

A PECULIAR EVIL

Silencing Expression in America

by Dinah Zeiger

Projection #1:

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Silencing Expression in America

MUSIC: *revolutionary war anthem or marching song*

The lights reveal an open stage filled with levels of varying shapes and sizes, backed by projection screen. Readers file on stage and group according to the identities of their opening characters.

MUSIC: *segues into "My Country 'tis of Thee (God Save the Queen)"*

Scene 1

Cast of Characters:

Citizen One

Bailiff

Crown Spokes(wo)man

John Peter Zenger

Andrew Hamilton

John Milton

Citizen Two

Citizen Three

Justice John Morris

James Alexander

Gov. William Cosby

John Stuart Mill

Projection #2:

Title/dissolves to Declaration Independence

MUSIC *"My Country 'tis of Thee" fades to drum beat under*

Citizen One moves into the light.

Citizen One

(Gestures to the projection screen.) That document over there looks somewhat foreign to us at first glance. Hard to read. As though the authors didn't know how to write the proper English alphabet. What made it truly foreign, however, was its message. It declared Americans' unhappiness with their government, with the laws--and often the whims--of their English ruler, King George III.

Pre-Revolution colonists had many grievances against the crown.

<p>Projection #3:</p>

<p>Sedition Proclamation, 1775</p>

But under this royal proclamation of 1775, speaking against King George III or his government meant heavy fines and cruel punishments, from prison to days bound in the stocks.

One of the most revolutionary things the colonists did when they broke with England was to articulate, in the Constitution, the limits of government in the lives of its citizens. The Constitution, and especially the First Amendment, established a self-governing society and endowed citizens with the right to speak out, to air their grievances against the government. Through this amendment, the colonists recognized the relationship between a free press and a free people.

But long before Thomas Jefferson wrote the Declaration of Independence and James Madison penned the Bill of Rights, printers in the American colonies challenged the political authority of the British Crown. From their presses rolled tracts, pamphlets, broadsides and newspapers arguing for liberty.

Crown Spokesman

Published this day, April 12, 1755, by one James Parker, Publisher of the Connecticut Gazette, a diatribe against His Majesty's Government:

[read ironically] "The liberty of the press will be zealously preserved inviolate in a land possess'd by the offspring of a people, who bravely fought the howling Wilderness with all its savage Terrors, rather than become the servile Slaves of bigotted Tyrants. The Press has

always been an Enemy to Tyrants, and just so far as Tyranny prevails in any Part of this World, so far the Liberty of the Press is suppressed!"¹

"The Crown finds the tendency of published accounts in the *New England Courant* is to Mock Religion & bring it to Contempt, affront His Majesty's Government and upset the peace and good order of his Majesties Subjects and disturb the good Order of this Province."²

Citizen One

The most contentious debate arose over sedition – the right of the people to criticize their government. In Britain, seditious libel meant speaking against King and Crown. British subjects could be punished – even imprisoned – for expression deemed dangerous to the government or offensive to religion. The Crown justified censorship on the grounds that speech critical of the government undermined the peoples' confidence in its ability to rule.

Crown Spokesman

"If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it."³

Citizen One

The debate over freedom from official censorship had begun in 1644, when the English poet and man of letters, John Milton, condemned the practice. He had published pamphlets without official permission criticizing Britain's divorce laws. That experience shaped Milton's thinking. He argued, in *Aeropagitica*, that censorship amounted to state control of thought:

Projection #4:

John Milton

Milton

Where there is much desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making. Out of fear . . . we in haste . . . resolve to stop their mouths, because we fear they come with new and dangerous opinions. . . . [But] though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injury by licensing and prohibiting to misdoubt her strength. Let her and Falsehood grapple; whoever knew Truth put to the worse in a free and open encounter?⁴

Citizen One

Milton's ideas, and those of other Enlightenment thinkers, formed the philosophical principles of the leaders of the American Revolution who crafted the United States Constitution.

Projection #5:

Text of the Preamble to the Constitution
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This Constitution, unique in its purpose, spells out the government's relationship to the people. Under its umbrella, for the first time in history, the people become sovereign. It limits government's reach and empowers citizens to criticize their institutions and representatives. Chief among the guarantees in the Bill of Rights is the freedom to express ourselves, to speak up, to disagree, to allow other points of view.

Projection #6:

Draft of First Amendment

Citizen Two

This early draft shows the famous words that would become the First Amendment:

“Congress shall make no law respecting the 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.”

Citizen Two

English philosopher John Stuart Mill passionately defended free speech. He believed that society could not progress, nor democracy flourish, if speech and press were not free.

Projection #7:

John Stuart Mill

Mill

“If all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. . . . [T]he peculiar evil of silencing the expression of an opinion is that it is robbing the human race -- posterity as well as the existing generation -- those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.”⁵

Citizen One

In the American colonies in the eighteenth century, people could be punished for expressing unfavorable political or religious views. Increasingly, however, colonial printers began to see themselves as a check on the King and Parliament, a position supported by the public. Printers went to jail in colonial America for publishing articles critical or disrespectful of their rulers. In New York in 1734 comes the first important case.

Bailiff

“Be upstanding in the court. Now comes before you the charge against John Peter Zenger on information for a misdemeanor. He stands accused of publishing seditious libels against Governor William Cosby.”

Projection #8:

Gov. William Cosby

Citizen One

John Peter Zenger, a German immigrant printer in New York, stood accused of publishing seditious libels about Governor William Cosby. Cosby was the King's creature, newly arrived in New York colony in 1731, and unpopular among the people.

Citizen Two

Did you see the advertisement in the *Weekly Journal*? There was William Harrison, the governor's lackey, described as a "Large Spaniel, of about 5 feet 5 inches high, lately strayed from his kennel with a mouth full of fulsome panegyrics!"⁶

Citizen Three

No! But I read the article calling the sheriff a monkey lately broke from his chain and run into the country!⁷

Citizen Two

His lackeys are numerous! Francis Harison, publisher of the *New York Gazette*, praises him in verse! Imagine this!

MUSIC: *catchy 18th Century tune that could fit the following*

Cosby the mild, the happy, good and great,
The strongest guard of our little state;
Let malcontents in crabbed language write,
And they . . . belch, tho' they cannot bite.
He unconcerned will let the wretches roar,
And govern just, as others did before.⁸

Citizen Three

Well I heard a catchy tune 'tother day about those pettifogging knaves denying us rights as Englishmen! I like the refrain: *(sings along with final notes of tune)*

"We'll make those scoundrel rascals fly and ne'er return again!"⁹

MUSIC: *continues under*

Citizen One

Zenger's trial originated in a get-rich-quick scheme in which Cosby tried to force Rip Van Dam, a city councilor, to repay half the salary van Dam had earned while acting as governor

before Cosby arrived. Van Dam refused and Cosby sued in a special, jury-less Court of Exchequer. Two of the three judges upheld Cosby's claim. Cosby demanded that the dissenter, Chief Justice Lewis Morris, explain his decision. Morris did so in a letter, later issued as a pamphlet printed by John Peter Zenger.

Morris

As to my Integrity, I have given You no Occasion to call it in Question. I have been in this Office almost twenty years, my Hands were never foul'd with a Bribe; nor am I conscious to myself, that Power or Poverty hath been able to induce me to be partial in the Favour of either of them. And as I have no Reason to expect any Favour from you, so am I neither afraid nor ashamed to stand the Test of the strictest inquiry you can make concerning my Conduct. I have served the Public faithfully and honestly, according to the best of my Knowledge; and I dare and do appeal to them for my Justification.¹⁰

Cosby

Whaaaat?! Sack him!

MUSIC: *concludes with dramatic/comic stinger i.e. bum, bum, bum!*

Citizen One

The dissenters, which now included Judge Morris as well as a young lawyer named James Alexander, formed a political party to challenge Cosby. Printer Zenger began publishing their newspaper, the *New York Weekly Journal*. Alexander, a passionate and brilliant advocate of freedom, wrote many of its unsigned articles.

Projection #9:

Masthead of the Weekly Journal

Alexander

Our mission is To expose . . . [Cosby] and those ridiculous flatteries with which Mr. Harrison loads our other newspaper, which our Governor claims and has the privilege of suffering nothing to be in [it] but what he and Mr. Harrison approve of.¹¹

Citizen One

Governor Cosby often complained to his patron in England about James Alexander.

Cosby

To the honorable Duke of Newcastle: Sir; There is one, James Alexander, whom I found in both New York and New Jersey Councils, very unfit to sit in either, or, indeed, to act in any capacity where His Majesty's honor and interest are concerned. He is the only man that has given me any uneasiness since my arrival. His known very bad character would be too long to trouble Your Grace with particulars, and stuffed with such tricks and oppressions too gross for Your Grace to hear.

