

# AP US Gov & Politics

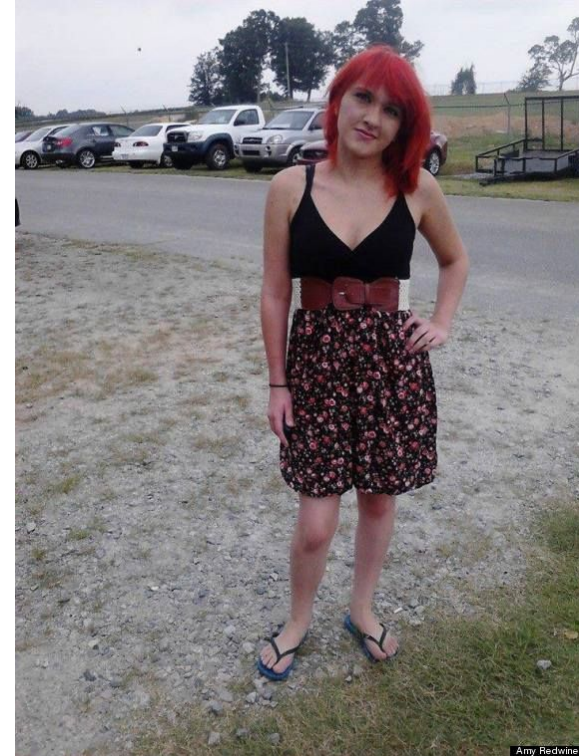
## Lesson #13: April 7th

**Learning Target (LOR 2.B) :** Describe the rights protected in the Bill of Rights.

**\*\*1st Amendment Civil Liberties: Speech\*\***

# Warm Up: Can the school tell you what to wear?

Look at the pictures below and think about whether these would be okay or not to wear at school (would you get in trouble for wearing this?) What is your basis for your decision?



# Lesson: Freedom of Speech

When it comes to the freedom of speech, these ideas are important to remember. Please write these down so you know what they are. Try to write them in your own words.

Term	Definition
<b>“Clear and present danger”</b>	Formulated during the 1919 case <i>Schenck v. United States</i> , the “clear and present danger” test permitted the government to punish speech likely to bring about evils that Congress had a right to prevent, such as stirring up anti-war sentiment. Since the 1960s, the Supreme Court has replaced the “clear and present danger” test with the “direct incitement” test, which says that the government can only restrict speech when it’s likely to result in imminent lawless action, such as inciting mob violence.
<b>Defamation</b>	The act of damaging someone’s reputation by making false statements. Defamation through a printed medium is called <i>libel</i> , while spoken defamation is called <i>slander</i> .
<b>Hate speech</b>	Written or spoken communication that belittles a group based on its characteristics, such as race, gender, or sexual orientation.

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<b>Term</b>	<b>Definition</b>
<b>obscenity</b>	Lewd or sexual art or publications. Although the Court has struggled to define what constitutes obscenity, it has upheld restrictions on materials that “to the average person applying contemporary community standards” depict offensive or sexual conduct and lack literary or artistic merit.
<b>Symbolic speech</b>	Nonverbal forms of speech protected by the 1st Amendment, such as picketing, wearing armbands, displaying signs, or engaging in acts of symbolic protest such as flag burning.
<b>Time, place, and manner restrictions</b>	Limits to freedom of expression based on when, where, and how individuals or organizations express opinions. For example, a city may require an organization to obtain a permit in order to conduct a public protest.

# Lesson

Today we will learn about the 1st Amendment's freedom of speech (sometimes called expression). As you watch, listen for two reasons why this freedom is so important.



# Freedom of Expression: Types of Speech

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- 1) **Pure Speech:** verbal speech (most common form of speech)
  - a) This type is given the most protections. But, libel, slander, & obscenity are not always protected.
- 2) **Symbolic Speech:** using actions and symbols to convey an idea, rather than using words
  - a) If you do something and it endangers public safety, it may be limited by the government.
- 3) **Speech “Plus”:** verbal & symbolic speech together (for instance a rally and picketing at the same time)
  - a) May be limited by the government.

