

## GREAT DEBATES IN AMERICAN HISTORY

# Unit 11: What Are the Limits of a Free Press?

### The Issue

On June 13, 1971, the *New York Times* began the publication of a secret Pentagon study of the Vietnam War known as the "Pentagon Papers." A few days later the United States Attorney General moved to stop further publication of the series on the grounds that it would damage national security. When the *Times* fought the Attorney General's actions on constitutional grounds, a lively debate followed on the nature and limits of freedom of the press.

### Background

Since the trial of John Peter Zenger in 1735, the news media have acted as "watchdogs" over the affairs of government. Together with other forms of expression, press freedom has enjoyed the privileged protection of the First Amendment of the Bill of Rights. Freedom of the press has generally meant freedom from prior restraint, a tradition that protects a publisher from pre-publication government censorship.

But press freedom has not been without limits, and the courts have sought to balance First Amendment freedoms with other societal interests that government has the duty to preserve. During times of war, for example, the government has often sought to limit and define the scope of the press to meet the needs of national security.

The Pentagon Papers were a 7,000 page Defense Department study of how the United States had become involved in the Vietnam War during the period from 1945 to 1968. Based on top secret documents, these papers were a detailed insider's history that was critical of government decision making. The study had been leaked to the press by Daniel Ellsberg, an ex-government

employee who had become disillusioned with the American war effort. The Pentagon Papers revealed that the administrations of Truman, Eisenhower, Kennedy, and Johnson had built up the American political, military, and psychological stakes in Vietnam in a number of important ways.

The Nixon administration reacted quickly to the publication of the Pentagon Papers. It obtained a federal court injunction prohibiting the *Times* from publishing what it considered official government secrets. Because of the significance of the case, legal struggles that might have taken years were heard and decided by the Supreme Court in just over two weeks.

### The Readings

The following debate begins with a passage by Richard Nixon, who was President of the United States when the *New York Times* published the Pentagon papers. Nixon discusses his view of the case in a selection from his book *No More Vietnams* (1985).

In "What a Free Press Is All About," *New York Times* Managing Editor A. M. Rosenthal offers a very different interpretation of this important case.

### Update

The Supreme Court ruled against the government in *New York Times v. United States*, leaving the press free to publish excerpts from the Pentagon Papers. However, the case also opened the door to future restraining orders, which the government could use to limit the powers of the press. The debate over these important issues has yet to be resolved.

# What Are the Limits of a Free Press?

**Richard Nixon**, *President of the United States from 1969 until his resignation in August 1974*, wrote this passage for his 1985 book, *No More Vietnams*.

MY ADMINISTRATION faced the difficult question of what to do about the most massive leak of classified documents in American history. We had only two options: We could either do nothing or move for a court injunction that would prevent the *Times* from continuing publication. Good policy argued for moving against the *Times*; safe politics argued against doing so.

My political advisers believed that it would be in my interest to let the Pentagon Papers come out. First of all, the study focused principally on Kennedy's and Johnson's handling of the war. Because it was written in 1968, it could contain nothing about my administration's actions. Furthermore, the *Times* stories about the Pentagon Papers leveled serious charges against my Democratic predecessors. Most of the accusations were based on grotesque distortions of the historical record. But that did not alter the fact that it would be to my political advantage for them to appear on the front page of virtually every newspaper in the country.

Nevertheless, I decided to try to block the publication of the Pentagon Papers because concrete policy considerations outweighed whatever political benefits I might accrue. It posed a significant threat to some of our national security interests. The National Security Agency feared that the more recent documents would provide code-breaking clues and contain information about our signal and electronic intelligence capabilities that would be spotted by the trained eyes of enemy experts. The State Department was alarmed because the study would reveal SEATO contingency war plans that were still in effect. The Central Intelligence Agency was worried that it would expose past or current informants and would contain specific references to the names and activities of agents still active in Southeast Asia. . . .

We also were concerned that the release of the Pentagon Papers would damage our delicate

negotiations with China and the Soviet Union. Diplomacy, especially with Communist powers, depends on secrecy. If leaders cannot express their views frankly for fear that what they say will appear in the next day's headlines, the chances of making progress in negotiations will be sharply reduced. If, for example, word had leaked out about our China initiative, those who opposed it in both countries would have destroyed any chances for success. When the Pentagon Papers were leaked, Kissinger was about to take his first secret trip to Peking, and the Strategic Arms Limitation Talks with the Soviet Union were just getting started. I knew that before going forward with our rapprochement, the Chinese would watch carefully to see how I handled disclosure of the Pentagon Papers. In

their eyes, a failure to act would have meant that we were an unreliable partner with whom it would be risky to share sensitive information.

If the *New York Times* had acted with any degree of responsibility, we could have avoided the battle in the court. But it had not done so. Its editors admitted having had possession of the documents

for more than three months before publishing them. Yet never once had they asked anyone in the government whether publication of any of the classified material might threaten national security or endanger the lives of our men in Vietnam.