Mr. Alexander continues to complain about me!¹²

Alexander

Our Governor, who came here but last year, has long ago given more distaste to the people than I believe any Governor that ever this Province had during his whole government. He was so unhappy that he knew not the difference between power and right. He has raised such a spirit in the people that will give the world reason to believe they are not easily to be made slaves of nor governed by arbitrary power.¹³

Citizen Two

The *New York Weekly Journal* published for two months, printing critical articles about Cosby and defending the freedom of the press.

Zenger

Editorial, January 21, 1734: Let this wiseacre (whoever he is) go to any country wife and tell her that the fox is a mischievous creature that can and does do her much hurt, that it is difficult if not impracticable to catch him, and that therefore she ought on any terms to keep in with him. Why don't we keep in with serpents and wolves on this foot? Animals are much more innocent and less mischievous to the public than some Governors have proved. A Governor turns rogue, does a thousand things for which a small rogue would have deserved a halter; and because it is difficult if not impracticable to obtain relief against him; therefore it is prudent to keep in with him and join in the roguery.¹⁴

Citizen Two

Cosby ordered the paper shut down on grounds of seditious libel. The Grand Jury refused to indict Zenger because the authorship of the allegedly libelous material could not be determined. Cosby offered 50 pounds to discover who had written the material and issued a public proclamation:

Cosby

“Copies of the newspaper are ordered to be burned by the hands of the common hangman or whipper near the pillory in this city on Wednesday the 6th between the hours of 11 and 12 in the forenoon, as containing in them many things tending to sedition and faction and bringing His Majesty’s government into contempt. . . . It is ordered that the sheriff of the City of New York do forthwith take and apprehend John Peter Zenger for printing and publishing several seditious libels dispersed throughout his journals or newspapers, entitled the New York Weekly Journal; as having in them many things to raise factions and tumults among the people of this province, inflaming their minds with contempt of His Majesty’s government and greatly disturbing the peace thereof.”¹⁵

Citizen Two

Zenger was arrested and held for eight months until he finally had his day in court. The renowned Pennsylvania lawyer and Assemblyman, Andrew Hamilton, defended him. Hamilton built a case showing why English libel law had no place in the colonies, appealing directly to the jury:

Projection #10:
Andrew Hamilton before the court.

Hamilton

Sires! It is natural, it is a privilege, I will go farther, it is a right, which all free men claim, that they are entitled to complain when they are hurt. They have a right publicly to remonstrate against the abuses of power in the strongest terms, to put their neighbors upon their guard against the craft or open violence of men in authority, and to assert with courage the sense they have of the blessings of liberty, the value they put upon it, and their resolution at all hazards to preserve it as one of the greatest blessings heaven can bestow. . . . The loss of liberty, to a generous mind, is worse than death.

... The question before the Court and you, Gentlemen of the jury, is not of small or private concern. It is not the cause of one poor printer, nor of New York alone, which you are now trying. No! It may in its consequence affect every free man that lives under a British government on the main of America. It is the best cause. It is the cause of liberty. And I make no doubt but your upright conduct this day will not only entitle you to the love and esteem of your fellow citizens, but every man who prefers freedom to a life of slavery will bless and honor you as men who have baffled the attempt of tyranny, and by an impartial and uncorrupt verdict have laid a noble foundation for securing to ourselves, our posterity, and our neighbors, that to which nature and the laws of our country have given us a right to liberty of both exposing and opposing arbitrary power (in these parts of the world at least) by speaking and writing truth.¹⁶

Citizen One

What Hamilton asked the jury to do was to nullify, or reject, the law of sedition itself. But he could not produce evidence of the truth of the statements contained in *Zenger's Journal*. The chief justice instructed the jury:

“The law is clear that you cannot justify a libel. . . . The jury may find that Zenger printed and published those papers, and leave to the Court to judge whether they are libelous.

<p>Projection #11:</p>

<p>Image of Not Guilty Decision</p>

The jury paid no attention and returned this verdict of “Not Guilty.”

Music 18th century popular tune establish and carry under

Hamilton established, and the jury agreed, that truth was an absolute defense against libel, a point rejected in English common law. No new law resulted from Zenger’s trial. And the colonial press remained relatively quiet until the mid 1760s when King George III’s policies sparked a debate in the press in both England and America. In that debate, the case most often cited was the Zenger trial. After the Revolutionary War, Governor Morris—a great-grandson of Lewis Morris and author of the Preamble to the Constitution—called the Zenger trial “the germ of American freedom.”

Scene 2

Cast of Characters:

Citizen One
Convention Chair
James Parker
Governor Morris
James Madison
George Hay
Justice David Davis

Citizen Two
Justice Louis Brandeis
Edwin Randolph
Benjamin Franklin
Thomas Jefferson
Samuel Bryan

Citizen One

For its first 12 years, a “Congress of the States” ruled the new American nation, governing with enough effectiveness to allow its armies to defeat the British. But previously ignored differences arose after the Revolution concerning how to best to govern this loose coalition of states.

On one side were the Federalists, who believed the new nation needed a strong centralized government. On the other side were the Anti-Federalists, who wanted to retain autonomy in the states. A Constitutional Convention met in Philadelphia in the summer of 1787 to find a compromise that would bridge their differences. The Anti-Federalists believed that the emerging document lacked sufficient guarantees of individual rights.

MUSIC: *fades out*

<p>Projection #12: Signing of the Constitution</p>

Convention Chairman

The chair recognizes Governor Morris of Pennsylvania

Governor Morris of Pennsylvania

A firm Government alone can protect our liberties. I fear the influence of the rich. They will have the same effect here as elsewhere if we do not, by such a Government, keep them within their proper sphere. People never act from reason alone. The Rich will take advantage of their passions and make these the instruments for oppressing them. The Result of the Contest will be a violent aristocracy, or a more violent despotism. The

schemes of the Rich will be favored by the extent of the Country. The people in such distant parts cannot communicate and act in concert. They will be the dupes of those who have more knowledge and intercourse. The only security against encroachments will be a select and sagacious body of men, instituted to watch against them on all sides.¹⁷

Convention Chairman

The chair recognizes Mr. Edwin Randolph of Virginia

Edwin Randolph of Virginia

Two such opposite bodies as Mr. Morris has planned could never long co-exist. Dissentions would arise as has been seen even between the Senate and House of Delegates in Maryland, appeals would be made to the people; and in a little time, commotions would be the result.¹⁸

Convention Chairman

The chair recognizes Mr. Benjamin Franklin of Pennsylvania .

Benjamin Franklin of Pennsylvania

Sir, I agree to this Constitution, with all its faults, because I think a general government necessary. And there is no form of government but what may be a blessing to the people if well administered , which I believe this is likely to be. It will only end in despotism, as other forms have done before it, when the people shall become so corrupted as to *need* despotic government, being incapable of any other. I doubt, too, whether any other convention would be able to make a better Constitution. For when you assemble a number of men to share their joint wisdom, you inevitably assemble with those men all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views.

Can a perfect production be expected from such an assembly? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does. And I think it will astonish our enemies, who are waiting with confidence to hear that our councils are confounded like those of the Builders of Babel; and that our states are on the point of separation, only to meet hereafter for the purpose of cutting one another's throats.

Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure that it is not the best. The opinions I have had of its errors, I sacrifice to the public good.¹⁹

Citizen One

Despite their differences, the Convention hammered out a Constitution and presented it to the voters in the thirteen states. Passage was not assured. During the debates in the states, printers circulated essays, pamphlets and broadsides arguing both sides of the question. Federalists, such as John Hancock and James Madison, and Anti-Federalists, men like Samuel Adams and Patrick Henry, waged a war of words in pamphlets and newspapers. Federalists argued for a centralized government. Anti-Federalists attacked what they feared would be the unchecked power of such a government and demanded a bill of rights guaranteeing individual liberties.

<p>Projection #13:</p>

<p>Congressional Pugilists</p>

Without a bill of rights, some newspapers claimed the government would fall into the hands of pagans and deists, leading to inquisitions and torture as punishment for federal crimes. Samuel Bryan, an anti-Federalist, wrote a series of essays published in the *Independent Gazetteer*, a Philadelphia newspaper, attacking the loss of states rights and warning of the dangers of centralized power and the influence of rich elites—fears that still haunt many Americans now, more than 200 years later.

Samuel Bryan

The United States are to be melted down into a despotic empire dominated by well-born aristocrats! The workingman will be subjugated to the will of an all-powerful authority remote and inaccessible to the people. . . . These lawyers and men of learning and moneyed men, will make us poor illiterate people swallow down the pill and they will swallow up all us little folks like the great Leviathan; yes, just as the whale swallowed up Jonah!"²⁰

Citizen One

James Madison, a champion of federalism, nonetheless took up the challenge to devise a bill of rights clearly limiting government's reach into the personal lives of its citizens. Madison articulated his ideas in a letter to fellow Federalist Thomas Jefferson.