**ESSENTIAL COURT CASES!**

# ***Tinker v. Des Moines* (1969): Background**

- In 1965, Iowa teenagers Mary Beth Tinker, her brother John, and their friend Christopher Eckhardt decided to state a peaceful protest of the Vietnam War by wearing black armbands to their public schools. School officials announced that students who wore armbands had to remove them or face suspension. The Tinker siblings and Eckhardt refused to remove their armbands, and the district suspended them until their protest ended.
- Their parents filed suit against the school district, claiming that the school had violated the students' free speech rights. Lower courts upheld the school district's decision as a necessary one to maintain discipline, so the families appealed to the Supreme Court for a ruling. In 1969, the Supreme Court heard the case, *Tinker v. Des Moines Independent Community School District*.
- One important aspect of the Tinker case was that the students' protest did not take the form of written or spoken expression, but instead used a symbol: black armbands. Was "symbolic speech" protected by the 1st Amendment?



# Did the school district violate the students' First Amendment right to freedom of expression?

[Click for Summary  
Video of \*Tinker v. Des  
Moines\*](#)

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**Yes. The Supreme Court ruled that the armbands were a form of symbolic speech, which is protected by the First Amendment, and therefore the school had violated the students' First Amendment rights.** The silent protest had not interfered with the school's ability to operate normally, and therefore the school district's restriction of the student's free speech rights was not justified.

Why is this a big deal?

- 1) The Court reaffirmed that the right to free expression is more important than the need for government entities (schools) to maintain order. Even minors have free speech rights that school officials must respect.
- 2) The ruling confirmed that symbolic speech merits protection under the 1st Amendment, and can include: marching, holding protest signs, conducting sit-ins, wearing t-shirts with political slogans, or even burning flags.

## ***Tinker v. Des Moines* Practice**

Based on the ruling in *Tinker v. Des Moines* (1969), the Supreme Court is most likely to view a case concerning which of the following as a symbolic speech case?

- A) A woman who was arrested for spray painting a political slogan on a car.
- B) An athlete at a public school who was kicked off the team for wearing a jersey with a protest movement slogan.
- C) A journalist who was sued for libel after writing a negative article about a presidential candidate.

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**\*\*Can you explain why this is the answer?**

## ***Tinker v. Des Moines* Practice**

- 1) What is symbolic speech? Should it be treated any differently than written or oral forms of expression?
- 2) Why do you think the Supreme Court has upheld restrictions on free speech under some circumstances, but overturned restrictions in others?

# ***Schenck v. US* (1919): Background**

- The US entered World War I on the side of the Allies in 1917, after several years of maintaining neutrality. President Woodrow Wilson had campaigned for reelection in 1916 on the slogan “He Kept Us Out of War.” This abrupt change in policy meant there were many Americans who disagreed with the decision to go to war.
- As part of the war effort, the US government attempted to quell dissent. Congress passed the Espionage Act of 1917, outlawing interfering with military operations or recruitment, as well as supporting US enemies during wartime.
- In this climate, socialist antiwar activists Charles Schenck and Elizabeth Baer mailed 15,000 fliers urging men to resist the military draft through peaceful means, such as petitioning for the repeal of the conscription law. They argued that the draft was a violation of the 13th Amendment’s prohibition of involuntary servitude.
- Schenck and Baer were convicted under the Espionage Act for interfering with military recruitment. They appealed to the Supreme Court on the grounds that the Espionage Act violated their 1st Amendment right to freedom of speech.

# Were Schenck's actions protected by the free speech clause of the First Amendment?

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**No. Schenck's actions were not protected by the free speech clause.** The Court upheld the Espionage Act, ruling that speech creating a "clear and present danger" was not protected by the First Amendment.

Why is this a big deal?

- 1) This decision shows how the Supreme Court interpreted the 1st Amendment to sometimes sacrifice individual freedoms in order to preserve social order. In this case, the Supreme Court prioritized the power of the federal government over an individual's right to freedom of speech.
- 2) The "clear and present danger" test established in this case no longer applies today. Later cases, like *New York Times Co. v. United States* (1971), bolstered freedom of speech and the press, even in cases concerning national security. Freedom of speech is still not absolute though, as time, place, and manner restrictions may regulate when, where, and how individuals exercise free speech.

## ***Schenck v. US* Practice**

- 1) Do you think the Court made the right decision in *Schenck v. US*? Why or why not?
- 2) When, if ever, should the government be permitted to restrict free speech?

# Wrap Up Question #1

In 1984, Gregory Lee Johnson burned an American flag in front of the Dallas City Hospital in protest to Reagan administration policies. He was tried and convicted under a Texas law that prohibited people from desecrating a respected object. The case eventually went to the Supreme Court, which ruled in a 5-4 decision that Johnson had not violated the Constitution.

