goals:

Students will . . .

- Identify the responsibilities of government in a national state of emergency.
- Appreciate how the checks-and-balances system works to protect individual liberties.
- Discover how the government responded to the events of 9/11.
- Understand the history and importance of habeas corpus.
- Analyze how executive orders affected individual liberties in three wars.
- Consider the importance of adhering to the rule of law.
- Grapple with timely issues that affect national security and individual liberties.

Class-Prep Assignment: Behind the Scenes

Students complete a self-assessment of civics knowledge and submit their scores before starting the Class-Prep Assignment. This assignment builds background knowledge and understanding for content covered in each part of the video.

DAY 1: Give and Take

Students learn how time and experience not only gave us free speech and press rights, but also caused the government to start taking them away.

DAY 2: Back to Basics

Students learn about the landmark Supreme Court decision in *New York Times v. United States* and explore the impact of the decision on the relationship between the government, the people, and the press.

Citizenship is every person's highest calling.

– Ambassador Walter H. Annenberg

TEACHING ACTIVITIES: Day by Day

Class-Prep Assignment: Behind the Scenes

Students complete the Civics Knowledge Self-Assessment and submit their scores before starting the Class-Prep Assignment.

This Class-Prep Assignment provides important background knowledge for the content covered in the video ***Freedom of the Press: New York Times v. United States***. It is divided into three parts. Each part is designed to acquaint students with the laws, cases, people, issues and terminology they will encounter when watching the corresponding part in the video.

Before each showing, allow students enough time to complete the parts as indicated below.

Part 1: Civic History in Brief	}	Day 1 Showing
Part 2: Laws, Cases, and Controversies		
Part 3: <i>New York Times v. U.S.</i>	→	Day 2 Showing

Materials/Technology Needed:

- Civics Knowledge Self-Assessment
- Class-Prep Assignment: Behind the Scenes (Student Materials)
 - Part 1: Civic History in Brief
 - Part 2: Laws, Cases, and Controversies
- Synopsis of the Story
- Visual: Track the Story Line
- Internet access
- All resources included with the lesson

Instructions:

1. Have students complete the Civics Knowledge Self-Assessment before starting Part 1 of Class-Prep Assignment.
2. Introduce the story by using the Synopsis of the Story and preview the story line by using the visual. Throughout the lesson, refer to the visual as needed to help students keep track of the story.
3. Review instructions for the Class-Prep Assignment and assign Part 1 and Part 2.

* Make available all resources included with this lesson for the duration of the activities. *

Remind students to bring their work to class.

DAY 1: Give and Take

Day 1 Showing { Part 1: Civic History in Brief (Start – 06:22)
Part 2: Laws, Cases, and Controversies (06:23– 14:18)

Overview: Students watch the first two parts of the video and begin to analyze how time and experience not only gave us free speech and press rights, but also caused the government to start taking them away.

Goal: Students will learn about role of the press in securing and defending our liberty, even in wartime.

Materials/Equipment:

- Computers with internet access
- Video: *Freedom of the Press: New York Times v. United States* (25 minutes)
Available from Annenberg Classroom at <http://www.annenbergclassroom.org/page/all-videos>
- Video transcript: *Freedom of the Press: New York Times v. United States* (In Lesson Resources)
- Supreme Court opinions in the four Guantanamo cases (In Lesson Resources)
- Research tips: Supreme Court Cases and Opinion (In Lesson Resources)

Student Materials:

- Class-Prep Assignment – Part 1 and Part 2 (completed before class)
- Student’s Video Guide
- Visual: Track the Story Line

Teacher Materials:

- Teacher’s Video Guide & Key
- Keys for All Cases in Brief (Activity in Part 2)
- Visual: Track the Story Line

Procedure:

1. Briefly review Parts 1 and 2 in the Class-Prep Assignment.
2. Distribute and review the Student’s Video Guide.
3. Show Part 1 and Part 2 of the video. Stop after Part 1 to reflect and discuss as a class or assign questions in the video guide.
4. Use the visual to track and review the story after each part.

Homework:

Class-Prep Assignment: Complete Part 3: *New York Times v. United States*

Purpose: Become familiar with the case and the opinion that will be discussed in Part 3 of the video.

Remind students to bring the assignment to class.

DAY 2: Back to Basics

Day 2 Showing → Part 3: *New York Times v. United States*

Overview: Students watch the remainder of the video, which focuses on the Supreme Court case and decision in *New York Times v. United States*.

Goal: Students explore the impact of the case and decision in *New York Times v. United States* on the people's right to a free press.

Materials Needed:

- Computer with internet connection
- Video: *Freedom of the Press: New York Times v. United States*
Available from Annenberg Classroom at <http://www.annenbergclassroom.org/page/all-videos>

Student Materials:

- Student's Video Guide (used on Day 1)
- Class-Prep Assignment: Part 3 (completed before class)
- Visual: Track the Story Line

Teacher Materials:

- Teacher's Video Guide & Key (used on Day 1)

Procedure:

1. Briefly review the Case Brief Chart for *New York Times v. United States* assigned for homework.
2. Show the last part of the video, then review the story line with the visual.
3. Conduct Three-Minute Reviews. (Instructions are provided in the Video Guide)

EXTENSION ACTIVITIES

Have more time to teach?

1. Explore the responsibilities and challenges of 21st century citizenship.
<http://www.p21.org/about-us/p21-framework/258>
2. Gather, discuss and evaluate contemporary examples of the press exposing questionable practices or illegal behavior by the government. (e.g., lies, secrets, deception, manipulation of facts, editing the historical record, misuse of classified material, taking advantage of uninformed and inexperienced reporters, etc.)
3. Develop and conduct a survey of students and adults that gathers data on media use for news and information about the government.
4. Explore examples of conflicts between the press and the president in current and past administrations.
5. Examine the risks and benefits of the 24/7 news cycle. Address the problems associated with giving the public early, unsubstantiated and incomplete information.
6. Identify and discuss the challenges faced by the government, the people and the press in the midst of the war on terror.
7. Address the problems of information overload and the struggle to stay informed in the information age. Devise a plan for helping ordinary people become discerning consumers of the news.
8. Learn about the status of freedom of the press around the world.
Freedom House Reports
<https://freedomhouse.org/reports>
9. Learn about “the law that keeps citizens in the know about their government” and how it works.
Freedom of Information Act (FOIA)
<https://www.foia.gov/>
10. Review codes of ethics in journalism, then analyze and evaluate the work of journalists from different media outlets.
 - SPJ Code of Ethics, Society of Professional Journalists
<http://www.spj.org/ethicscode.asp>
 - National Press Photographers Association: Code of Ethics
https://nppa.org/code_of_ethics