Projection #14:

Madison

Madison

Mr. Jefferson: My own opinion has always been in favor of a bill of rights; provided that it be so framed as not to imply powers not meant to be included in the enumeration. . . . I have favored it because I suppose it might be of use, and if properly executed could not be of disservice. . . . Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. . . . It may be thought all paper barriers against the power of the community are too weak to be worthy of attention . . . yet, as they have a tendency to impress some degree of respect for them, to establish the public opinion in their favor, and rouse the attention of the whole community, it may be one mean[s] to control the majority from those acts to which they might be otherwise inclined.²¹

Citizen One

Jefferson regarded the press as an essential component of such a system of governance.

Jefferson

Sir: The basis of our governments being the opinion of the people, the very first object should be to keep that right. Were it left to me to decide whether we have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.²²

Projection #15:

Madison notes on the Bill of Rights, June 8, 1789

Citizen One

In handwritten notes, Madison began shaping his ideas for a Bill of Rights, first in a speech to the Virginia Assembly.

Madison

Sirs: It will be a desirable thing to extinguish from the bosom of every member of the community any apprehensions that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled. I know some respectable characters who opposed this government on the grounds that it grants more power to the state than deemed necessary. I believe that the great mass of the people who opposed it, disliked it because it did not contain effectual provision against encroachments on particular rights. The amendments which have occurred to me proper to be recommended by Congress to the states, are these:

The civil rights of none shall be abridged on account of religious belief or worship. Nor shall any national religion be established. Nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

Nor shall the people be deprived 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.

Finally, the people shall not be restrained from peaceably assembling and consulting for their common good, nor from applying to the legislature by petitions for redress of their grievances.

I propose that the First Amendment shall read: "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."²³

MUSIC: *last phrases of "Star Spangled Banner" or modern free speech song*

Citizen Two

Secured by passage of the Bill of Rights in 1791, press freedom seemed guaranteed . . .

Projection #16

The Sedition Act of 1798

. . . that is until 1798 and passage of the Alien and Sedition Acts.

The Sedition Act punished publication of “any false, scandalous and malicious writing or writing against the government of the United States or Congress or the President, with the intent to defame or to bring them into contempt or disrepute.”

The Federalists, the party in power led by Alexander Hamilton and President John Adams, argued that the Sedition Act was needed to protect the United States from foreign invaders and propagandists. Democratic-Republicans, the newly formed party led Jefferson and Madison, regarded the Act as a direct threat to individual liberty as well as a political barrier to the freedom of the press and a restriction on states’ rights. In a letter to a neighbor, Jefferson wrote:

Jefferson

Sir: I am informed that the alien and sedition laws are working hard. I fancy that some of the State legislatures will take strong ground on this occasion. For my own part, I consider those laws as merely an experiment on the American mind, to see how far it will bear an avowed violation of the constitution. If this goes down we shall immediately see attempted another act of Congress, declaring that the President shall continue in office during life, reserving to another occasion the transfer of the succession to his heirs, and the establishment of the Senate for life. I have no doubt these things are in contemplation. Nor can I be confident of their failure, after the dupery of which our countrymen have shown themselves susceptible.²⁴

Citizen One

Many believed the Alien and Sedition laws were designed to silence and weaken the Democratic-Republican Party, and most of those prosecuted were Democratic-Republican journalists who criticized Adams’ presidency and the Federalists. Over a period of two years, twenty-five printers were arrested and seventeen indicted. In all, ten printers were tried and convicted.

Matthew Lyons, one of the printers arrested, represented Vermont in Congress. Feelings about the Sedition Act ran high, and during a caucus on a vote, Lyons, an Irish immigrant of humble origins, asserted that rich landowners like Roger Griswold of Connecticut pursued only their own greedy interests. Muzzling the press, as the Sedition Act would do, would silence their opponents. Griswold overheard the remark, and a fight later ensued on the floor of the House when Griswold struck Lyons with his hickory cane. Lyons replied with fire tongs.²⁵

<p>Projection #17: Kentucky Resolution</p>
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Citizen Two

Together, Madison and Jefferson fought the Sedition Act, proposing, in this Kentucky Resolution—and a similar Virginia Resolution—a radical idea: That government is the servant of the people, not the other way ‘round. They argued for the idea enshrined in the Constitution -- that the government cannot tell the people what to think. Madison and Jefferson recognized that a democratic society exists and can remain secure only when its citizens may freely debate the political issues of the day.

MUSIC: *soft drum roll begins*

In their fight against the Sedition Act, Democratic-Republicans championed the citizens’ right to say:

George Hay

Everything his passions suggest!²⁶

Citizen Two

George Hay, a leading Democratic-Republican, argued:

Hay

Citizens may speak against the government matters that are false, scandalous and wicked.²⁷

Citizen Two

Jefferson and Madison's stand against the Sedition Act clarified the citizens' relationship to their government – that the people are sovereign, not subjects. Freedom of expression is central to this relationship, and a free press is its foundation. George Hay wrote:

Hay

A citizen should be safe within the sanctuary of the press even if he condemns the principle of republican institutions and censures the government, even if he violates every principle of decency and truth!²⁸

MUSIC: *drum roll ends with stinger*

Citizen One

Public opposition to the Sedition Act was so great that it played a major role in the election of Thomas Jefferson in 1800. In his first inaugural address he declared:

Projection #18:

Thomas Jefferson

Jefferson

If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments to the safety with which error of opinion may be tolerated where reason is left free to combat it.²⁹

Citizen One

But by the time of his second inaugural, Jefferson had been subjected to a barrage of press criticism and he spoke of the “licentiousness” with which the “artillery of the press has been leveled against us.” Near the end of his presidency, he wrote to a prospective publisher about the nature and use of the press, reflecting on issues that bedevil American media powers today:

Jefferson

Sir, To your request of my opinion of the manner in which a newspaper should be conducted, so as to be most useful, I should answer, "by restraining it to true facts and sound principles only." Yet I fear such a paper would find few subscribers.

It is a melancholy truth that suppression of the press could not more completely deprive the nation of its benefits than is done by its abandoned prostitution to falsehood. Nothing can now be believed which is seen in a newspaper. Truth itself becomes suspicious by being put into that polluted vehicle.

Perhaps an editor might begin a reformation in some such way as this: Divide his paper into four chapters, heading the first, Truths. Second, Probabilities. Third, Possibilities. Fourth, Lies. The first chapter would be very short, as it would contain little more than authentic papers and information from such sources as the editor would be willing to risk his own reputation. The second would contain what, from a mature consideration of all circumstances, his judgment should conclude to be probably true. This, however, should rather contain too little than too much. The third & fourth should be professedly for those readers who would rather have lies for their money than the blank paper they would occupy.³⁰

Citizen Two

The Sedition Act expired in 1801. But the fight for press and speech freedom continued throughout the nineteenth and twentieth centuries as both federal and state governments enacted laws that muzzled expression that aroused unrest or incited lawlessness.

MUSIC: *Time transition* Battle Hymn of the Republic

Projection #19:
Lincoln at Antietam

Sixty-five years later, after the Civil War, when the Union Army imposed severe restrictions on the press, the Supreme Court stepped in to limit the government's attempt to abridge the citizens' rights. In one of its most far-reaching decisions, Justice David Davis wrote:

Justice David Davis

In times like these, when the public mind is agitated, when wars, and rumors of wars, plots, conspiracies and treasons excite alarms, it is the duty of a court to be watchful lest the public feeling should reach the seat of justice and thereby precedents be established that may become the ready tools of faction in times more disastrous. The worst precedents may be established for the best of motives. The Constitution was made for times of commotion. In the calm of peace and prosperity, there is seldom great injustice. Dangerous precedents occur in dangerous times.³¹

MUSIC: *World War I tunes*

Projection #20:
Recruiting Poster

Scene 3

World War I: The Espionage Act

Cast of Characters:

<p>Citizen One</p> <p>Newspaper Reader 1</p> <p>Court Clerk</p> <p>Congressman 1</p> <p><i>Masses</i> Counsel Hillquit</p> <p>Judge Rodgers</p> <p>Justice Clarke</p> <p>Justice Brandeis</p>	<p>Citizen Two</p> <p>Newspaper Reader 2</p> <p>Newsboy</p> <p>Congressman 2</p> <p>Judge Learned Hand</p> <p>Judge Henry Clayton</p> <p>Justices Holmes</p>
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Citizen One

Justice Davis's words predicted what occurred next. This time, World War I prompted a reaction. The fighting raging in Europe in 1914 divided Americans, and both Britain and Germany flooded U.S. newspapers with propaganda. In 1917, as America was drawn into the war, the government responded with draconian measures against a whole range of publications.

Projection #21:

Images of front pages announcing US entering war in Europe

News Boy

(holding newspaper) EXTRA! EXTRA! CONGRESS DEBATES ESPIONAGE ACT!

Citizen Two

As with the ill-fated Alien and Sedition Act of 1798, the 1917 Espionage Act made it a crime for Americans to speak against the government, especially its war efforts. Citizens could be jailed for inciting disloyalty or encouraging men to resist the draft. Among other things, the act gave the Postmaster General authority to deny mailing privileges to any publication he believed gave aid or comfort to the enemy. A large number of foreign-language and radical newspapers and magazines were caught in this net.