Which of the following constitutional provisions does the case described in the scenario have in common with *Tinker v. Des Moines* (1969)?

- a) Free Exercise Clause
- b) Assembly and Petition Clause
- c) Due Process Clause
- d) Freedom of Speech Clause



# Wrap Up Question #1 (Answer)

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# Wrap Up Question #2

Which of the following is an accurate comparison of the two court cases?

	<b>Schenck v. US (1919)</b>	<b>Tinker v. Des Moines (1969)</b>
a)	Political spending is a form of protected speech.	The right to privacy extends to a woman's decision to have an abortion.
b)	Congress may not use the commerce clause to make possession of a gun in a school zone a federal crime.	School sponsorship of religious activities violates the establishment clause.
c)	The US government cannot block the publication of secret government documents.	Compelling Amish students to attend school past the 8th grade violates the free exercise clause.
d)	Speech creating a "clear and present danger" is not protected by the 1st Amendment.	Public school students have the right to wear black armbands to protest the Vietnam War.

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## Wrap Up Question #3

Which of the following scenarios is an example of how the federal government can restrict protected speech under the 1st Amendment?

- A) Congress passes a law that criminalizes depictions of a person using drugs like marijuana.
- B) The Federal Communications Commission (FCC) makes a rule requiring television networks to use an automated beep when a vulgar word is said on broadcast television.
- C) The Federal Election Commission (FEC) makes a rule banning newspapers from publishing political cartoons that negatively depict political officials.
- D) Congress passes a law banning the sale of violent games to children under the age of 12.

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# AP US Gov & Politics

## Lesson #14: April 7th

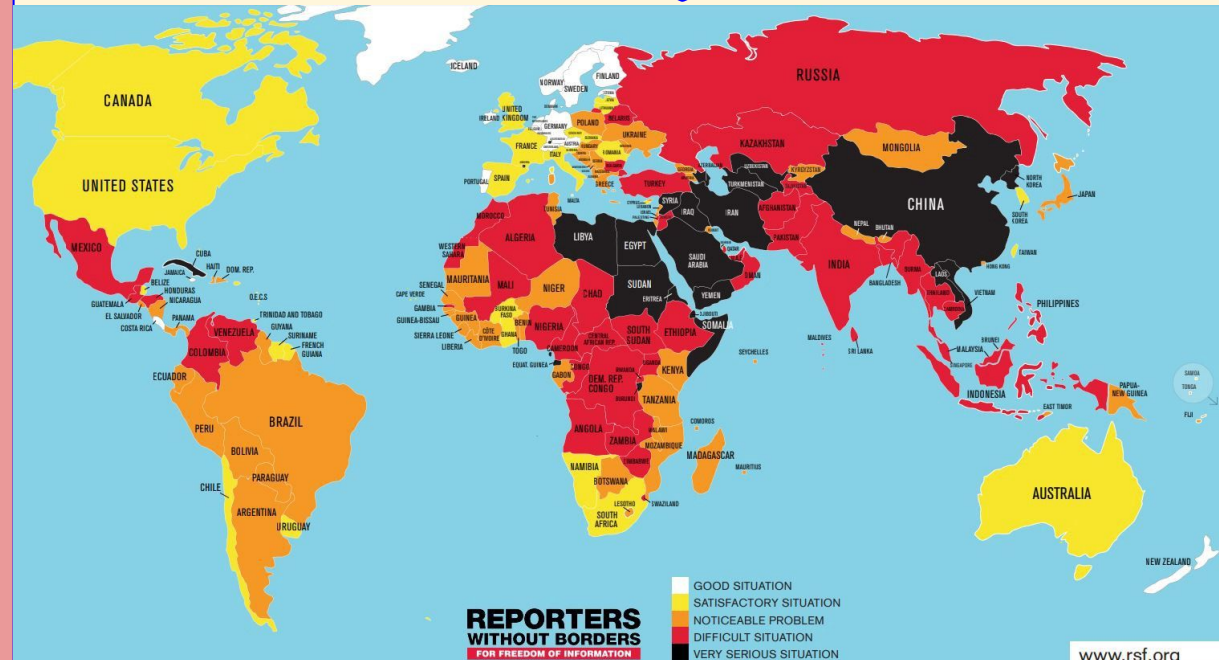
Learning Target (LOR 2.B) : Describe the rights protected in the Bill of Rights.