RELATED RESOURCES

Annenberg Resources:

- *Understanding Democracy, A Hip Pocket Guide*—John J. Patrick
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>
- Chapter 7: The Right to Freedom of the Press, *Our Rights*
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Rights/Chapter_7_Our_Rights.pdf
- Chapter 15: Freedom of the Press in a Free Society, *The Pursuit of Justice*
http://www.annenbergclassroom.org/Files/Documents/Books/The%20Pursuit%20of%20Justice/126_133_Ch_15.pdf
- Freedom of the Press: Timelines
<http://www.annenbergclassroom.org/timeline/freedom-of-the-press>
- The Annenberg Guide to the United States Constitution: What It Says, What It Means
First Amendment
<http://www.annenbergclassroom.org/page/first-amendment>
- Civil Liberties in Wartime: Timeline
<http://www.annenbergclassroom.org/Files/Documents/Timelines/CivilLibertiesinWartime.pdf>

Civic Literacy

- 21st Century Citizenship: Partnership for 21st Century Skills
<http://www.p21.org/our-work/citizenship>
- U.S. Citizenship and Immigration Services: Civics Practice Test
<https://my.uscis.gov/prep/test/civics>
- Civics (History and Government) Questions for the Naturalization Test (rev. 2/16)
<https://www.uscis.gov/sites/default/files/USCIS/Office%20of%20Citizenship/Citizenship%20Resource%20Center%20Site/Publications/100q.pdf>
- iCivics Lesson: The Fourth Branch: YOU!
<https://www.icivics.org/sites/default/files/Fourth%20Branch.pdf>
- Civics Renewal Network
<http://civicsrenewalnetwork.org/>

Press Freedom

- First Amendment
https://www.law.cornell.edu/anncon/html/amdt1bfrag1_user.html#amdt1b_hd4
<http://constitution.findlaw.com/amendment1.html>
- Bill of Rights Institute: Landmark Supreme Court Cases—Freedom of the Press
<https://billofrightsinstitute.org/educate/educator-resources/landmark-cases/freedom-of-the-press/>
- National Archives: Freedom of the Press Under Stress
<https://education.blogs.archives.gov/2016/04/26/freedom-of-the-press-under-stress/>
- A Free Press
<http://www.archives.gov/philadelphia/exhibits/franklin/press.html>
- Proclamation 5360: Freedom of the Press Day, May 3
<https://reaganlibrary.archives.gov/archives/speeches/1985/80285c.htm>
- Speech by President Kennedy: The President and the Press: Address before the American Newspaper Publishers Association, April 27, 1961
http://www.jfklibrary.org/Research/Research-Aids/JFK-Speeches/American-Newspaper-Publishers-Association_19610427.aspx
- Student Press Law Center
<http://www.splc.org/>
- Defenders of Freedom: The Media and You
<http://usatoday30.usatoday.com/educate/elections/elect5.htm>

Supreme Court Resources

- Information about Opinions
http://www.supremecourt.gov/opinions/info_opinions.aspx
- United States Reports: Decisions of the United States Supreme Court
<https://law.resource.org/pub/us/case/reporter/US/>

“In the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defense and 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. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For, without an informed and free press, there cannot be an enlightened people.”
Justice Stewart, Concurring opinion: *New York Times Co. v. United States* (1971)

Student Materials

- Civics Knowledge Self-Assessment
- Class-Prep Assignment: Behind the Scenes
 - Part 1: Civic History in Brief
 - Part 2: Laws, Cases, and Controversies
 - Part 3: *New York Times v. United States*
- Research Tips: Supreme Court Cases and Opinions
- Student's Video Guide
- Synopsis of the Story
- Visual: Track the Story Line

Civics Knowledge Self-Assessment

Those applying to become U.S. citizens must pass a civics (history and government) test as part of the process. The following questions are taken from the 100-question list by U.S. Citizenship and Immigration Services updated 2/16. All questions relate to topics in the video *Freedom of the Press: New York Times v. United States* and the accompanying lesson.

Score Box Assessment Date: Raw score: Percent:
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Instructions:

1. Check your knowledge by answering the questions **before** starting the Class-Prep Assignment.
2. Correct answers by using the USCIS 100 Civics Questions and Answers as a key. Your teacher can provide you with a copy or you may access one from USCIS:
<https://www.uscis.gov/citizenship/learners/study-test/study-materials-civics-test>
3. Write your score in the box at the right.
4. Rate your knowledge level on a scale of 0-10. _____
0= No nothing 10 = Expert

Questions:

Note: The reference code following each question indicates the question number on the key.
(Q1) = question 1

1. What is the supreme law of the land? (Q1)
2. What does the Constitution do? (Q2)
3. The idea of self-government is in the first three words of the Constitution. What are these words? (Q3)
4. What is an amendment? (Q4)
5. What do we call the first ten amendments to the Constitution? (Q5)
6. What is **one** right or freedom from the First Amendment? (Q6)
7. What did the Declaration of Independence do? (Q8)
8. What are **two** rights in the Declaration of Independence? (Q9)
9. What is the "rule of law"? (Q12)
10. Name **one** branch or part of the government? (Q13)
11. What stops **one** branch of government from becoming too powerful? (Q14)
12. Who is in charge of the executive branch? (Q15)
13. Who makes federal laws? (Q16)
14. What are the two parts of the U.S. Congress? (17)

Civics Knowledge Self-Assessment

15. Who signs bills to become laws? (Q33)
16. Who vetoes bills? (Q34)
17. What does the judicial branch do? (Q37)
18. What is the highest court in the United States? (Q38)
19. How many justices are on the Supreme Court? (Q39)
20. What are the two major political parties in the United States? (Q45)
21. What is one responsibility that is only for United States citizens? (Q49)
22. Name one right only for United States citizens? (Q50)
23. What are the two rights of everyone living in the United States? (Q51)
24. What do we show loyalty to when we say the Pledge of Allegiance? (Q52)
25. What is one promise you make when you become a United States citizen? (Q53)
26. How old do citizens have to be to vote for President? (Q54)
27. What are two ways that Americans can participate in their democracy? (Q55)
28. What is one reason colonists came to America? (Q58)
29. Why did the colonists fight the British? (Q61)
30. When was the Declaration of Independence adopted? (Q63)
31. There were thirteen original states. Name **three**. (Q64)
32. What happened at the Constitutional Convention? (Q65)
33. When was the Constitution written? (Q66)
34. The Federalist Papers supported the passage of the U.S. Constitution. Name one of the writers. (Q67)
35. Who was the “Father of Our Country?” (Q69)
36. Who was the first President? (Q70)
37. Name one war fought by the United states in the 1900s. (Q78)
38. Who was president during World War I? (Q79)

Class-Prep Assignment: Behind the Scenes

Part 1: Civic History in Brief

Prerequisite: Complete the Civics Knowledge Self-Assessment and submit your score.