Congress was uneasy about the press censorship provisions in the Espionage Act, and a heated debate attended its introduction in the House of Representatives:

Congressman #1

Honored colleague, kindly read back that provision please!

Congressman #2

Section three: Whoever, when the United States is at war, shall willfully cause or attempt to cause insubordination, disloyalty, mutiny, refusal of duty, in the military or naval forces of the United States, or shall willfully obstruct the recruiting or enlistment service of the United States, to the injury of the service or of the United States, shall be punished by a fine of not more than \$10,000 or imprisonment for not more than twenty years, or both.³²

Congressman #1

I believe the press censorship in this bill is in flat contradiction of the Constitution! And although I do not claim to be a constitutional lawyer, I think I know something about our Constitution!

Congressman #2

I am opposed to giving any man a bridle that he may place upon the free expression of

opinions of Americans. Suppose a man writes an editorial condemning the food provided for our soldiers. Is it to be said that he shall be harnessed by some eight or ten upstarts going around enforcing military laws?

To say you cannot criticize a general not fit to command troops would be another outrage! But here you are, fixing it so any malicious person can dig out a paragraph in a paper and cause trouble! We will all get along better if we're careful about muzzling the press!³³

Congressman #1

This nation cannot afford to adopt a censorship measure that would make it possible to suppress legitimate criticism of the administration of the government in this war.³⁴

Citizen Two

Even so, Congress left in place one key provision when it debated the final version:

Congressman #1

Would my esteemed colleague read back that section?

Congressman #2

The President may prohibit the publication or communication of any information relating to the national defense, which in his judgment is of such a character that it is or might be useful to the enemy.³⁵ That includes recruiting of soldiers!

Congressman #1

And publications that contravene the act would be considered unmailable?

Congressman #2

That's correct. The Postmaster General can declare all materials in violation of the act unmailable.

Citizen Two

The editors of the nation's press objected to attempts to muzzle them.

MUSIC: *soft drum roll*

Newspaper Reader 1

(holding newspaper) *The New York Times* says: “While conceding the necessity for military censorship, we *insist* that there should be *sense* in censorship. A bill pending in Congress would clothe officials, high and low, with a dangerous power to suppress information that would be of no use to the enemy!”³⁶

Newspaper Reader 2

The New Orleans Times-Picayune argues: “The American people are entitled to all the news, good and bad, to a full, free and frank statement of all that occurs.³⁷ The rights to free speech and a free press are to be cherished, whether in war or peace. There has never been a cheaper or more cruel thrust at the American press than is contained in the Espionage bill pending before the Senate!”³⁸

Newspaper Reader 1

The New York American says: “The Espionage bill should be trimmed of every word that forbids the freedom of speech or the freedom of publication directly or indirectly. It is, in fact, an unnecessary bill, which ought to be rejected altogether by the Congress!”³⁹

News Boy

ESPIONAGE BILL SIGNED! NUMEROUS PROSECUTIONS EXPECTED!
NO CENSORSHIP PROVISION!⁴⁰

MUSIC: *drum roll ends with a stinger*

Citizen Two

Even without the censorship provision, the government relentlessly pursued certain publications and publishers.

Newspaper Reader 2

It says here in the *New York Times* that a federal warrant was issued for the arrest of Henry B. Krenning, the former president of an automobile manufacturing company, charging him with violating the Espionage Act because he made a disparaging remark about the Chief Executive at the theater!⁴¹

News Boy

EXTRA! Socialists to Test the Espionage Act! Editors of radical publication would establish their right to the mails!⁴²

Citizen One

The publishers of *The Masses*, an illustrated socialist monthly, had engaged in a battle with Post Office censors, who objected to the magazine's anti-draft campaign. The censors charged the publishers under the sedition provisions of the Espionage Act.

<p>Projection #22:</p>

<p>Cartoons, "Conscription" from <i>Masses</i></p>
--

At issue were these cartoons. In court, defense lawyer Morris Hillquit argued that *The Masses* had tried to comply with the law.

Masses Counsel Morris Hillquit

May it please the court! My clients have done everything possible to prove to the Post Office Department that our August 1917 issue conforms to the law. Our business manager went to Washington and asked Solicitor General Lamar to show him what was objectionable under the Espionage Act. The solicitor refused to specify. He insisted that the entire tone and spirit of the issue render it unmailable. Unfortunately, we now must sue in order to distribute our magazine.

Citizen One

The case was argued in federal district court in New York before Judge Learned Hand, who doubted the government's claims that the content in question would incite civil disorder.

Judge Learned Hand

Political action arouses the passions and may, in fact, stimulate men to the violation of law. Detestation of existing policies is easily transformed into forcible resistance of the authority that executes them. It would be folly to disregard the causal relation between the two. Yet, to equate agitation with direct incitement to violence disregards our tolerance of all methods of political action, which in normal times is a safeguard of free government. The distinction is not scholastic hair-splitting but rather a hard-won right in the fight for

freedom. If one stops short of urging others to resist the law, it seems to me one should not be guilty of causing its violation. If that is not the test, then I can see no escape from the conclusion that, under this section of the Espionage Act, every political action that might provoke someone to speak against the government is illegal. I am confident that Congress had no such revolutionary purpose in view.

It seems to me quite plain that none of the language and none of the cartoons in this magazine can be thought directly to counsel or advise insubordination or mutiny, without a violation of their meaning quite beyond any tolerable understanding.

The Espionage Act forbids anyone from willfully obstructing the recruiting or enlistment service of the United States. It is quite clear that none of the cartoons that appeared in *The Masses* fall within such a test. Certainly the nearest is that entitled 'Conscription,' and the most that can be said of that is that it may breed such animosity to the draft as will promote resistance and strengthen the determination of those disposed to be recalcitrant. There is no intimation that, however hateful the draft may be, one is in duty-bound to resist it, certainly none that such resistance is to one's interest. I cannot, therefore, assent to the assertion that any of the cartoons violate the act.⁴³

Citizen One

Judge Hand ruled that *The Masses* did not violate the Espionage Act. The government appealed, and a three-judge panel overturned Judge Hand's decision. Appeals Court Judge Henry Wade Rogers observed that political cartoons have long been used as a very effective means of political propaganda.

Judge Henry Wade Rogers

Cartoons were so employed in France during the French Revolution and in England as early as the days of Walpole. In this country, they were used during the Revolution, in the War of 1812, and in the Civil War. A cartoon can express ideas as lucidly and clearly as printed words! But there is no escape from legal responsibility because pictures, rather than words, are used.⁴⁴

Citizen One

Pleading the case before the Appeals Court, *Masses* counsel Morris Hillquit concurred:

Masses Counsel Hillquit

May it please the court. We concede that the cartoon in question is a powerful argument

against the conscription law. It says, in effect, that the youth of the land are by it forced into military service. It binds workers to military service and causes great agony and suffering to women. Mothers with children too small to be subject to the 'Draft' pray to God that the draft law may be repealed before their children come to military age! Democracy is trampled under foot by such a law! That is what this picture says.'

Judge Rogers

That is not what it says to us! It seems to us to say: This law murders youth, enslaves labor to its misery, drives womanhood into utter despair and agony, and takes away from democracy its freedom. Its voice is not the voice of patriotism, and its language suggests disloyalty. We disagree that it would not interfere with enlistment. That it would interfere, and was intended to interfere, was evidently the opinion of the Postmaster General; and this court cannot say that he was not justified in his conclusion.

... The question whether the publication contained matter intended willfully to obstruct the recruiting or enlistment service is not in doubt. Indeed, the court does not hesitate to say that, considering the natural and reasonable effect of the publication, it was intended willfully to obstruct recruiting. This publication is indeed unfit for the mail!⁴⁵

Newsboy

(holding rolled newspaper) SUPREME COURT UPHOLDS SENTENCE OF RUSSIAN REDS!
DECIDES AGAINST FOUR WHO THREW PAMPHLETS FROM ROOFTOPS!

Projection #23:

Court exhibit of pamphlet

Newspaper Reader 1

(holding newspaper) It says here in the *New York Times*, August 23, 1918: Seditious leaflets were scattered in the streets New York City yesterday by Jakob Abrams and five other men and one woman! Says here they were all followers of Lenin and Trotsky. Threw them from the rooftops of a building on the lower East Side. Those leaflets condemn President Wilson for sending American troops to fight against the Bolsheviks. It says here that one leaflet, written in Yiddish, called for a general strike to protest against the government's policy of intervention. The bunch were indicted under the Sedition Act of 1918, which made it a

crime to “willfully utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language” about the United States’ form of government, or to “willfully urge, incite, or advocate any curtailment of production” of things “necessary or essential to the prosecution of the war.”⁴⁶

Citizen One

In October, Jakob Abrams and his fellow conspirators appeared in federal court before Judge Henry Clayton.