The Supreme Court ruled against the government. But I still believe I acted responsibly in challenging the right of the *New York Times* to publish the Pentagon's study. Its release was an illegal action. Its publication was a threat to our ability to conduct foreign policy. If we had done nothing, we would have been setting a dangerous precedent: Every disgruntled bureaucrat in Washington would have read our inaction as a signal that he could leak anything he pleased . . . In the thirteen years since the Supreme Court sanctioned the *Times's* publication of the Pentagon Papers, that is exactly what has happened.

*"Its release was an illegal action. Its publication was a threat to our ability to conduct foreign policy."*

Richard Nixon

Source: Richard Nixon. *No More Vietnams* (New York: Arbor House, 1985).

# What Are the Limits of a Free Press?

**A. M. Rosenthal**, *managing editor of the New York Times*, wrote this column in 1972.

THE DECISIONS were taken and two great issues immediately confronted the Government, the press, the courts and the public. There was, to begin with, the issue of the papers themselves and what they showed about the process of government, how decisions are made—or, sometimes more important, not made—and how the country went step by step into the most divisive foreign war in its history.

And there was the great constitutional issue of freedom of the press: Does it have limits, and, if so, what are they and who determines them and can they be imposed in advance of publication? . . .

The decisions were not taken to change history or to try to affix blame or as an act of civil disobedience—quite the contrary, we were convinced we were acting totally within the law, and from the beginning agreed that if it did come to a court test, we would fight all the way through the judicial process but would not defy the courts.

The decisions were taken simply because we believed that this was what the national interest and the role of a free press were all about.

After a year, there still are some questions to be pondered—what happened as the result of publication of the papers, what did it all add up to?

Some interesting things the Government said would happen simply did not. It seems so long ago. Remember?

Codes could be broken. Military security endangered. Foreign governments would be afraid to deal with us. There would be nothing secret left and the Government could not move for fear of having intricate diplomatic steps made public. The people would lose confidence in government, and inside government confidentiality would be destroyed.

The electronic code machines hum away. No country seems to have pulled its embassy out of Washington. President Nixon is at the zenith of his diplomatic endeavors and is received more

happily in Peking and Moscow than any militant pacifist. No one single instance of military security damage has been surfaced. Henry Kissinger manages to travel to the Soviet Union and China and Paris when reporters think he's at his desk in Washington. And as far as faith in government is concerned, if The Pentagon Papers affected Mr. Nixon's standing in the country, you certainly can't prove it by the polls on popularity or conduct of the war.

Some unpleasant things happened, not because of the publication of the papers but because the Government rushed into battle against them.

By far the most important was that for the first time, a Government of the United States asked for and courts granted an injunction against newspapers—and prior restraint, death to a free press, had a precedent.

That was a loss and it could only be redressed in the future by the determination of American society—the press, the public, the courts, the politicians—to fight to the end against any future attempts at prior restraint.

No press ever remained free by bowing to censorship beforehand for fear of what might take place if it printed the truth.

But, then, what has been the result, what did it really all add up to? . . .

For the first time in history citizens were able to read and judge and draw their conclusions from a documented case study of how one American Government after another, in concealment from its public, went to war—first into a guerrilla war, then into a great land war, then into the most massive bombardment war in history.

They could read how one Administration was locked into decisions by a previous Administration and never quite realized it; how geopolitical assumptions that could cost millions of lives were made, carried out, but never re-examined; how government officials knew that every escalating step had failed but kept this knowledge secret from the public; how secrecy had become a way of life for decision-makers and that even they never quite realized it.

***"No press ever remained free by bowing to censorship beforehand for fear of what might take place if it printed the truth."***

A. M. Rosenthal

Source: *New York Times*, June 11, 1972.

## GREAT DEBATES WORKSHEET 11

**Directions:** Use the information in the Unit 11 debate to answer the following questions. If necessary, use an additional sheet of paper.

### A. Comprehension

1. According to Richard Nixon, two options were open to his administration in the Pentagon Papers case. Identify each option and explain the arguments for and against each.

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2. According to A. M. Rosenthal, two great issues were raised by the publication of the Pentagon Papers. Identify these two issues.

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3. What were Nixon's major objections to the publication of the Pentagon Papers?

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4. Review the list of objections you made in response to question 3. For each objection identify a response made by Rosenthal.

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### B. Critical Thinking

1. **Drawing Conclusions:** Explain how the publication of the Pentagon Papers may have affected the future course of United States involvement in Vietnam.

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2. **Expressing Problems Clearly:** Explain how "prior restraint" (pre-publication censorship) might have a different effect on press freedom than post-publication legal actions.

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3. **Demonstrating Reasoned Judgment:** Assume you are a newspaper editor. How would you respond in the following situations? Be prepared to defend your decision in each case.

a. You are informed that the President is planning to invade a country thought to be a threat to United States security.

b. You are told by the Defense Department that news reporters will not be allowed to cover future American military actions to protect the reporters from battlefield hazards.

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4. **Testing Conclusions:** Evaluate the arguments on both sides of the debate. Which side's arguments are most effective and convincing? Use specific reasons and examples to support your position.

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