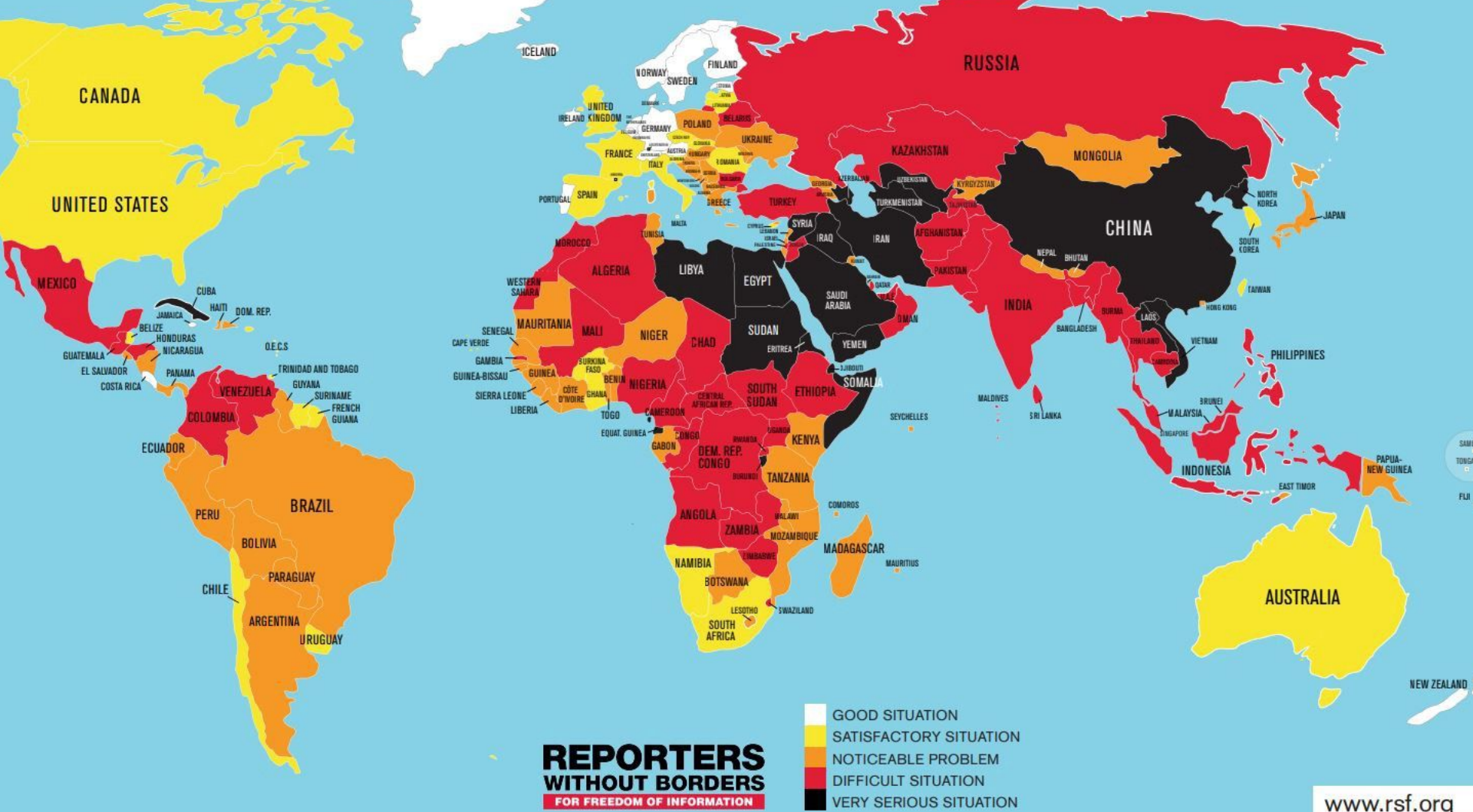
# Warm Up:

Looking at this image from the organization Reporters Without Borders ([www.rsf.org](http://www.rsf.org)) and think about the following 3 questions to answer on a sheet of paper:

- 1) What things have you heard about news media from the countries in Black?
- 2) What kinds of positive access to free news media do you know exist in the US or other yellow areas?
- 3) Do you think the United States label changes with different Presidents?

Bigger picture on next slide!