United States Judge Henry D. Clayton of Alabama

You come before this court demanding freedom of speech. Freedom of speech is one thing, and disloyalty is another! What you term free speech does not protect disloyalty. I am sorry for the people of New York that have to deal with individuals who have no more conception of what free government means than a billy-goat has of the gospel!

To the members of the jury: You should consider that people who are activated by pure and lawful motives as a rule act in open daylight. People who have circulars to distribute, and they intend no wrong, go up and down the streets circulating them. So it is proper for you to consider how these leaflets were printed and how they are circulated, as bearing upon the questions of the intent of the defendants.”⁴⁷

Newspaper Reader 1

(reading newspaper) Guilty! Sentenced to 20 years in jail and \$1,000 fines! Now they’re appealing to the Supreme Court on the grounds that their First Amendment right to speak against the government has been denied!

Projection #24:

Defendants in Abrams Case

Court Spokesperson

In the matter of Abrams, et al: Speaking for the majority of the Supreme Court of the United States, Justice John Hessin Clarke:

Justice Clarke

Under the circumstances in which the Abrams circulars were written and disseminated, the First Amendment does not apply. The purpose of the radical leaflets was not simply to

prevent the intervention of American forces in Russia, but to stir up revolution and frustrate the government's military purpose.

While the immediate occasion for this particular outbreak of lawlessness may have been resentment caused by our government sending troops into Russia, yet the plain purpose of their propaganda was to excite sedition, riots and revolution in this country for the purpose of embarrassing and, if possible, defeating the military plans of the government in Europe.

The convictions are upheld!⁴⁸

Court Spokesperson

Speaking in dissent, the Court recognizes Justice Oliver Wendell Holmes, whose opinion is joined by Justice Louis Brandeis.

Justice Holmes

The principle of the right to free speech is always the same. It is only the present danger of immediate evil or an intent to bring it about that warrants Congress in setting a limit to the expression of opinion where private rights are not concerned. Congress certainly cannot forbid all effort to change the mind of the country. Now, nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger to the success of government aims nor have any appreciable tendency to do so.

Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart, you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent.

But when men have realized that time has upset many fighting faiths, they may come to believe that the ultimate good desired is better reached by free trade in ideas --- that the best test of truth is the power of the thought to get itself accepted in the competition of the market --- and that truth is the only ground upon which their wishes safely can be carried out.

That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think we should be eternally vigilant *against* attempts to check the expression of opinions

that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.⁴⁹

MUSIC: *1930's Labor tunes*

Projection #25:

Photo of Anita Whitney

Citizen One

Justices Holmes and Brandeis continued for many years to advocate for liberty of the press and the right of citizens to speak out against their government. Brandeis's opinion in the 1927 case of Anita Whitney became a cornerstone of the First Amendment free expression four decades later.

Citizen Two

Whitney, a member of a distinguished California family, was convicted under California's 1919 Criminal Syndicalism Act. Her crime: helping establish the Communist Labor Party in California, a group the state charged taught the violent overthrow of government. Whitney claimed the group never intended to be an instrument of violence and the conviction limited her freedom of expression. The Supreme Court rejected her First Amendment claim, but Justice Brandeis argued that her actions – forming a teaching group – only remotely threatened public order. Advocacy of any position, Justice Brandeis said, cannot ever justify denying free speech if that speech is not an immediate incitement.

Justice Brandeis

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.

... Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil feared is so imminent that it may happen before there is opportunity for full discussion. If there be time to expose, through discussion, the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.⁵⁰

MUSIC: *1960's civil rights tunes*

Scene 4

New York Times v Sullivan. 1963

Cast of Characters

Citizen One	Citizen Two
L.B. Sullivan	<i>NY Times</i> lawyer Eric Embry
Montgomery Advertiser editor	Alabama Journal editor
Herbert Wechsler, <i>NY Times</i> lawyer	Justice Brennan

Citizen One

The Sedition Act of 1798 so vigorously opposed by Madison and Jefferson was never fully tested in court, until a day in 1964 when the United States Supreme Court heard the case of *New York Times vs. Sullivan*. On its surface, the case concerned libel – harm to someone’s reputation –but it also implicated the First Amendment guarantees of free speech and free press. The case drove straight to the heart of the civil rights movement and the role of a free press as watchdog and critic of government.

The question before the Court was whether state power had been used to limit the people’s right to speak out against injustice: Had the government infringed on freedom of expression. The Supreme Court wrestled with whether, under the guise of protecting reputation, government officials had attempted to intimidate the press into ignoring the peaceful efforts of southern blacks to contest segregation.

Citizen Two

The civil rights movement had gained momentum from the Court's 1954 decision ordering the nation's schools to integrate. By 1960, organized actions – from lunch counter sit-ins to voting rights marches – swept the South. Many Northern newspapers and television networks sent reporters to cover the protests. News reports revealed a social and economic underclass, driven to action in hopes of gaining equal access to education and public transportation and the right to eat in cafes and coffee shops. Mostly, though, they wanted the right to register to vote.

Projection #26:

Image NYT ad, March 29, 1960

Citizen One

The Sullivan case began on March 29, 1960, when the *New York Times* ran a full-page editorial ad, placed by the Committee to Defend Martin Luther King and the Struggle for Freedom in the South. The headline read: "Heed Their Rising Voices," a phrase borrowed from an editorial in the *Times* a few weeks earlier. The ad solicited funds to help pay for the defense of Dr. King, accused of falsifying tax returns, and to support the group's non-violent actions. In ten paragraphs, the ad described "an unprecedented wave of terror" waged against students seeking their constitutional rights.

Citizen Two

The ad did not single out anyone by name. But it identified 10 cities as sites of "intimidation and violence" intended to "behead this affirmative movement, and . . . demoralize Negro Americans and weaken their will to struggle." The ad targeted Montgomery, Alabama, where it said "truck-loads of police armed with shotguns and tear-gas attempted to starve Alabama State College students into submission." Based on this last reference, each of the four commissioners of the city of Montgomery filed \$500,000 libel suits against the *New York Times* and four local clergymen who had signed the ad.

L.B. Sullivan, commissioner of public affairs for the city of Montgomery, supervised the police and fire departments. All of the complaints were brought under his name. Sullivan, in a letter to the *New York Times*, demanded a retraction.

L.B. Sullivan

(holding letter) The publication of the ad as a whole charges me with grave misconduct and improper actions and omissions as an official of the city of Montgomery. I demand that the persons who placed the ad publish, in as prominent and public a manner as the original, a full and fair retraction!⁵¹

Citizen Two

The *Times*' lawyer replied:

***New York Times* lawyer Eric Embry**

(holding letter) We are somewhat puzzled as to how you think the statements in the ad in any way reflect on you. So far, our investigation seems to indicate that the statements are substantially correct, with the sole exception that we find no justification for the statement that the dining hall in the state college was padlocked in an attempt to starve them into submission. In the meanwhile, you might, if you desire, let us know in what respect you claim the statements in the advertisement reflect on you.⁵²

Citizen One

The *Times* received no reply. Instead, Sullivan brought a libel suit demanding \$500,000 damages. It named the *Times* and four of the ministers living in Alabama who had signed the ad. The Montgomery trial ran for three days, and the atmosphere was hostile toward the defendants. One local newspaper, the *Montgomery Advertiser*, took up the drumbeat immediately after the ad ran.

***Montgomery Advertiser* Editor**

There are voluntary liars; there are involuntary liars. Both kinds contributed to the crude slanders against Montgomery broadcast in a full-page ad in the *New York Times*. And it is up to the *New York Times* and the involuntary liars to purge themselves of their false witness!

... The Republic paid a dear price for the hysteria and mendacity of the abolitionist agitators! The author of this ad is a lineal descendent of those abolitionists, and the breed runs true!⁵³

Those “Abolitionist Hellmouths” have much to answer for. The commonwealth of Alabama with its 3 million people has been painfully and savagefully injured by the *New York Times*!⁵⁴

Citizen One

The Alabama attorney general, MacDonald Gallion, also weighed in, saying that the ad contained “vicious, unfounded and malicious lies. We are sick of warped and slanted attacks on Alabama!”⁵⁵

Citizen Two

The trial attracted unusual media attention. Both Montgomery newspapers and the local television station photographed the jurors, 12 local white men whose names appeared in page-one articles. TV cameras followed them to the very door of the jury room.

From the outset, racial overtones were evident in the way the judge and Sullivan’s attorneys addressed the lawyers representing the black ministers. White attorneys were addressed with the courtesy title “Mr.,” while black attorneys were called “Lawyer.”⁵⁶

Sullivan testified that the ad clearly *identified* him, an element that must be proven in libel. Further, he claimed the information was false and the ad had damaged his reputation, which also must be proven in a libel case. The *Times*’ lawyer, Eric Embry, maintained that Sullivan had not met those standards.

