

The Pentagon Papers **Ron Miller, Jewett Academy**

The Pentagon Papers Case **New York Times Co. v. United States, 403 U.S. 713 (1971)**

Lesson Plan Summary:

On June 13, 1971, the *New York Times* began a series of articles based on the Pentagon Papers, a top secret Department of Defense study on the Vietnam War. Although the study dealt with the situation in Vietnam from the end of World War II to 1968, the Nixon administration attempted to prevent the *New York Times* and the *Washington Post* from publishing the study. The Department of Justice obtained a court injunction to prevent the publication of the Pentagon Papers based on the Espionage Act. The *New York Times* and the *Washington Post* appealed the case to the U.S. Supreme Court. The Court's ruling was an important decision on the issue of freedom of the press.

Objectives:

SS.C.2.4.6 SS.C.2.4.3 SS.C.1.4.4 SS.A.5.4.6

Students will discuss the importance of a free press

Students will identify the impact the print and electronic media had on public opinion.

U.S. History Era:

Vietnam Era

Grade Level

High School Social Studies

Materials:

Handouts 1-4

Lesson Time:

180 minutes

Lesson Procedures:

Have students read excerpts for the US Supreme Court Case, *New York Times v. United States*

Activities:

Complete scaffolding questions.

Write essay

Assessment:

FCAT style essay:

Write a five paragraph essay on the Supreme Court's decision in *New York Times Co. v. United States*.

Was the Nixon administration's claim of national security a valid enough reason to influence the Supreme Court to force the *New York Times* and the *Washington Post* to drop their stories on the Pentagon Papers?

Resources:

The Oyez Project, *New York Times v. United States*, 403 U.S. 713 (1971)

available at: (http://oyez.org/cases/1970-1979/1970/1970_1873)

FindLaw,| Cases and Codes, *NEW YORK TIMES CO. v. UNITED STATES*, 403 U.S. 713 (1971). 403 U.S. 713. available at:(<http://laws.findlaw.com/us/403/713.html>)

Stone, Geoffery R., *Perilous Times, Free Speech in Wartime*. W.W. Norton and Company, New York, 2004

Handout 1

INTRODUCTION

The Pentagon Papers

New York Times Co. v. United States, 403 U.S. 713 (1971)

As the War in Vietnam dragged on, a top secret government study of the war became the bases of one of the most important Supreme Court cases on the issue of freedom of the press. The court was faced with balancing national security and the right of the press to report on government actions.

In 1967, President Lyndon Johnson's Secretary of Defense, Robert McNamara, commissioned an analysis of America's involvement in Vietnam. The top secret government report examined American participation in Vietnam from World War II to 1968. The result was a 47 volume study. The Pentagon Papers revealed that the US government was involved in deception as to its role in Vietnam and that the government continually resisted full disclosure about the increasing failure of US policies in Vietnam.

On June 13, 1971, the *New York Times* started a series of articles based on the Pentagon Papers. Portions of the Pentagon Papers were quoted extensively. Although all of the information in the articles was at least two years old and dealing with the Johnson administration, the Nixon administration attempted to halt the publication of the articles. The Attorney General, John Mitchell, demanded that the stories be halted to protect national security. Mitchell cited provisions in the Espionage act and warned that criminal charges could be filed against the newspaper reporters and publishers. When the New York Times refused to stop publication, the Department of Justice got an injunction to halt publication.

The *New York Times* and the *Washington Post*, which also planned to run stories on the Pentagon Papers, appealed the injunction to the U.S. Supreme Court. The court faced difficult questions in this case. The Nixon Administration held that prior restraint was necessary to protect national security. Was this true? Did the efforts on the part of the administration to prevent publication of the Pentagon Paper violate the First Amendment? The court's 6-3 decision to lift the injunction and allow the publication of the Pentagon Papers was one of the most important court decisions supporting freedom of the press.

Read the excerpts of the opinions of Justices Black, Douglas, and Blackmun and answer the scaffolding questions. Then write an essay which answers the following question:

Was the Nixon administration's claim of national security a valid enough reason to influence the Supreme Court to force the New York Times and the Washington Post to drop their stories on the Pentagon Papers?