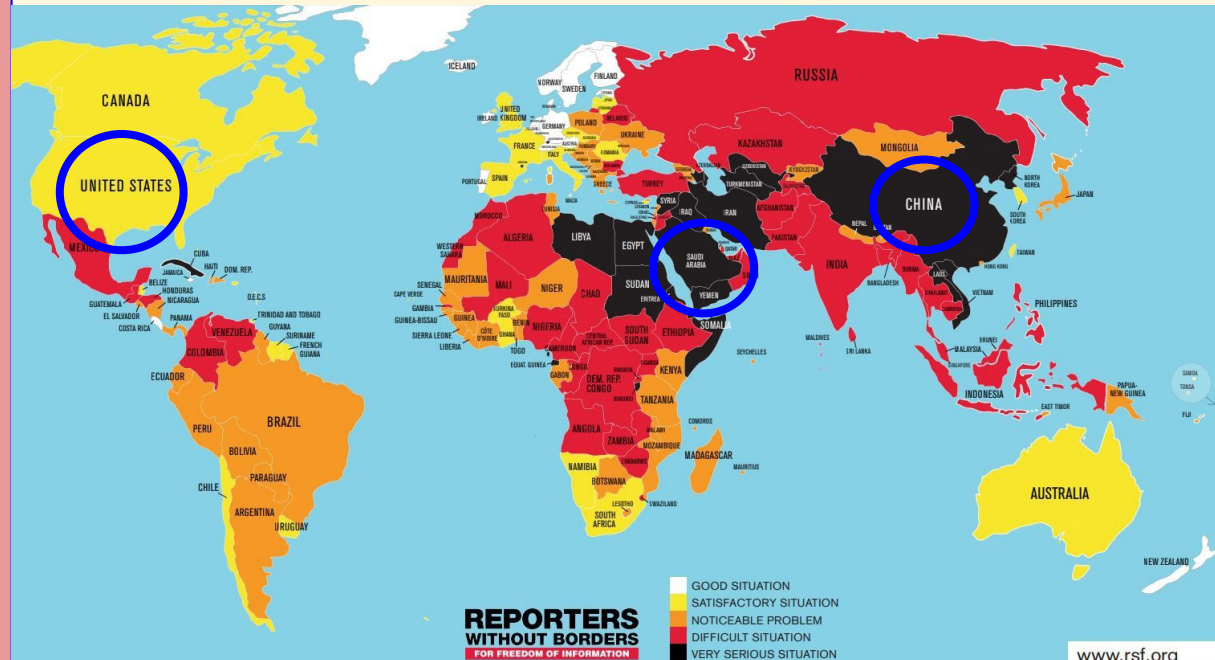
UNITED STATES

CHINA

SAUDI ARABIA

# Warm Up: **Teacher Thought**

- 1) **China** is infamous for blocking outside content from its citizens or allowing them to report on what's happening there. **Saudi Arabia** is the location where a journalist was assassinated in 2018.
- 2) We are the home of Facebook, Twitter, tons of CNN or FOX, etc. access to leaders and top stories
- 3) I do think more than just Presidents, the Freedom of the Press is valued differently during different times. For example, if there is a threat of terror some press would be restricted for National Security.



# Key terms

Term	Definition
<b>libel</b>	The act of damaging someone's reputation by printing false statements. Although ordinary citizens can sue for libel based on false statements alone, public persons or officials must also prove that the false statements were made with malicious intent.