Introduction:

The Class-Prep Assignment is designed to provide you with essential background knowledge for the video *Freedom of the Press: New York Times v. United States*. It is divided into three parts. Each part supports a specific section of the video.

Instructions:

1. You may work independently, with a partner, or in a study group. Should you choose to work with others, please identify them by name below.
2. Complete the work for each of the following parts as assigned before watching the video.

Part 1: Civic History in Brief

Part 2: Laws, Cases, and Controversies

Part 3: *New York v. United States*

3. Bring all related work to class to use as a reference during class discussion.
4. Use the resources at the end of each part and those made available by the teacher to complete the work.
5. Keep a list of other reputable sources used.

Bring this assignment and all completed work with you to class.

Class-Prep Assignment: Behind the Scenes

Part 1: Civic History in Brief

Part 1: Civic History in Brief

In Part 1, you will learn about the experiences, words, aspirations and interactions of people and their government over time that led to the unabridged rights to freedom of speech and the press in the U.S. Constitution.

Instructions:

Use the resources at the end of Part I to assist with the questions and activities.

Questions:

1. When was the printing press invented and why?
2. Describe the relationship between British subjects and the King of England during the colonial period.
3. How did the king handle the press in England and in the colonies?
4. During the colonial period, how did the King and the people make use of the press?
5. The colonists believed the right to a free press was part of their "heritage as Englishmen." Explain.
6. Why was the press valuable to the colonists in the revolutionary period?
7. How did the colonists get the right to a free press?
8. Quote the relevant phrase for the right to free speech and the press. Cite the source. Identify the citation format you followed.

Restate the quote without using any of the exact words.

Activity 1: Sequence the Events

Chronology tells the story of the press from regulation to freedom. Sequence the following experiences, events, and documents, then rewrite them in correct order. Add dates and descriptors for each item with an asterisk (*).

- ___ Articles of Confederation*
- ___ Regulation and censorship of the press in the colonies
- ___ U.S. Constitution*
- ___ Invention and use of the printing press*
- ___ Bill of Rights*
- ___ Colonization in the U.S. by the British begins*
- ___ Declaration of Independence*
- ___ Bill of Rights*
- ___ Regulation and censorship of the press in England
- ___ First Amendment*
- ___ Revolutionary War* (1775-1783; war for independence)

Class-Prep Assignment: Behind the Scenes

Part 1: Civic History in Brief

Be prepared to discuss ways in which the people, the press, and their government both changed and stayed the same over the period of time covered.

Activity 2: Design a Graphic

Freedom of expression includes freedom of speech and the press. Design a graphic, such as a Venn diagram, that compares and contrasts the two rights.

Speech:

Press:

Both speech and press:

Activity 3: The Founder's Own Words

Analyze the following quotes to determine what the founders said about the people, the press, the government, and liberty. Take notes.

- **Thomas Jefferson to Edward Carrington, 16 January 1787**

"I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them."

- **Thomas Jefferson to James Madison, 10 December 1787**

". . . Bill of Rights is what the people are entitled to against every government, and what no government should refuse, or rest on interference."

- **Thomas Jefferson to Colonel Charles Yancey, Monticello, January 6, 1816**

"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be. The functionaries of every government have propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves; nor can they be safe with them without information. Where the press is free, and every man able to read, all is safe."

- **James Madison:** "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

Class-Prep Assignment: Behind the Scenes

Part 1: Civic History in Brief

Part 1 Resources

- The Annenberg Guide to the United States Constitution: What It Says, What It Means
<http://www.annenbergclassroom.org/page/a-guide-to-the-united-states-constitution>
- *First Amendment Overview*, Legal Information Institute, Cornell University Law School
https://www.law.cornell.edu/wex/first_amendment
- Chapter 7: The Right to Freedom of the Press, *Our Rights*
Focus on the first 4 paragraphs. (Included in Lesson Resources)
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Rights/Chapter_7_Our_Rights.pdf
- *Our Constitution*: Chapter One: Why Was a Constitution Necessary?
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Constitution/Chapter%2001_Our%20Constitution.pdf
- *Understanding Democracy, A Hip Pocket Guide*—John J. Patrick
(Selections Included in Lesson Resources)
<http://www.annenbergclassroom.org/page/understanding-democracy-a-hip-pocket-guide>

Additional Resources Used

Cite other reputable sources used.

Video Vocabulary for Part 1

After working through Part 1, assess your knowledge of the vocabulary words below, including multiple meanings, as these terms will be used in video.

abridge
amendment
Articles of Confederation
authority
banned
Bill of Rights
citizenry
Congress
constitution
Constitution
crime
critical
democracy

First Amendment
Framers
freedom of speech
freedom of the press
gag
government
informed
integrity
law
parliament
printing press
prior restraint
protest

protest literature
ratified
revolution
revolutionaries
revolutionary era
revolutionary idea
Revolutionary War
rights
seditious libel
the Crown
the press
the public

Class-Prep Assignment: Behind the Scenes

Part 2: Laws, Cases, and Controversies

Part 2: Laws, Cases, and Controversies

In Part 2, you will learn about judicial decisions that show how interpretations of the rights to free speech and the press evolved over time.

Activity #1:

Select words from the list at the right to fill in the blanks or answer the questions. Consult the Part 2 Resources to assist with the activity.

1. A possible war with France led the first Congress to pass the _____ and President _____ to sign them into law. _____ was the Vice President and a leader of the _____ Party. The President was a member of the _____ Party.
2. _____ was one of the earliest people convicted of _____ under the _____ for writing and reading a letter critical of President Adams and his administration's policy toward France.
1. The power of _____ gives the _____ the power to declare _____ laws written by Congress and signed into law by the President. In World War I, which laws made dissenting words a _____? _____
2. In which cases were individuals convicted for voicing opposition to a war or government actions? _____
3. In which cases were individuals convicted for the distribution of written material deemed a threat by the government? _____
4. In _____, the Supreme Court unanimously agreed that the nature of the circumstances ultimately determines if one can claim protection under the free speech clause of the _____. When delivering the majority opinion, _____ linked printed words and spoken words and articulated a standard known as the _____ for determining when the government can limit individual _____.
5. _____ was a _____ leader sentenced to 10 years in federal prison for giving an anti-war speech that included criticism of the _____.
6. When Justice Oliver Wendell Holmes wrote his _____ in _____, he used the metaphor of a marketplace to explain the value of _____ and the free exchange of ideas.