Handout 2

Read the following excerpt from the opinion of Justice Hugo Black and complete the scaffolding questions.

MR. JUSTICE BLACK,

"... I believe that every moment's continuance of the injunctions against these newspapers amounts to a flagrant, indefensible, and continuing violation of the First Amendment. ... In my view it is unfortunate that some of my Brethren [on the Supreme Court] are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding would make a shambles of the First Amendment. Our Government was launched in 1789 with the adoption of the Constitution. The Bill of Rights, including the First Amendment, followed in 1791. Now, for the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the Government can halt the publication of current news of vital importance to the people of this country.

In seeking injunctions against these newspapers and in its presentation to the Court, the Executive Branch seems to have forgotten the essential purpose and history of the First Amendment. ... Madison and the other Framers of the First Amendment, able men [403 U.S. 713, 717] that they were, wrote in language they earnestly believed could never be misunderstood: "Congress shall make no law . . . abridging the freedom . . . of the press . . ." 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.

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. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

... Government argues in its brief that in spite of the First Amendment, "[t]he authority of the Executive Department to protect the nation against publication of information whose disclosure would endanger the national security stems from two interrelated sources: the constitutional power of the President over the conduct of foreign affairs and his authority as Commander-in-Chief."

In other words, we are asked to hold that despite the First Amendment's emphatic command, the Executive Branch, the Congress, and the Judiciary can make laws enjoining publication of current news and abridging freedom of the press in the name of "national security." The Government does not even attempt to rely on any act of Congress. Instead it makes the bold and dangerously far-reaching contention that the courts should take it upon themselves to "make" a law abridging freedom of the press in the name of equity, presidential power and national security, even when the representatives of the people in Congress have adhered to the command of the First Amendment and refused to make such a law.

To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make "secure." No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.

The word "security" is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic. The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged. ..."

FindLaw,| Cases and Codes, NEW YORK TIMES CO. v. UNITED STATES, 403 U.S. 713 (1971). 403 U.S. 713. available at:(<http://laws.findlaw.com/us/403/713.html>)

1. Does Justice Black support the New York Times or the Nixon Administration?
2. According to Justice Black, what is the essential role of a free press in a democracy?
3. Why does Justice Black reject the administration's point of view that national security takes precedence over freedom of the press?

Handout 4

Read the following excerpt from the opinion of Justice Harry Blackmun and complete the scaffolding questions.

MR. JUSTICE BLACKMUN

"The First Amendment, after all, is only one part of an entire Constitution. Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs and places in that branch the responsibility for the Nation's safety. Each provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions. First Amendment absolutism has never commanded a majority of this Court. ... What is needed here is a weighing, upon properly developed standards, of the broad right of the press to print and of the very narrow right of the Government to prevent. Such standards are not yet developed. The parties here are in disagreement as to what those standards should be. But even the newspapers concede that there are situations where restraint is in order and is constitutional ...

I strongly urge, and sincerely hope, that these two newspapers will be fully aware of their ultimate responsibilities to the United States of America. ... there were a number of examples of documents that, if in the possession of the Post, and if published, "could clearly result in great harm to the nation," and he defined "harm" to mean "the death of soldiers, the destruction of alliances, the greatly increased difficulty of negotiation with our enemies, the inability of our diplomats to negotiate . . . add the factors of prolongation of the war and of further delay in the freeing of United States prisoners, then the Nation's people will know where the responsibility for these sad consequences rests."

FindLaw,| Cases and Codes, NEW YORK TIMES CO. v. UNITED STATES, 403 U.S. 713 (1971). 403 U.S. 713. available at:(<http://laws.findlaw.com/us/403/713.html>)

8. Does Justice Douglas support the New York Times or the Nixon Administration?

9. Where in the Constitution does Justice Blackmun find support for his opinion?

10. According to Justice Blackmun, what are the dangers of publishing the Pentagon Papers?