<b>Pentagon Papers</b>	A top-secret account of US military action in Vietnam, which showed that President Lyndon Johnson had lied to Congress and the public about the extent of the war. Analyst Daniel Ellsberg leaked the Pentagon Papers to the <i>New York Times</i> in 1970.
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<b>prior restraint</b>	Government censorship of free expression by preventing publication or speech before it takes place. The Supreme Court has established a "heavy presumption against prior restraint" (in other words, it is likely the Court will declare an act of the government that blocks free expression unconstitutional).
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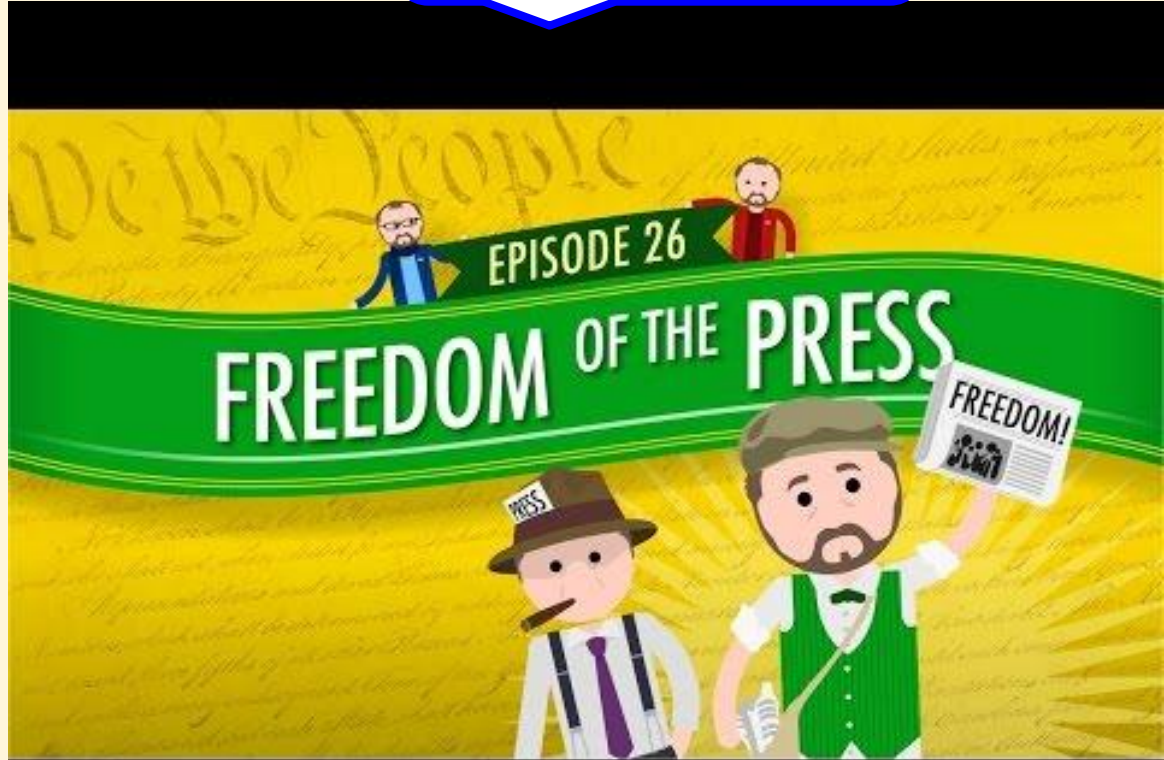


## Lesson Activity

Today we will learn about the 1st Amendment Freedom of the Press.

**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 peaceably to assemble, and to petition the government for a redress of grievances.

Click on this Crash Course video



# 1st Amendment : Freedom of Press

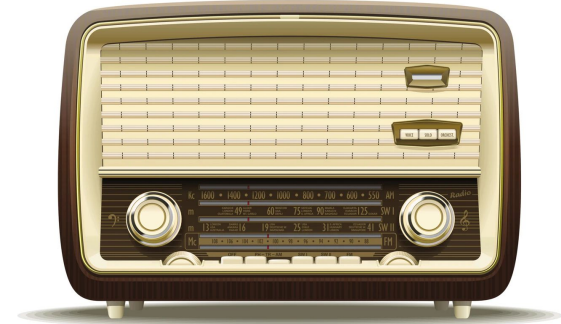
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- Similar protections as speech, as it's part of expression
- Prior restraint: allowed in situations where national security might be compromised



**Court case Application:**  
***Near v. Minnesota (1931)***- the Court incorporated the protections of free press to the states under the due process clause of the 14th Amendment and prohibited prior restraint