Vocabulary

People

George Washington
Thomas Jefferson
John Adams
Matthew Lyon
Eugene V. Debs
Justice Oliver Wendell Holmes
Justice Louis Brandeis

Laws and Cases

Sedition Act of 1798
Sedition Act of 1918
Espionage Act of 1917
U.S. Constitution
Debs v. United States
Marbury v. Madison
Schenck v. United States
Abrams v. United States
United States v. Matthew Lyon

Legal & Political Terms

"clear and present danger" test
conviction
crime
Democratic-Republican
dissenting opinion
draft
Federalist
First Amendment
freedom of speech
Jeffersonian
judicial review
liberty
majority opinion
"marketplace of ideas"
opposition party
political party
prosecute
seditious libel
Socialist
the press

Class-Prep Assignment: Behind the Scenes

Part 2: Laws, Cases, and Controversies

Research Activity #2: Dangerous Words?

Through this activity you will learn more about four historic cases in which these people ended up being convicted under the law and sentenced to prison for using words to oppose the federal government:

- Matthew Lyon
- Eugene V. Debs
- Charles T. Schenck
- Jacob Abrams

Cases for three of the people were appealed and heard by a Supreme Court that upheld the convictions. One was not. Each case plays an important role in the video you will watch in class.

Instructions:

Reproduce the Case in Brief Chart below, then work with a partner or in a study group to complete 1 chart for each case before coming to class. Only complete rows 1-8 at this time.

Note: There are two categories that do not apply for one case. Write N/A and give a reason.

Case in Brief Chart			
1.	Name of the Case	Which court was the final arbiter of this case?	Vote
2.	Full Citation for the Opinion	Constitutional Issue	Decision Date
3.	Identify Opposing Parties:		
4.	Background Story (Facts): a. Describe the historical context (e.g., major events, issues, concerns of society) at the time.) b. Provide key information about each of the parties. c. What decision/action led to the dispute between parties? d. Why did the parties end up in court? e. What claims were made by each side?		
5.	Question Before the Court:		
6.	Decision of the Court:		
7.	Outcome:		
8.	Was this case about spoken words, printed words, or both?		
Complete the following AFTER watching the video.			
9.	How did the decision in this case contribute to the story in the video?		
10.	Describe a memorable point, principle or understanding involving this case and provide a supporting quote. Identify the writer and indicate if it comes from the majority or dissenting opinion.		
11.	Explain how the case and the decision are a reflection of the times.		

Class-Prep Assignment: Behind the Scenes

Part 2: Laws, Cases, and Controversies

Part 2 Resources

This collection of resources is provided to assist with completing the activities in Part 2.

- Research Tips: Supreme Court Cases and Opinions (Lesson Resource)
- Civil Liberties in Wartime: Timeline (Included in Lesson Resources)
Annenberg Classroom
<http://www.annenbergclassroom.org/Files/Documents/Timelines/CivilLibertiesinWartime.pdf>
An annotated timeline containing the laws and cases covered in this assignment.
- Chapter 6: The Right to Free Speech, *Our Rights* (Included in Lesson Resources)
Annenberg Classroom
http://www.annenbergclassroom.org/Files/Documents/Books/Our%20Rights/Chapter_6_Our_Rights.pdf
- Chapter 8: Limits and Latitude, *The Pursuit of Justice* (Included in Lesson Resources)
Annenberg Classroom
http://www.annenbergclassroom.org/Files/Documents/Books/The%20Pursuit%20of%20Justice/69_75_Ch_8.pdf
- *The Sedition Act of 1918*
PBS: http://www.pbs.org/wnet/supremecourt/capitalism/sources_document1.html
- Sedition Act Trials: Historical Documents and Background: A Short Narrative
Federal Judicial Center: http://www.fjc.gov/history/home.nsf/page/tu_sedition_narrative.html
- *Schenck v. United States*
OYEZ: <https://www.oyez.org/cases/1900-1940/249us47>
Justia: <https://supreme.justia.com/cases/federal/us/249/47/>
Britannica: <https://www.britannica.com/biography/Charles-T-Schenck>
- *Abrams v. United States*
OYEZ: <https://www.oyez.org/cases/1900-1940/250us616>
Justia: <https://supreme.justia.com/cases/federal/us/250/616/case.html>
PBS: http://www.pbs.org/wnet/supremecourt/personality/landmark_abrams.html
- *Debs. v. United States*
Oyez: <https://www.oyez.org/cases/1900-1940/249us211>
Justia: <https://supreme.justia.com/cases/federal/us/249/211/>
Britannica: <https://www.britannica.com/biography/Eugene-V-Debs>
- *United States Reports*: Decisions of the United States Supreme Court
<https://law.resource.org/pub/us/case/reporter/US/>
(Use the citation to locate the case.)

Class-Prep Assignment: Behind the Scenes

Part 2: Laws, Cases, and Controversies

Resources for Terminology

- Legal Information Institute, Cornell University Law School
<https://www.law.cornell.edu/wex/all>
- Findlaw—Law Dictionary
<http://dictionary.lp.findlaw.com/>
- Glossary of Legal Terms: SCOTUSblog
<http://www.scotusblog.com/reference/educational-resources/glossary-of-legal-terms/>

Additional References and Resources Used

Cite other reputable sources used.

Video Vocabulary for Part 2

After working through Part 2, self-assess your knowledge of the vocabulary words below, including multiple meanings, as they will be used in this part of the video.

<p>Words and Phrases hindsight suppress articulate check the government morale disrepute opinion</p> <p>Laws and Events World War I Alien and Sedition Acts of 1798 Sedition Act of 1918 Espionage Act of 1917 First Amendment Constitution</p>	<p>Legal and Government Terms “marketplace of ideas” case “clear and present danger” test contempt conviction Democratic-Republican dissent dissenting opinion Federalist Jeffersonian judicial review law majority opinion political party prosecuted socialist Supreme Court Supreme Court opinion draft uphold</p>	<p>People to Know George Washington Thomas Jefferson John Adams Matthew Lyon Eugene V. Debs Justice Oliver Wendell Holmes Justice Louis Brandeis</p> <p>Judicial Decisions <i>Matthew Lyon case</i> <i>Debs v. United States</i> <i>Marbury v. Madison</i> <i>Schenck v. United States</i> <i>Abrams v. United States</i></p>
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Class-Prep Assignment: Behind the Scenes

Part 3: *New York Times v. United States*

Part 3: *New York Times v. United States*

In Part 3, you will learn about the Supreme Court decision in *New York Times v. United States* (1971) and discover how it changed the trajectory of the Court’s interpretation of the First Amendment right to freedom of the press.