Eric Embry

The only substantial error in the ad was the statement about padlocking the dining hall, and that could not possibly have referred to Mr. Sullivan. Indeed, nothing in the ad refers to him! And by his own testimony, he has not been damaged. Where is the evidence that has shown Mr. Sullivan suffered any injury? Has his standing in the community suffered, or has it possibly been enhanced?⁵⁷

Citizen One

Despite Embry's pleas, Judge Walter Jones instructed the jury that the ad was libelous and therefore was presumed false. The jury's only task was to determine the damages. Jurors deliberated two hours and 20 minutes and returned a damage award of \$500,000 – the exact amount Sullivan demanded. Newspapers in the South celebrated the victory. The *Alabama Journal* crowed at the outcome.

Alabama Journal Editor

“This trial should make reckless Northern publishers re-survey their habit of permitting anything detrimental to the South and its people to appear in their columns! The South is libeled every day and subjected to more character assassinations than in the days of the New England fanatical abolitionists, *Uncle Tom's Cabin* and Simon Legree. Northern publishers until now have regarded themselves as free from prosecution because they were far off and under the impression they could be sued for derelictions only in the courts of their home cities. Now the rules have changed! The *Times* was summoned more than a thousand miles to Montgomery to answer for its offense. Other newspapers and magazines face the same prospect! The only way to avoid such long-distance summons is to print the truth.”⁵⁸

Citizen One

The *Times* and other news organizations saw the use of libel as a weapon deliberately chosen to discourage their coverage of the injustices wreaked on the black population in a segregated and hostile South. They worried that the strategy of intimidation by lawsuit would spread. And it did. By the time the Sullivan case made it to the U.S. Supreme Court, Southern officials had brought nearly \$300 million in libel actions against various members of the press.⁵⁹

Citizen Two

The *Times* appealed first to the Alabama Supreme Court, which upheld the trial court. Worried that if the decision stood, publishers -- whether print or broadcast – would quit sending reporters to cover the civil rights struggles in the South, the *Times* decided to appeal the case to the United States Supreme Court.

Herbert Wechsler, the lawyer representing the *Times*, built his case on the Sedition Act of 1798. He claimed that public and political resistance to the act demonstrated the right to

criticize government, which Alabama now jeopardized by using libel law to undercut such criticism.

Wechsler argued that the ad placed in the *New York Times* was as much a political document as those that had been punished under the Sedition Act. The ad recited a list of grievances and protested against abuses dealing squarely with the major issue of our time, and Alabama sought to silence those complaints. Said Wechsler:

Herbert Wechsler

May it please the court! What is at stake here is criticism of the government, and its repression must be judged outside the mere label of libel. Libel is not insulated from First Amendment protection. This Court has in the past defended that prized American privilege to speak one's mind, although not always with perfect good taste. As Judge Learned Hand observed, the First Amendment presupposes that right conclusions are more likely gathered out of a multitude of tongues than through any kind of authoritative selection. To many this is and always will be folly; *but we have staked our all on it.*

Political debate is not limited by any test of truth, to be administered by juries, courts or executive officials, nor to speak of a test that puts the burden of establishing the truth upon the writer! Sharp differences always arise in political debate. To persuade others to his point of view, the pleader resorts to exaggeration, to vilification and even to false statement. But the people of this nation have ordained, in the light of history, that in spite of the probability of excesses and abuses these liberties are essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

If truth is not a test, then political speech cannot be penalized because it damages official reputations. If such speech could be punished, then nothing could be safely uttered that was anything but praise! That short-lived Sedition Act of 1798 crystallized a national awareness of the central meaning of the First Amendment, that Americans could not be punished for criticizing public officials! This Court never judged that Act, but the verdict of history surely sustains the view that it was inconsistent with the First Amendment.

This is not the time – there never is a time – when it would serve the values enshrined in the Constitution to force the press to curtail its attention to the tensest issues that confront the country or to forego dissemination of its publications in the areas where tension is extreme.⁶⁰

Projection #27:

March 9, 1964

(date superimposed over NYT ad from previous slide)

Citizen One

The Supreme Court heard arguments over two days in January 1964 and handed down its opinion on March 9, 1964, nearly four years after the ad appeared.

Justice William J. Brennan wrote the opinion of the Court, which clearly understood that what it had done was revolutionary. The decision reconsidered an entire area of law and the extent to which constitutional protections of speech and press limit libel actions by public officials. It was a momentous decision that extended First Amendment protection to libelous statements when public officials claimed damage to their reputation. This was a radical idea, for it made the official claiming libel responsible for proving that the statements were false

Projection #28:

Justice Brennan

Justice Brennan

“The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.

"It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions, and this opportunity is to be afforded for "vigorous advocacy" no less than "abstract discussion." Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

"The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection. The question is whether it forfeits that protection by the falsity of some of its factual statements and by its alleged defamation of respondent. Erroneous statement is inevitable in free debate, and must be protected if the freedoms of expression are to have the "breathing space" that they need . . . to survive."⁶¹

Citizen One

The Supreme Court's decision that day aided the cause of the civil rights movement and opened the door to reporting on the government's conduct of the escalating war in Vietnam. Its verdict that public officials must meet the actual malice standard foiled further attempts by local and state governments to use libel threats to deter coverage of their violent responses to nonviolent protests. Without the press to bear witness, the nonviolent strategy of the NAACP and the Southern Christian Leadership Conference might have failed. Expressions of injustice – taking a seat at the front of the bus, sitting at a segregated lunch counter – came to be understood as a form of speech, as expressive conduct.

One of the lessons learned in the conflicts of the 1960s and 1970s is that freedom of expression demands a vigilant press and an informed public. Government often seeks to silence the press, especially in times of war. It may briefly succeed, but in the end the Constitution prevails. That has been true since the nation's founding, and happened again in 1970s when the *New York Times* and the *Washington Post* challenged the government to stop the presses.

MUSIC: *1970's anti-war tunes*

Scene 5

New York Times v United States. 1971

The Pentagon Papers

Cast of Characters

Citizen One	Citizen Two
Daniel Ellsberg	Harrison Salisbury
Hedrick Smith	President Nixon
HR Haldman	Gen. Alexander Haig
Attorney General Mitchell	Henry Kissinger
Judge Murray Gurfein	Judge Gerhard Gesell
Clerk of the Court	Justice Black
Justice Harlan	Justice Brennan
Justice Stewart	Justice Marshall
Justice Brandeis	

Citizen Two

Tensions between hawks and doves ran high in 1971 as American involvement in Vietnam persisted. Despite assurances from President Richard Nixon that he intended to withdraw American soldiers, a new round of fighting had erupted in the demilitarized zone separating North and South Vietnam, and bombing raids over Laos intensified. At home, peace marches continued. The Laos incursion prompted demonstrations nationwide, culminating in a protest in Washington DC, where, ringed by National Guard soldiers, Vietnam veterans threw away their medals.

The Pentagon Papers -- leaked by Daniel Ellsberg, a disaffected former military analyst -- landed in the middle of this mixture of public anger and official lies. Almost seven thousand pages in length, the Papers contained a three-thousand-page history of how the United States had become embroiled in Vietnam, beginning in the Truman Administration. Four thousand pages of classified documents from the Defense Department, the White House, the CIA, the State Department and the Joint Chiefs of Staff filled in the details. Over a period of months, as the war escalated, Ellsberg photocopied the entire document and locked it away in his safe, where it lay for several years.⁶²

Projection #29:

Daniel Ellsberg

Daniel Ellsberg

“Faced with what I believed was a terribly reckless, rash policy by the United States, for the first time in my career, I thought of leaking secret information. I knew other people did it, unauthorized disclosures, outside the government. . . . I didn’t think the stakes were trivial. I tried first to interest Senator Fulbright and later Senator McGovern to publicize the papers on the floor of the Senate. But they both declined, thinking the American people would see it as unpatriotic. I had considered the media as a back-up option, and in late February 1971, I decided to contact Neil Sheehan, a reporter with the *New York Times*. We’d done business before, and I knew him from Vietnam. Sheehan told his editors he might gain access to a major Pentagon study of the war, under conditions—namely I wanted them to print the whole thing—all seven thousand pages. Harrison Salisbury was among the newspaper’s editors, who wanted to read the documents first, before they agreed to anything.”⁶³

Harrison Salisbury

“I was in the room at the *Times* with about two dozen senior officials and editors when we discussed what to do with the Papers. Max Frankel, the Washington Bureau Chief, put the question to us – journalistically, did the story warrant defying the government and possible legal action? Did the documents, in fact, betray a pattern of consistent and repeated deception by the American government of the American people? There was agreement that this is precisely what the documents showed.”⁶⁴

Citizen One

It was a judgment call. Because the report and documents concerned national security, the *Times* was certain the government would invoke those claims in appeals not to publish. The *Times*’ lawyer, James Goodale, believed the Papers were a history and posed no national security issues. So the editors proceeded cautiously on what they called ‘Project X.’ Hedrick Smith was one of several reporters who spent months organizing and reading the documents and writing carefully worded stories.