# Freedom of the Press Includes:

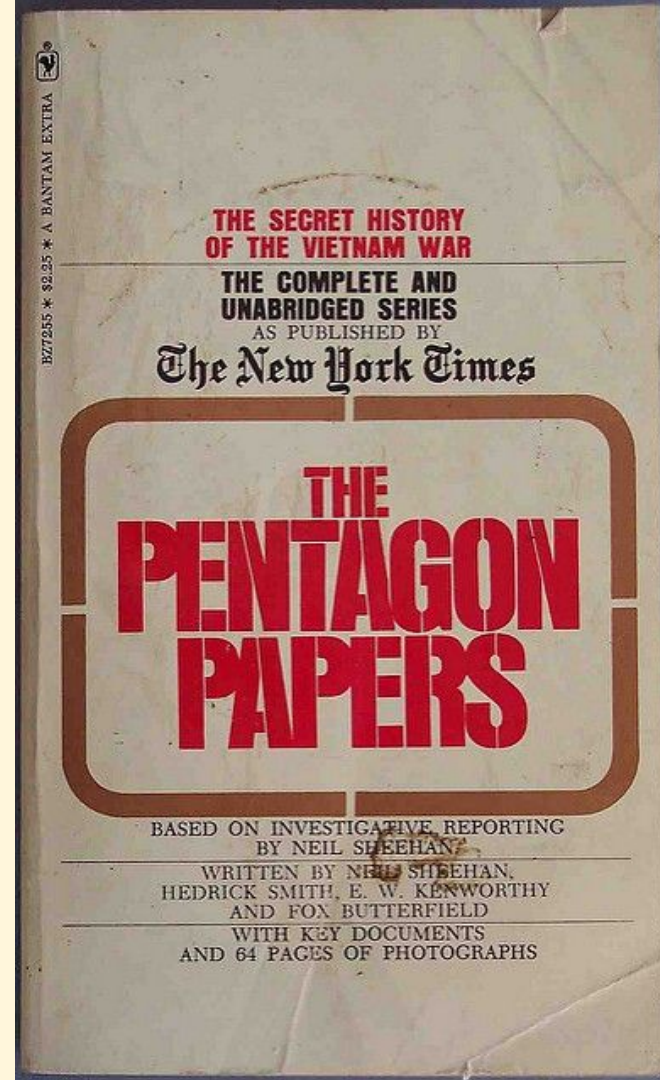


**ESSENTIAL COURT CASE!**



# New York Times Co. v. United States (1971)

In 1971, the administration of President Richard Nixon attempted to suppress the publication of a top-secret history of US military involvement in Vietnam, claiming that its publication endangered national security.





# New York Times Co. v. US (1971) Background

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- By the late 1960s and early 1970s, the American public had become increasingly hostile to the ongoing US military intervention in Vietnam. In 1970, analyst **Daniel Ellsberg** **leaked a top-secret history of US involvement in Vietnam** to the New York Times. This document, known as the **Pentagon Papers**, showed that President Lyndon Johnson (who had left office in 1969) had **lied to Congress and the American people about the extent of US military action** in Southeast Asia.
- In 1971, the ***New York Times*** published the first chapter of the Pentagon Papers. The administration of President Richard Nixon then issued federal injunctions against publishing the remainder of the Pentagon Papers to both the *New York Times* and the *Washington Post*. **The federal government argued that the publication of the top-secret history would imperil national security.** The case reached the Supreme Court in June 1971.
- The Supreme Court has, at times, ruled that the government can restrict speech that presents a “clear and present danger.” For example, in the 1919 case *Schenck v. United States*, the Court upheld the conviction of two socialists who distributed pamphlets urging men to resist the military draft during World War I.
- One important point about the New York Times case, however, was that the **federal government was seeking to prevent publication of a document, as opposed to seeking legal consequences after its publication.** This is known as “**prior restraint**,” or government censorship of materials before publication takes place.

## Did the Nixon administration violate the First Amendment by attempting to prevent the publication of the Pentagon Papers?

[Click for Summary  
Video of NYT v. US](#)

Write me down. I'm important! And my title of the slide!

**Yes, the Nixon administration did violate the First Amendment.** In a 6-3 decision, the Court ruled that the US government had not met “the heavy burden of showing justification for the enforcement” of prior restraint. The Court ordered the immediate end of the injunctions against publication.

The Court offered two explanations for its ruling. First, that “Both the history and language of the First Amendment support the view that the press must be left free to publish news, whatever the source, without censorship, injunctions, or prior restraints.” Second, that the publication of a history of US action in Vietnam would not endanger current military personnel by revealing their location or movements.

# Practice #1

Which of the following statements best explains how the Court's ruling in *New York Times Co. v. United States* (1971) changed the balance of power between law and order and the protection of individual liberties?

- A) It limited the power of state governments by striking down a school policy that required the reading of a prayer at the start of the school day
- B) It enhanced the power of state governments by declaring a state law requiring Amish children to attend school until they were 16 constitutional
- C) It enhanced the power of the federal government to place limitations on speech which creates a "clear and present danger"
- D) It restricted the power of the federal government to prevent the press from releasing classified information

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“In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.”