Research Activity:

1. Reproduce, then complete rows 1-8 in the Case in Brief Chart (same chart used in Part 2).
2. Use the resources at the end of Part 3 to assist with this activity.
3. Cite other reputable sources used.

Case in Brief Chart			
1.	Name of the Case	Which court was the final arbiter of this case?	Vote
2.	Full Citation for the Opinion	Constitutional Issue	Decision Date
3.	Identify Opposing Parties:		
4.	Background Story (Facts): a. Describe the historical context (e.g., major events, issues, concerns of society) at the time. b. Provide key information about each of the parties. c. What decision/action led to the dispute between parties? d. Why did the parties end up in court? e. What claims were made by each side?		
5.	Question Before the Court:		
6.	Decision of the Court:		
7.	Outcome:		
8.	Was this case about spoken words, printed words, or both?		
Complete the following AFTER watching the video.			
9.	How did the decision in this case contribute to the story in the video?		
10.	Describe a memorable point, principle, or understanding involving this case and provide a supporting quote. Identify the writer and indicate if it comes from the majority or dissenting opinion.		
11.	Explain how the case and the decision are a reflection of the times.		

Class-Prep Assignment: Behind the Scenes

Part 3: *New York Times v. United States*

Part 3: *New York Times v. United States*

Part 3 Resources:

- Freedom of the Press: Prior Restraint
First Amendment Center
<http://www.firstamendmentcenter.org/prior-restraint>
- Civil Liberties in Wartime: Timeline
Annenberg Classroom
<http://www.annenbergclassroom.org/Files/Documents/Timelines/CivilLibertiesinWartime.pdf>
An annotated timeline containing the laws and cases covered in this assignment.
- *New York Times v. United States* (1971)
Bill of Rights Institute:
<http://billofrightsinstitute.org/educate/educator-resources/lessons-plans/landmark-supreme-court-cases-elessons/new-york-times-v-united-states-1971/>
- United States Reports: Electronic copies of the official printed version
<https://law.resource.org/pub/us/case/reporter/US/403/403.US.713.1873.1885.html>
- *New York Times Company v. United States*
OYEZ: <https://www.oyez.org/cases/1970/1873>
- *New York Times Co. v. United States*
403 U.S. 713 (1971)
Justia: <https://supreme.justia.com/cases/federal/us/403/713/>

Resources for Terminology

- Legal Information Institute, Cornell University Law School
<https://www.law.cornell.edu/wex/all>
- Findlaw—Law Dictionary
<http://dictionary.lp.findlaw.com/>
- Glossary of Legal Terms: SCOTUSblog
<http://www.scotusblog.com/reference/educational-resources/glossary-of-legal-terms/>
- Glossary: United States Courts
<http://www.uscourts.gov/Common/Glossary.aspx>
- Merriam-Webster Online
<http://www.merriam-webster.com/>

Class-Prep Assignment: Behind the Scenes

Part 3: *New York Times v. United States*

Part 3: *New York Times v. United States*

Additional Resources Used

List the names and provide links for other reputable sources used.

Video Vocabulary for Part 3

Self-assess your knowledge of the vocabulary words below, including multiple meanings. Be sure you can identify the people, organizations, documents and events as they all play significant roles in the last part of the story.

Words and Phrases

advocate
checks and balances
classified information
“clear and present danger” standard
dissent
enjoin
evolution in doctrine
expedited
hindsight
imminent harm
First Amendment values
fourth branch of government
treason
leak
majority
manipulate
policy
top secret
undaunted
unprecedented

People and Organizations

Daniel Ellsberg
Alexander Haig
Charles Colson
Justice William J. Brennan, Jr.
Justice Harry Blackmun
Justice William O. Douglas
President Nixon
Henry Kissinger
New York Times
Washington Post
Marines

Documents and Events

Vietnam War
Pentagon Papers

Research Tips: Supreme Court Cases and Opinions

1. Case names and Supreme Court opinions may be written in short or long forms.

The following format variations are for the same case.

New York Times Company v. United States ← The parties in dispute are italicized.)

New York Times Co. v. United States

New York Times v. United States

New York Times Co. v. United States (1971) ← The date indicates the year of the Court's opinion.

New York Times Company v. United States, 403 U.S. 713 (1971) ← full citation

When the official Supreme Court Opinion is recorded in *United States Reports*, the title includes more information:

<p>403 U.S. 713 91 S.Ct. 2140 29 L.Ed.2d 822 NEW YORK TIMES COMPANY, Petitioner, v. UNITED STATES. UNITED STATES, Petitioner, v. The WASHINGTON POST COMPANY et al. Nos. 1873, 1885. Argued June 26, 1971. Decided June 30, 1971.</p>

Source: <https://law.resource.org/pub/us/case/reporter/US/403/403.US.713.1873.1885.html>

2. Every Supreme Court opinion has an official citation.

The full citation contains 5 elements: case name (names of the parties involved), year the Supreme Court made its decision, publisher of the opinion, the volume and page number in the official record, *United States Reports*.

Example: *New York Times Company v. United States* ← case name in italics
 403 U.S. 713 (1971)

403	U.S.	713	(1971)
Volume # in <i>United States Reports</i>	<i>United States Reports</i> <i>Initials for the publisher of the opinion</i>	Page Number <i>First page of the case in the volume</i>	Year of Decision <i>in parentheses</i>

3. There is only 1 official source for Supreme Court decisions.

- ***United States Reports***

Official bound volumes: <http://www.supremecourtus.gov/opinions/boundvolumes.html>

Electronic copies: <https://law.resource.org/pub/us/case/reporter/US/>

The print version trumps the electronic version should there be any discrepancies.

4. Reputable sources such as these, though unofficial, provide additional helpful information.

- Oyez: <https://www.oyez.org/>
- Findlaw: <http://caselaw.findlaw.com/court/us-supreme-court>
- Cornell University Law School: <https://www.law.cornell.edu/supct/search/search.html>
- Justia US Supreme Court: <https://supreme.justia.com/>

Student's Video Guide

Freedom of the Press: New York Times v. United States

(Time: 25 minutes)

Synopsis

Freedom of speech or the press did not exist in the colonies before the Constitution. British subjects were under the authority of the king, and the king punished dissenters. The king also controlled the press and censored content before it was published. After the colonists fought and won independence from England, the rules were changed when the Constitution was written.