Hedrick Smith

“As a professional judgment, we were simply trying to bring more information to the public. I worked on the stories with Sheehan. We finally decided to handle it chronologically, historically. We did chunks, going back to Truman, Eisenhower, then through the Kennedy years and Johnson. We had standards. Number one, you don’t print anything that will expose a current military operation or endanger troops or anything of use to the enemy. Second, you don’t report intelligence information or communications codes. Three, we would never expose anything in which there was ongoing secret diplomacy. We were actually spared difficult decisions because this was a history. We worked for three months on it, finally broke it down into twelve stories.”⁶⁵

Projection #30:

NY Times front page June 13, 1971

Citizen One

The series broke on the front page of the *New York Times* on Sunday, June 13, 1971. President Richard M. Nixon learned of it when he read that day’s *Times*. He discussed it with his aides but mainly considered it a problem for the Democrats. It didn’t hurt him or the Republican Party. No action was taken that day, no review ordered. On Monday, June 14—the second day of the *New York Times* Pentagon Papers series—Nixon began to have a change of heart. He instructed his chief of staff, H. R. Haldeman, to discover the source of the leaked documents and “out” whoever was responsible. But the first alert was raised in a call by his deputy national security advisor, Gen. Alexander Haig.

Projection #31:

Portraits of Nixon, Haig, Haldeman, Mitchell, Kissenger all in one frame.

Gen. Alexander Haig

Sir, “we must address this massive security leak from the Pentagon! That goddamn *New York Times* expose today ran some of the most highly classified documents of the war.”

Nixon

Didn’t read it. Where’d the papers come from?

Haig

“The whole study was done by Bob McNamara and Clark Clifford, Kennedy and Johnson’s defense secretary. Those peaceniks! I’m sure the papers were stolen during the turnover from the Johnson Administration, and they’ve just been holding them for a juicy time.”⁶⁶

Citizen One

The president later spoke with his National Security Advisor, Henry Kissinger.

Nixon

Henry! Talked to Haig. He was very disturbed by that *New York Times* thing . . . unconscionable damn thing for them to do! More than unconscionable -- it’s treasonable action by the bastards that put it out!

Kissinger

Exactly, Mr. President! It has the highest classification. It violates all sorts of security laws.

Nixon

Call Attorney General Mitchell and tell him to put that reporter under oath about where he got that report! A congressional committee should call him! Put him under oath, and then he’s guilty of perjury if he lies. . . . Good God! Can you imagine the *New York Times* doing a thing like this ten years ago! Whatever they say about our policy, this leak serves the enemy!⁶⁷

Citizen One

Later that day, Nixon’s chief of staff, H.R. Haldeman called.

H.R. Haldeman

Mr. President why the hell do we classify anything if a newspaper feels no compunctions about printing it? To the ordinary guy, this is all gobbledygook, but out of all of it comes one very clear thing: you can’t trust the government! You can’t believe what they say, and you can’t rely on their judgment! The implicit infallibility of presidents, which has been an accepted thing in America, is badly hurt by this because it shows the president can be wrong!⁶⁸

Nixon

Here’s what I want done. Get Pat Buchanan, the press guy, to get all the facts together and write a little story that this is all a political ploy by the intellectuals and the Democrats.

Let's smoke out Brookings Institution—those left-wingers!—They leaked it! Call Don Kendall and have others call and maybe have NBC show a prime-time rerun of Tricia's wedding from yesterday. Have some of their big advertiser call! Pick one network—zero-in at the highest levels.⁶⁹

And, until further notice, under no circumstances, is anyone connected with the White House to give any interviews to a member of the staff of the *New York Times* without my express permission . . . or respond on any subject to an inquiry from the *Times*. And I do not expect such permission in the foreseeable future.⁷⁰

Citizen One

Attorney General John Mitchell was not alarmed at first, but one of his aides concluded that the Papers published by the *Times* threatened national security and could compromise intelligence interests. He focused on the ongoing and unresolved diplomatic negotiations, including a settlement of the war with North Vietnam. In truth, the material concerning diplomatic relations was not among the volumes of documents Ellsberg had released to the *New York Times* and did not factor into any of its articles. Nixon talked to Mitchell and Kissinger the next day and set in motion the chain of events that led to the U.S. Supreme Court.⁷¹

Nixon

John, what's your advice on the *Times* thing? Has the government ever done this to a newspaper before?

Mitchell

Well, I think so. I think we should put the *Times* on notice, kind of low key. You call them and send a telegram to confirm that they're violating a statute. I'd think we'd look a little silly if we didn't take action to advise them about publication.

Nixon

As far as the *Times* goes, hell, Henry, they're our enemies!

Kissinger

This is an attack on the integrity of the government! If you can steal whole filing-cabinets full of classified information and then make it available to the press, you can't have orderly government!⁷²

Nixon

There's a principle at stake here. It is the role of government, not the *New York Times*, to judge the impact of a top security document. If we don't move against the *Times* it will be a signal to every disgruntled bureaucrat that he could leak anything he pleased while the government stood by." ⁷³

Citizen Two

Attorney General John Mitchell sent this telegram on June 14, 1971 to Arthur Ochs Sulzberger, publisher of the *New York Times*:

Mitchell

"I have been advised by the Secretary of Defense that the material published in the *New York Times* on June 13, 14, 1971 captioned "key texts from Pentagon's Vietnam Study" contains information relating to the national defense of the United States and bears a top secret classification.

As such, publication of this information is directly prohibited by the provisions of the Espionage law, Title 18, United States Code, section 793.

Moreover, further publication of information of this character will cause irreparable injury to the defense interests of the United States. Accordingly, I respectfully request that you publish no further information of this character and advise me that you have made arrangements for the return of these documents to the Department of Defense."⁷⁴

Citizen Two

Abe Rosenthal, the *Times'* editor, decided to publish anyway. The matter now moved to the courts. That day, the United States government filed suit in federal court in New York to stop the presses. Judge Murray Gurfein granted a temporary halt until he could hear the evidence. At the hearing, the government's attorneys argued that the *Times'* publication of the Pentagon Papers violated a provision of federal espionage laws and that, legally, Judge Gurfein could stop the newspaper from publishing any further documents. The *Times'* lawyers argued the White House did not have the inherent power to bring a lawsuit because Congress had never given it that power. Calling it a classic case of censorship, the *Times'* lawyers agreed that the First Amendment did permit a prior restraint in certain

circumstances. But, they argued, the material printed by the *Times* did not meet those very specific instances.⁷⁵

Citizen One

With the temporary halt to the *New York Times* series, Daniel Ellsberg feared the rest of the story would be buried, so he leaked a copy of the Papers to the *Washington Post*, which began publishing immediately. On June 18, 1971, the front page of the *Post* led with “Documents Reveal U.S. Effort in '54 to Delay Viet Election.”

When court reconvened in New York City that morning, it looked like Judge Gurfein would side with the government. But in closed-door hearings, government witnesses had failed to prove that any specific part of the documents had caused significant damage to U.S. interests. Judge Gurfein lifted the restraining order.

Judge Murray Gurfein

This case does not present a sharp clash between vital security interests and the right of the *Times* to publish the disputed material, because no cogent reasons were advanced as to why these documents, except in the general framework of *embarrassment*, would vitally affect the security of this nation. The security of the nation is not at the ramparts alone. Security also lies in the value of our free institutions. A cantankerous press, an obstinate press, a ubiquitous press must be suffered by those in authority in order to preserve the even greater values of freedom of expression and the right of the people to know. These are troubled times. There is no greater safety valve for discontent and cynicism about the affairs of government than freedom of expression in any form. This has been the genius of our institutions throughout our history. It has been the credo of our presidents. It is one of the marked traits of our national life that distinguishes us from other nations under different forms of government.⁷⁶

Citizen Two

Government lawyers immediately appealed, and again the court ordered the *Times* to stop the presses. In the meantime, government lawyers in the nation’s capitol sought to block further publication in the *Washington Post*. At a hearing on the afternoon of June 18, 1971 before Judge Gerhard Gesell government lawyers presented the same argument as they had against the *Times*. The *Post*’s lawyers argued that they were publishing historical documents. Judge Gesell ruled that same evening. The *Post* could continue publishing.

Judge Gesell

The case before us presents a raw conflict between the First Amendment and the genuine deep concern of responsible officials in our government. But the government has not proven any of the dangers proposed would likely happen. The right of a free press to publish cannot be adjusted to accommodate the desires of foreign governments to be protected from embarrassing disclosures. . . It also appears that government officials often selectively and frequently use classified material in dealing with the press. Because this disputed material relates to the long-standing and often vitriolic debate over Vietnam, the question presented by this case is of paramount public importance and an order suppressing it would feed the fires of distrust.⁷⁷

Citizen One

On appeal, the *Times* case was sent back to Judge Gurfein in New York for more hearings. Meanwhile, the government appealed the *Washington Post* decision and again lost. At this stage, lawyers for both the *New York Times* and the White House believed it was an issue that the U.S. Supreme Court should decide.