-Justice Hugo Black

## Practice #2

Based on the text, which of the following statements would the author most likely agree with?

- A) There should be a “heavy presumption against prior restraint” of freedom of speech
- B) School sponsorship of religious activities violates the free press clause
- C) Speech that presents a “clear and present danger” should not be protected by the First Amendment
- D) The right to publish pornographic material is protected under the First Amendment

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## Practice #3

**Which of the following actions by a news organization would most likely be protected from prior restraint based on the precedent established by *New York Times Co. v. United States* (1971)?**

- A) Releasing a podcast that reveals classified information about the current locations of American military units
- B) Publishing an editorial in a university newspaper featuring false information that damages another student's reputation
- C) Broadcasting a radio advertisement that calls for all American patriots to bring their guns to keep protesters away from statues of Confederate Civil War heroes
- D) Broadcasting a televised report that analyzes classified information about government surveillance of other countries

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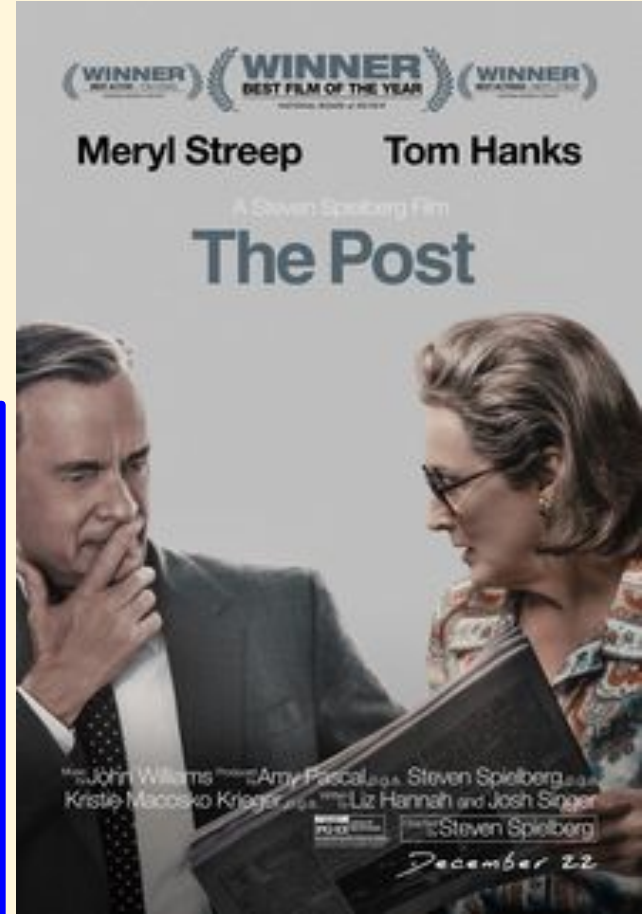


# Meaning of Supreme Court Ruling

In this ruling, the Court established a “**heavy presumption against prior restraint**,” even in cases involving national security. This means that the Court is very likely to find cases of government censorship unconstitutional.

***New York Times Co. v. United States*** was a major victory for freedom of the press.





The historical drama, *The Post*, depicts the minor role the New York Times played in the press revealing of the Pentagon Papers and subsequent government cover-ups. However, it is a good movie to get the basics about the investigations at the time of publishing. The Washington Post was faced with much of the same legal concerns with publishing the story and sources while the case was playing out in the Supreme Court.

# WHO THREATENS

## HEADS OF STATE

launching verbal attacks and lawsuits

## VIOLENT GROUPS

threatening attacks and death

## TROLLS

abusing and threatening online

## JUDGES

delivering draconian sentences

## SECURITY FORCES

harassing, arresting, and beating

## MEDIA OWNERS

controlling the editorial line and job security

# THE PRESS?



# Reflection Questions to Consider

1. **Why do you think the Court ruled differently in *New York Times Co. v. United States* (1971) than it did in *Schenck v. United States* (1919)? Consider differences in the ideological composition of the Court and public opinion towards the wars.**
  - a. Hint: *Schenck v. US* is a Freedom of Speech case that the Supreme Court justified restricting free speech in verbal or printed form when it could have created a “clear and present danger” to society.
  - b. Quote from Justice Wendell Holmes, “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic . . .”
2. **Under what circumstances, if any, should the government have the ability to restrict the freedom of the press?**