Remembering the king's actions, the Framers designed a government with three branches and a system of checks and balances to prevent the abuse of power. They also made the federal government responsible for protecting individual liberties and accountable to a separate, but all powerful group, the People.

Jefferson viewed the press as the "only safeguard for public liberty" and an informed citizenry as "the best army" for the task. Freedom of the press was seen as vital for protecting democracy, so the Framers linked it to speech and included both in the First Amendment: "Congress shall make no law . . . abridging freedom of speech, or of the press..."

Experience not only made its mark on the Constitution, but it also impacted judicial interpretations that followed. In World War I, the Supreme Court upheld government actions against people in the interest of national security. Over the next 200 years, the Court would continue to grapple with freedom of expression issues in wartime. All the while, a watchful press would keep the public informed and debate alive. In 1971, the Supreme Court reaffirmed freedom of the press even in the midst of a national crisis by allowing the publication of the Pentagon Papers. It had come full circle in its views.

This video tells the story of how time and experience gave us the fundamental rights of free speech and a free press and how our understanding of those rights evolved over the years.

<p>Speakers on Screen</p> <ul style="list-style-type: none">• Akhil Amar: Yale Law School• Barbie Zelizer: University of Pennsylvania• Floyd Abrams: Attorney, Cahill Gordon & Reindel• Geoffrey R. Stone: University of Chicago Law School• Joanne Freeman: Yale University• Kanji Yoshino: New York University School of Law• Paula Franzese: Seton Hall University School of Law• Stephen Solomon: New York University• Susan Herman: President, American Civil Liberties Union• Ted Olson: Former U.S. Solicitor General• Vincent Warren: Executive Director, Center for Constitutional Rights	<p>Speakers on Audio Tape</p> <ul style="list-style-type: none">• Alexander M. Haig, Jr.: White House Chief of Staff• Charles Colson: Special Council to the President• Henry Kissinger: Secretary of State• Richard M. Nixon: President of the United States <p>Laws and Cases</p> <ul style="list-style-type: none">• Espionage Act of 1917• Sedition Act of 1798• Sedition Act of 1918• U.S. Constitution• <i>Abrams v. United States</i>• <i>Debs v. United States</i>• <i>Marbury v. Madison</i>• <i>New York Times v. United States</i>• <i>Schenck v. United States</i>• <i>United States v. Matthew Lyon</i>
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Student's Video Guide
Freedom of the Press: New York Times v. United States
(Time: 25 minutes)

Preparation for Viewing and Study

Carry out steps 1 and 2 several days before watching the video.

Materials Needed:

- Class-Prep Assignment
- Synopsis of the Story
- Visual: Track the Story

1. Read the synopsis and compare it to the visual.

2. Build/reinforce essential background knowledge.

Complete assigned parts in the Class-Prep Assignment. Each part is designed to acquaint you with the laws, cases, people, issues and terminology you will encounter when watching the corresponding parts in the video.

Part 1: Civic History in Brief

Part 2: Laws, Cases, and Controversies

Part 3: New York Times v. United States

3. Request a copy of the video transcript.

The transcript is formatted into three parts to facilitate the study and thoughtful reflection of the content in each part. The divisions and their titles do not appear in the video.

4. Review key words and phrases as needed before each day's showing.

Schedule

1. Plan to watch the video in two class sessions. The following stopping points are recommended in the video transcript at points where the main topic changes.

Part 1: Civic History in Brief (Start – 06:22)	}	Session 1 showing
Part 2: Laws, Cases, and Controversies (06:23 – 14:18)		
Part 3: <i>New York Times v. United States</i> (14:19 – End)	→	Session 2 showing

2. Be sure to complete Part 1 and Part 2 in the Class-Prep Assignment before the first session.
3. Complete Part 3 in the Class-Prep Assignment as homework before the second session.
4. Be prepared to participate in brief review at the beginning of each session.

Student's Video Guide

Freedom of the Press: New York Times v. United States

(Time: 25 minutes)

Instructions

1. Use the video as your primary source for responses in this guide.
2. Watch the assigned part(s) in the video, then complete the work for the corresponding part(s) in the guide.
3. Add “behind the scenes” details from the Class-Prep Assignment to fill in gaps or expand an answer.

Key Understanding

Freedom of speech and freedom of the press are both forms of expression protected by the First Amendment and they are often linked together. Legally, “the speech and press clauses may be analyzed under an umbrella ‘expression’ standard, with little, if any, hazard of missing significant doctrinal differences.” Several of the cases covered in the video involve free speech issues.

Learn more from this article: Freedom of Expression: Is There a Difference Between Speech and Press

https://www.law.cornell.edu/anncon/html/amdt1bfrag2_user.html

Part 1: Civic History in Brief

(Time: Start - 6:22)

Words and Phrases

abridge
amendment
Articles of Confederation
authority
banned
Bill of Rights
citizenry
Congress
constitution
Constitution
crime
critical
democracy

First Amendment
Framers
freedom of speech
freedom of the press
gag
government
informed
integrity
law
parliament
printing press
prior restraint
protest

protest literature
ratified
revolution
revolutionaries
revolutionary era
revolutionary idea
Revolutionary War
rights
seditious libel
the Crown
the press
the public

Student's Video Guide
Freedom of the Press: New York Times v. United States
(Time: 25 minutes)

Part 1 Questions

1. What is meant by “the press” in the First Amendment?
2. Define *sedition libel*.
3. Define *prior restraint*.
4. Discuss this statement in the video: “Democracy depends on an informed citizenry. In order for democracy to function effectively and to function with integrity, the public needs to know what is going on.”
5. Who is not protected by the First Amendment?
Who is protected by the First Amendment?

Part 1 Discussion

1. Provide examples of how experience left its mark on our Constitution.
2. Explain how freedom of speech and freedom of the press worked together to achieve liberty. What are the benefits and limits of each?
3. Why is it important to know what your government is doing? What are the risks of not knowing?
4. When it comes to free speech and a free press, what restriction was put on the government by the First Amendment?