On Saturday, June 26, 1971, the Justices of the U.S. Supreme Court heard oral arguments. Later that day, they met in private conference to discuss their positions on the issue of prior restraint. They shared their opinions with each other.

Projection #32:

Justices of the Supreme Court 1971

Clerk of the Court

Mr. Justice Black:

Mr. Justice Black

We should not destroy the First Amendment by providing a 'loitering' ordinance that is vague and loose. It is not a question of facts; it would be the worst blow to the First Amendment to enjoin these publications. . . . This is an abridgement of freedom of the press!⁷⁸

Clerk of the Court

Mr. Justice Harlan:

Mr. Justice Harlan

The judicial process has been made a travesty! The hearing has been panicky and hurried. . . . We, the judiciary, should not be in the business of determining what our national security standards are. I am convinced our role is very limited, and I want to read those documents.⁷⁹

Clerk of the Court

Mr. Justice Brennan:

Mr. Justice Brennan

Can any injunction be effective? Many papers are publishing the chronicles. . . . What sense is there in restraining the *Washington Post* and the *New York Times* if the stuff is coming out elsewhere? "Every restraint in this case, whatever its form, has violated the First Amendment – and none the less so because that restraint was justified as necessary to afford the court an opportunity to examine the claim more thoroughly."⁸⁰

Clerk of the Court

Mr. Justice Stewart:

Mr. Justice Stewart

The executive branch has great powers in foreign affairs. Secrecy is of great importance in many affairs, and I [for one] would give the executive full power of secrecy. But the president has failed here. These documents are now in the hands of the press. It is now immaterial whether the material was classified and how. Any judicial order to a paper not to publish is contrary to the Constitution. Is there any [real] threat here?⁸¹

Clerk of the Court

Mr. Justice Marshall:

Mr. Justice Marshall

The chief executive has broad powers. I would protect his right to secrecy except to Congress. The First Amendment, when it says 'no law,' applies to all three branches of government. . . . The president's 'inherent' power is limited by the First Amendment.⁸²

Citizen One

At the final vote, six of the nine Justices agreed the government could not stop the presses. The Court's decision, released on June 30, 1971, pointed out that "any system of prior restraints of expression comes to this court bearing a heavy presumption against its constitutional validity." The decision continued: "The government thus carries a heavy burden of showing justification for the imposition of such a restraint," which it failed to do. Each of the justices offered reasons for their decision that day. Justice Stewart spoke forcefully for an end to secrecy.

Justice Stewart

"The only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry – in an informed and critical public opinion which alone can here protect the values of democratic government. For this reason, it is perhaps here that a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For, without an informed and free press, there cannot be an enlightened people.

"I should suppose that moral, political, and practical considerations would dictate that a very first principle of that wisdom would be an insistence upon avoiding secrecy for its own sake. For when everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly maintained."⁸³

Citizen One

Justice Hugo Black argued that the *Times* and the *Post* did the job entrusted to them by the Founders:

Justice Black

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.⁸⁴

Citizen One

This was a momentous decision, for it risked the claims of national security against the rights of citizens to know what their government was doing. The courage of the Supreme Court in defending the First Amendment guarantee of a free press must be seen against the backdrop of a nation at war. It also must be weighed against the values expressed in the Bill of Rights and the reasons why Americans hold dear their right as citizens to freely express themselves.⁸⁵

MUSIC: patriotic anthem (*“America the Beautiful” etc.*) *begins softly, plays throughout to the end and rises to crescendo at the finish.*

Citizen Two

Over and over again, perilous times have tested the Constitution, especially the right to speak freely and publish unpopular ideas and opinions. The Supreme Court hasn’t always stood firm. Decisions abridging those rights have been enacted and later overturned as the Justices weighed the values expressed in the Bill of Rights. Justice Louis Brandeis articulated it best in a 1927 decision:

<p>Projection #33: Justice Brandeis</p>

Justice Brandeis

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should

prevail over the arbitrary.

They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty.

They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; without free speech and assembly discussion would be futile; with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; the greatest menace to freedom is an inert people; public discussion is a political duty; and that this should be a fundamental principle of the American government.

The Framers recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; They knew it is hazardous to discourage thought, hope and imagination; fear breeds repression; repression breeds hate; hate menaces stable government.

The Framers knew the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law--the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly are guaranteed.

Only an emergency can justify repression. Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing that there is no emergency justifying it."⁸⁶

Citizen One

Justice Brandeis continued to advocate for liberty of the press and the right of citizens to speak out against their government. As he pointed out in one of his best-known opinions, the men who won our independence by revolution were not cowards. They did not exalt order at the cost of liberty, rather, they believed the remedy for bad ideas was more speech, not the *peculiar evil* of an enforced silence.

MUSIC: *anthem builds and ends*

Projection #34:
A PECULIAR EVIL
Silencing Expression in America

CURTAIN

MUSIC: *upbeat tune for curtain call. Plays to its conclusion as audience files out.*

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- ² Jill Lepore, 2000. *Encounters in the New World: A History in Documents*. Oxford UP.70.
- ³ Chief Justice John Holt, *Rex v. Tuchin*, 14 *Howell's State Trials* 1095 (1704). Qted in Smith, 61-62.
- ⁴ Milton, John. *Aeropagitica: A Speech of Mr. John Milton For the liberty of Unlicensed Printing to the Parliament of England*. Luxon, Thomas H., ed. *The Milton Reading Room*, <http://www.dartmouth.edu/~milton>, January, 2009.
- ⁵ Mill, J.S. *On Liberty*. London. Longman, 1869. Bartleby.com 1999, January 2009.
- ⁶ Smith, 13.
- ⁷ <http://law.jrank.org/pages/2341/John-Peter-Zenger-Trial-1735-Zenger-s-Attack-on-Royal-Governor.html>, February, 2009.
- ⁸ Lindner, Douglas. 2001. *The Zenger Trial: An Account*. February, 2009. <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/verse.html>
- ⁹ Ibid.
- ¹⁰ Rutherford, Livingston. 1904. *John Peter Zenger, His Press, His Trial*. New Jersey. The Lawbook Exchange, 15. http://books.google.com/books?id=Bzxo1x9sUv0C&printsec=copyright&source=gbs_pub_info_s&cad=2#v=onepage&q&f=false, February, 2009.
- ¹¹ Lindner. <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/letters.html>. February, 2009.
- ¹² Ibid.
- ¹³ Ibid.
- ¹⁴ <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/colonydivided.html>. February, 2009.
- ¹⁵ <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/burningorder.html>. February, 2009.
- ¹⁶ "Hamilton's Summation for Zenger". <http://www.law.umkc.edu/faculty/projects/ftrials/zenger/zengerrecord.html>. February, 2009.
- ¹⁷ "In Convention: July 2, 1787." http://avalon.law.yale.edu/18th_century/debates_702.asp March, 2009.
- ¹⁸ Ibid. Mr. Randolph.

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- 19 “Franklin’s Speech, Sept. 17, 1787.” http://avalon.law.yale.edu/18th_century/debates_917.asp. March, 2009.
- 20 Roger A. Bruns. “The Federalists & the Anti-Federalists” in *A More Perfect Union: The Creation of the United States Constitution*. National Archives & Records Administration: Washington D.C. 1986, p. 33. http://www.archives.gov/exhibits/charters/constitution_history.html. March, 2009.
- 21 “Letter to Thomas Jefferson, Oct. 17, 1788.” http://www.constitution.org/jm/17881017_bor.htm
- 22 Letter from Thomas Jefferson to Edward Carrington, 1787. ME 6:57 <http://etext.virginia.edu/jefferson/quotations/jeff1600.htm>. March, 2009.
- 23 Gales & Seaton’s History of Debates in Congress, “Amendments to the Constitution,” June 8, 1789, p. 449. <http://memory.loc.gov/cgi-bin/ampage?collId=llac&fileName=001/llac001.db&recNum=226>
- 24 Jefferson to Steven T. Mason, Oct. 11, 1798, Jefferson Works, 8:450.
- 25 “Congressional Pugilists,” <http://memory.loc.gov/ammem/amlaw/lwpugilr.html>. March, 2009.
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- 27 Levy, 35.
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- 29 Jefferson, T. First Inaugural Address. http://avalon.law.yale.edu/19th_century/jefinau1.asp. March, 2009.
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- 34 “Anti-Censorship Tide Floods House,” *New York Times*, May 4, 1917.
- 35 World War I Document Archive: <http://www.gwpda.org/1918/usspy.html>. March, 2009.
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- 37 Quoted in “Press Fights Back to Hold Freedom,” *New York Times*, April 20, 1917.
- 38 “Breath of Life to Liberty,” *New York Times*, April 19, 1917.
- 39 “Plenty of Laws for Spies,” *New York American*, April 19, 1917.
- 40 “Espionage Bill Is Signed,” *New York Times*, June 16, 1917.
- 41 “Wilson Critic Arrested,” *New York Times*, Oct. 11, 1917.
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- 45 *Masses Publishing*, 39.
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