



## LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

### *NEW YORK TIMES V. U.S.* (1971) MONDAY, OCTOBER 21, 2005

#### OVERVIEW

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This month we spotlight the landmark press freedom case *New York Times v. United States* (1971). The decision by the *New York Times* and *Washington Post* to print illegally leaked, classified documents about American involvement in the Vietnam War sparked a First Amendment battle between the highest levels of government and two of the most respected newspapers in the country.

#### RESOURCES

- <http://www.oyez.org/oyez/resource/case/278/>
- [http://www.fac.org/faclibrary/case.aspx?case=NY\\_Times\\_v\\_US](http://www.fac.org/faclibrary/case.aspx?case=NY_Times_v_US)
- <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=403&invol=713>

#### ACTIVITY

The sun set on Washington, DC. The year was 1971. Not daring to turn lights on, the researcher stood cloaked in darkness, listening to the rhythmic hum of the photocopier. He fed pages and pages of classified documents into the machine as the night wore on.

Daniel Ellsberg copied more than 7000 pages of documents that revealed the history of the government's actions in the Vietnam War. They exposed government knowledge that the war would cost more lives than the public was being told, and that the war was being escalated even as the President had said it was close to ending. They would become known as the "Pentagon Papers."

Ellsberg believed that Americans needed to know what was in the reports, and decided to make the Pentagon Papers public. To achieve his goal, he broke several laws. He gave copies to the *New York Times*, which began printing excerpts from the documents on June 13, 1971. The government immediately obtained a court order preventing the *Times* from printing more of the documents, arguing that publishing the material threatened national security. This was the first time in American history that the government had successfully ordered a prior restraint (an order that news be censored ahead of publication) on national security grounds. Historically, prior restraint has been considered the most serious form of censorship.

In response, Ellsberg released the Pentagon Papers to the *Washington Post*, which began printing excerpts as well. The government then sought another injunction, but this time was refused. The government appealed its case, and in less than two weeks the case—combined with the *New York Times* appeal—was before the Supreme Court.

The Court ruled 6-3 in *New York Times v. United States* that the prior restraint was unconstitutional. Though the majority justices disagreed on some important issues, they agreed that "Only a free and unrestrained press can effectively expose deception in government. . . . In revealing the workings of government that led to the Vietnam War, the newspapers nobly did that which the Founders hoped and trusted they would do." Dismissing the claimed threat to national security, the Court continued, "The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment." *New York Times v. United States* remains one of the most important freedom of the press case in American history.



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### QUESTIONS

1. What are the Pentagon Papers?
2. Why did the government seek a prior restraint against the *New York Times* and the *Washington Post*?
3. Why did the Court find the prior restraint unconstitutional?
4. In his dissent, Justice Harlan objected that the Court did not have adequate time to examine the thousands of pages of classified material to determine if national security was truly at stake and that the Court had been “almost irresponsibly feverish in dealing with these cases.” Do you agree? Why or why not?
5. If you were the editor of the *New York Times*, would you have published the excerpts from the Pentagon Papers? Why or why not?
6. Explain whether you believe prior restraint would be constitutional in the following cases:
  - A television network plans to broadcast soldiers’ flag-draped coffins being returned to the U.S.
  - A magazine will feature an interview with and photographs of a seriously wounded soldier.
  - A newspaper article will detail a major city’s response plan in case of a terrorist attack.
  - A news report will contain a map of Iraq, illustrating American troop positions.



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## ANSWERS

1. The Pentagon Papers are 7000 pages of classified documents that revealed the history of government actions in the Vietnam War.
2. The government claimed that publishing the Pentagon Papers would threaten national security.
3. The Court found the prior restraint unconstitutional because the claimed threat to national security was too vague to justify the infringement of the newspapers' First Amendment rights. The Court asserted that the First Amendment was written precisely to ensure that a free press could expose deception in government.
4. Some students may agree with Justice Harlan, noting that two weeks is an incredibly short amount of time to read 7000 pages of documents and therefore the Court was premature in dismissing the claimed threat to national security. Others may disagree, noting that the Pentagon Papers were a history of the government's actions, and did not reveal anything about plans for the war. Others may say that national security is never a valid reason to abridge the First Amendment's clear prohibition against government interference with press freedom.
5. Answers will vary.
6. Answers will vary.