Student's Video Guide
Freedom of the Press: New York Times v. United States
 (Time: 25 minutes)

Part 2: Laws, Cases, and Controversies

(Time: 6:22 - 14:19)

<p>Words and Phrases</p> <p>Alien and Sedition Acts of 1798 Sedition Act of 1918 articulate check the government case “clear and present danger” test contempt conviction disrepute dissent dissenting opinion Espionage Act of 1917 Federalist First Amendment Democratic Republican</p>	<p>hindsight Jeffersonian judicial review law majority opinion “marketplace of ideas” morale opinion political party prosecuted socialist suppress Supreme Court Supreme Court decision the draft uphold World War I</p>	<p>People to Know</p> <p>George Washington Thomas Jefferson John Adams Congressman Matthew Lyon Eugene V. Debs Justice Oliver Wendell Holmes Justice Louis Brandeis</p> <p>Supreme Court Decisions</p> <p><i>Debs v. United States</i> <i>Marbury v. Madison</i> <i>Schenck v. United States</i> <i>Abrams v. United States</i></p>
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Part 2 Questions:

The Adams Administration

1. The Adams administration had problems with the restrictions placed on the government by the words in the First Amendment about free speech and the press. Describe those problems and how the government “solved” them.
2. Where did the Adams administration get the authority to put people in jail for speaking ill of the government?
3. What historical event prompted the reinterpretation of the First Amendment by the Adams administration?
4. Explain how President Adams used the Sedition Act of 1798 as a political tool to punish the opposition party.
5. In 1798, what judicial checks were in place for challenging the constitutionality of the Sedition Acts? Explain.
6. What is the significance of Matthew Lyon’s story?
7. How can the Supreme Court step in to “fix federal law” when it is not a lawmaking body and it doesn’t go through the laws to find the ones that need fixing? Explain.
8. How did the people let Adams know that they did not like him trying to limit free speech and that they didn’t like the Sedition Act? What role did the press have in helping the people decide?

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The Wilson Administration -- 100 years later.

1. What laws were passed by this administration and why?
2. How were the laws used?

The Schenck Case

1. Who was Schenck?
2. What did Schenck do?
3. What happened to Schenck?
4. Supreme Court decision:
5. Significance of the case:

The Debs Case

1. Who was Debs?
2. What did Debs do?
3. What happened to Debs?
4. Supreme Court decision:
5. Significance of the case:

6. After hearing about the decisions in *Schenck* and *Debs*, what logical conclusion might the public come to about the position of the Court on dissent under the First Amendment?

7. The *Debs* and *Schenck* cases were decided within days of each other. How did the news affect the people in general and one person in particular?

The Abrams Case

1. Who was Abrams?
2. What did Abrams do?
3. What happened to Abrams?
4. Supreme Court decision?
5. Significance of the case?

6. How was the *Abrams* case similar to the *Debs* and *Schenck* cases?

7. Describe the "pivot" made by Justice Oliver Wendell Holmes in this case.

8. Explain the significance of dissent by Justice Oliver Wendell Holmes and the metaphor he used to explain his new position.

9. What role do you think the people and the press played in changing the mind of Justice Oliver Wendell Holmes? Explain.

10. How did Holmes' dissent impact the law and the trajectory of the Court's decisions in free speech cases in the coming years?

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 (Time: 25 minutes)

Part 2 Discussion

1. Reflect on the cases of *Lyon*, *Debs*, *Schenck* and *Abrams*, then identify commonalities on different points:
 Here are four points to start your thinking. Add at least 6 more points, then respond to each.
 - a. Historical context:
 - b. Laws involved in the cases:
 - c. Government's claim:
 - d. Nature of the violations:

2. The judicial process was different in which of these cases? *Lyon*, *Debs*, *Schenck*, *Abrams*. Explain.

Part 3: New York Times v. United States

(Time: 14:19 – 25:18)

<p>Words and Phrases</p> advocate checks and balances classified information clear and present danger standard dissent enjoin evolution in doctrine expedited hindsight imminent harm First Amendment values fourth branch of government treason leak	<p>majority manipulate policy top secret undaunted unprecedented</p> <p>Documents and Events</p> Vietnam War Pentagon Papers	<p>People and Organizations</p> Daniel Ellsberg Alexander Haig Charles Colson Justice William J. Brennan Jr. Justice Harry Blackmun Justice William O. Douglas President Nixon Henry Kissinger New York Times Washington Post Marines
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Part 3 Questions:

1. Which department was responsible for the Pentagon Papers and what did they contain?
2. Who was Daniel Ellsberg and why did he leak the Pentagon Papers?
3. Which administration was responsible for the Pentagon Papers?
4. Why did Nixon get involved when his Administration was not responsible for the Pentagon Papers?
5. Why did the publication of the Pentagon Papers by the *Times* and the *Post* start, stop, and then start again?

Student's Video Guide
Freedom of the Press: New York Times v. United States

(Time: 25 minutes)

6. How was the *New York Times* case different from the *Lyon*, *Debs*, *Schenck*, *Abrams* cases?
7. Why do you think the Court acted so quickly to decide this case?
8. Capture screen shots of the headlines in each of the papers announcing the decision of the court, and the title of a relevant article in the paper.
9. What did the people learn about their government from the publishing of the Pentagon Papers?

Part 3 Discussion

1. Does the ruling in this case give the press unbridled freedom to publish any government document they receive? Explain.
2. Consider the impact that Daniel Ellsberg, technology, and the media may have had on the decision by the justices. If all the justices had voted to stop publication, would that have been the end of the story?
3. What are the roles and responsibilities of the “fourth branch” of government?
4. The public may have the right to know everything about their government, but should they? If not, how much should they know and what should they know? Read what the judge said about public access to information in his ruling on the Pentagon Papers case:

“Our democracy depends for its future on the informed will of the majority, and it is the purpose and the effect of the First Amendment to expose to the public the maximum amount of information on which sound judgment can be made by the electorate. The equities favor disclosure, not suppression. No one can measure the effects of even a momentary delay.”

From the ruling of U.S. District Court Judge Gerhard Gesell on June 21, 1971, as quoted in *The Washington Post*, “Pentagon Papers: Free—At Last” on July 1, 1971.



How is Judge Gesell interpreting the “freedom of the press” clause of the First Amendment? What meaning of “freedom” is he describing? Unbridled or limited? Explain.

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Review & Respond

Class Activity: Three Minute Reviews

Materials Needed: Paper and pencil

1. Divide the class into small groups. Select a recorder for each group.
2. Provide each group with a different topic, theme, position, issue or question.
3. Allow 3 minutes for groups to discuss.
4. Give each group 3 minutes to record their comments in writing.
5. When time is up, the recorder for each group reads the responses of the class.
6. Briefly discuss as a class after each group's report.
7. Other points may be added by the class and the teacher.

Suggestions for Review and Discussion:

1. Key points in each of these cases:
Abrams v. United States
Debs v. United States
Marbury v. Madison
New York Times v. United States
Schenck v. United States
United States v. Matthew Lyon
2. How do the People fit into our checks-and-balances system of government?
3. Why is it important for people know what their government is doing? What kind of information is important for them to know and why do they need to know it?
4. Identify ways in which the government tries to control information about national security matters.
Legal:
Unethical or illegal:
5. Identify ways in which people learn about national security matters.
Legal:
Unethical or illegal:
6. Trace the evolution of our right to a free press.
7. Discuss the role of technology in achieving and keeping our First Amendment rights to free speech and the press.
8. Explain the relationship between the people, the press, and the government in a democracy.

