

# New York Times v. United States, 403 U.S. 713 (1971) Condensed Case



Kaiser, Kurt, *The New York Times Building*,  
Wikicommons. July 19, 2018.

## The Big Picture

The First Amendment protects the press from censorship, even when its reporting touches on matters of national security.

## Ruling

The Government did not meet the high burden of demonstrating that the publication of classified materials on the Viet Nam War would endanger national security.

## Constitutional Text

The First Amendment reads:  
*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.*

*To signal its position that censoring the New York Times was clearly unconstitutional, the Court's main opinion was only three paragraphs long. One of the concurring opinions – the opinion of Justice Black – is included below to provide further context.*

## **OPINION OF THE COURT**

[T]he United States seeks to [prevent] the New York Times and the Washington Post from publishing the contents of a classified study entitled "History of U.S. Decision-Making Process on Viet Nam Policy."

"Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." The Government "thus carries a heavy burden of showing justification for the imposition of such a restraint." [Lower courts in this matter] held that the Government had not met that burden. We agree.

JUSTICE BLACK, WITH WHOM JUSTICE DOUGLAS JOINS,  
CONCURRING.

When the Constitution was adopted, many people strongly opposed it because the document contained no Bill of Rights to safeguard certain basic freedoms.

In response to an overwhelming public clamor, James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed: "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.*" The Bill of Rights changed the original Constitution into



## **Dissenting Opinion**

[T]he imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex modern government. Only those who view the First Amendment as an absolute in all circumstances can find such cases as these to be simple or easy.

[T]he First Amendment right itself is not an absolute. [For instance, no one has the right] to shout “fire” in a crowded theater if there was no fire.

Would it have been unreasonable, since the newspaper could anticipate the Government's objections, to give the Government an opportunity to review the entire collection and determine whether agreement could be reached on publication? [T]he newspapers and Government might well have narrowed the area of disagreement as to what was and was not publishable, leaving the remainder to be resolved in orderly litigation, if necessary. To me it is hardly believable that a newspaper long regarded as a great institution in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents.

a new charter under which no branch of government could abridge the people's freedoms of press, speech, religion, and assembly. Yet the Solicitor General argues and some members of the Court appear to agree that the general powers of the Government adopted in the original Constitution should be interpreted to limit and restrict the specific and emphatic guarantees of the Bill of Rights adopted later. I can imagine no greater perversion of history. Madison and the other Framers of the First Amendment wrote in language they earnestly believed could never be misunderstood: “Congress shall make no law \* \* \* abridging the freedom \* \* \* of the press \* \* \* .”

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.

[T]he 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.

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.”

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 [nation].