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9. Agree/Disagree: In a democracy, ignorance about the government is not bliss, it is dangerous. Explain.
10. It is often said that hindsight is 20/20. What does the idiom mean and how does it apply to the story?
11. Why does it matter if the government lies or manipulates information in order to influence the public?
12. Explain how advances in technology make it both harder and easier for people to tell when the government lies.
13. Reflect on the impact of evolving technology and the power of the media to shape public opinion and motivate others to action.
14. Discuss the challenges facing the public and the government in a society with a free press and many different media options.
15. Should leakers and hackers be prosecuted if they obtain and distribute government information?
16. Americans have greater access to information about their government than ever before, but complacency and ignorance remain pervasive. Discuss possible reasons and consider the ramifications of not knowing.

Wrap Up Homework

Revisit the video as needed to complete rows 9-11 in each of the 5 case briefs in the Class-Prep Assignment.

Synopsis of the Story

Video: *Freedom of the Press: New York Times v. United States*

Freedom of speech or the press did not exist in the colonies before the Constitution. British subjects were under the authority of the king, and the king punished dissenters. The king also controlled the press and censored content before it was published. After the colonists fought and won independence from England, the rules were changed when the Constitution was written.

Remembering the king's actions, the Framers designed a government with three branches and a system of checks and balances to prevent the abuse of power. They also made the federal government responsible for protecting individual liberties and accountable to a separate, but all powerful group, the People.

Jefferson viewed the press as the “only safeguard for public liberty” and an informed citizenry as “the best army” for the task. Freedom of the press was seen as vital for protecting democracy so the Framers linked it to speech and included both in the First Amendment: “Congress shall make no law . . . abridging freedom of speech, or of the press . . .”

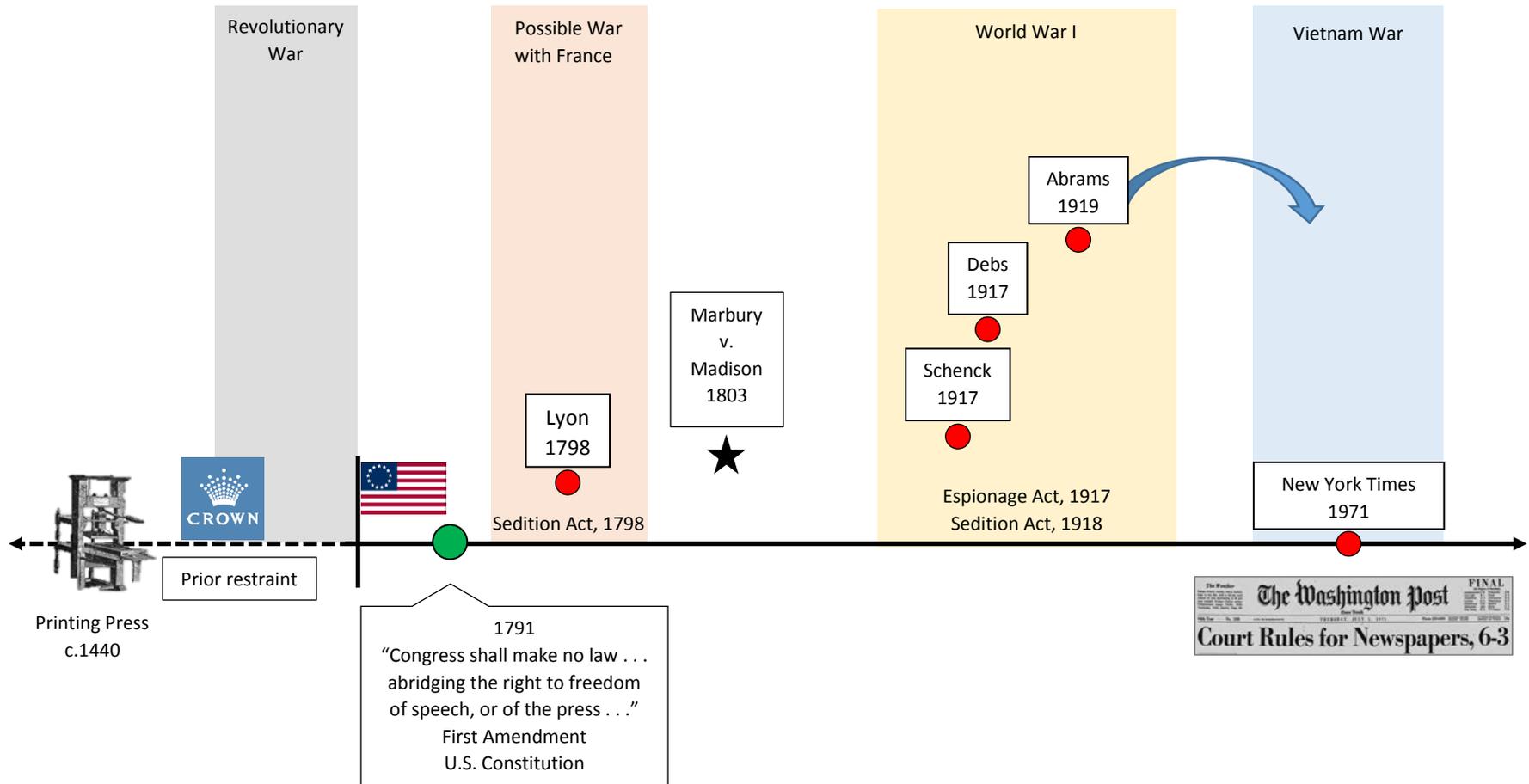
Experience not only made its mark on the Constitution, but it also impacted judicial interpretations that followed. In World War I, the Supreme Court upheld government actions against people in the interest of national security. Over the next 200 years, the Court would continue to grapple with freedom of expression issues in wartime. All the while, a watchful press would keep the public informed and debate alive. In 1971, the Supreme Court reaffirmed freedom of the press even in the midst of a national crisis by allowing the publication of the Pentagon Papers. It had come full circle in its views.

Thomas Jefferson to Edward Carrington, 16 January 1787

“I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. The way to prevent these irregular interpositions of the people is to give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them.”

Track the Story Line

Video: *Freedom of the Press: New York Times v. United States*



“The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.” – James Madison