

Mass Media
Thursday, October 2, 1986

NY Times - p. 1 "nat'l security"

ROLL -- anyone new? needing course outline?

(on board)

Terminology

Information continuum

News Values

Agenda-setting by gatekeepers
(include role of the reporter)

AFTER DISCUSSION

(on board)

Information: ~~Its Antecedents and Its Uses~~

why care?

the Constitutional need for information.

Introduction -- National Security

The Enlightenment (18th C. rationalism)

Major documents of government

First Amendment

12/91. 200th anniversary: Bill of Rights

Roles of Congress and the courts

Press as watchdog -- Molly Ivins

Role of citizens

Attaining goals: it takes more than laws.

civility and a minimum of cynicism. A willingness to understand other points of view. A resistance to being split into opposing camps. (what we can learn from Bosnia etc.)

Thematic underpinning of course. likely only for major
essay on the final exam
Stanford 1st Amendment case for freedom of info.

INTRO to FIRST AMENDMENT

There is an inherent need to know, in a democracy. If we are to elect officials and hold them accountable, and if we are to participate in ~~self~~-govt in other ways, then we must have full and accurate info on which to base our decisions.

In contrast.

If not, then vacuum...

because

In a totalitarian state, only the dictator needs to know, ~~for~~ the people do not participate. *They simply do as they are told.*

who therefore and then off to work

The viewpoint of a free society, then, is that citizens elect the officials, ~~they~~ work for us, and they owe us information. We should be able to get whatever info we choose, with only very narrow limitations.

But - QM - FBI

One of the limitations is national security; it's real, but it is much narrower than we are often led to believe. The chief of classification at the Pentagon, asked how much of the classified material actually had to do w/ natl security, told the Senate of Congress: $\frac{1}{2}$ of 1 percent.

NYT clip

Clinton Administration's effort: nyt 3/18/94 clip

It is a constant struggle to keep info free-flowing. But it's necessary to keep at it.

Now, the founding of the US of A was a bold and optimistic experiment. We should keep in mind, too, that it was a revolution.

How did this come about? The Enlightenment, etc....

Wm. B. F. Lawrence

Information: Its Antecedents and

First Amendment

First lecture

Its Uses

~~Foreover~~

The Necessity for a free flow of information

The Enlightenment

Major documents of govt

First Amendment

Roles of Congress and courts

Press as watchdog

Role of citizens

I 1 This course is about information -- the kind we call news. And in a few sessions we'll look more closely at news, specifically, and see if we can figure out what is meant by that term. Think about it.

Begin Before we do that, however, we should ~~also~~ ^{and} consider information, and the necessity for a free flow of information ~~is~~ ^{now} implicit in our major documents of government: The Declaration of Independence and the U.S. Constitution.

Declaration of Independence - 1776

U.S. Constitution - 1789 1787

Bill of Rights

1789, prepared by 1st U.S. Congress in Sept. 12-1791

The ideas contained in these documents, which set a new nation in motion, had to come from somewhere. The draft of the Declaration came from Th. Jefferson's brain, and that, in turn, had been influenced by leading egalitarian thinkers in France and England. (Recommend Inventing America, Gary Wills).

THE ENLIGHTENMENT: (18th c. rationalism)

ordinary individuals The particular ideas and culture in the United States were heavily influenced by Western Europe, esp. France and England. What was going on there, in 1776? The French philosophes -- writers and scientists -- were elevating reason, and the reasonable nature of every man, to a code of action for a new kind of society. The most famous of them, Voltaire, had spent a lifetime pricking injustice with his pen and acidic wit, and was within two years of dying in 1776. Voltaire, that most quotable of writers, who said sarcastically, God is always on the side of the big battalions. The French, whether they knew it or not, were getting ready for their great Revolution, which began in 1789 -- the year the U.S. Constitution was ratified.

In England, economists and philosophers were dealing with the problems and prospects of the industrial revolution, where ~~xxxxxxxx~~ in a few years time 1811-16, people called Luddites -- English (disillusioned English workingmen, would destroy the machinery that had put them out of jobs. Politically, the Parliament was ~~xxxxxxxx~~ engaged in the long process of wresting power from the English monarchs, who by our day make hundreds of ceremonial appearances each year, shaking thousands of hands, but hold little real power.

→ The ferment of ideas, politics, technology in these ~~xxxx~~ countries, esp., then, led to discussion and writing about the nature and rights of ordinary individuals, and much of this influenced the work of the founding fathers of this country.

II What, then, did they devise? First of all, a declaration of independence from England, ~~which~~ in a revolutionary document that stated, incredibly, that all men are created ~~xxxx~~ equal, and endowed by certain innate and natural rights -- to life, liberty and the pursuit of happiness. The implications of that explain why we need information -- liberty and pursuit of happiness, for example, are based on knowledge. It explains why this country built ~~the~~ an unprecedented system of free public education, which has expanded until today it reaches right up through the college level. CPAs: not sufficiently funded

meant freemen. Those not in slavery or serfdom. 2. Those who possess the rights and privileges of a citizen. Landowners. (white men)

First Amendment
1st lecture

cf. Inventing America, Jefferson's Declaration
of Independence, Garry Wills, 1978.

2. *patently
inspired*

All right. The Declaration set down an ~~extremely~~ idealistic and optimistic goal -- equality of oppty, the right to go about life with as few restrictions from govt. or church or any other source as possible.

The mechanics for putting that into practice came in the U.S. Constitution. -1787.
~~Why wasn't that satisfied until 1789?~~ *in effect 1789*
(Review Articles of Confederation) ← 1777

*hammered
out*

The body of the Constitution sets down the mechanics of govt, and has given us an enduring structure:

Congress makes laws in accordance w/ Constitution.

~~Exec~~ Executive administers the laws.

Judiciary adjudicates disputes, and rules on the constitutionality of the laws.

(We think of ourselves as a young country, but we have the oldest continuous representative democracy.)

That is in the body of the Constitution, along with other mechanics, such as how the President shall be elected. But what about the Bill of Rights? What is it? When was it adopted? Why? *1789 - In force Dec 1791*

The Bill of Rights, then -- the 1st 10 amendments to the Constitution -- outline individual freedoms. Let's look at the First Amendment, the keystone of our rights as U.S. citizens, and the focus of our interests in this course:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging 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.

P. 297

Look at the position and relationship of these rights. Look at the punctuation. Freedom of the press is an extension of freedom of speech, and is better understood if we translate it as the people's right to know. [The press has no special rights for itself, but has been given Constitutional protection as an information source for all citizens.]

Where is it written that the press must perform this service? It isn't, and most of the mass media do not perform the service. It is entirely up to the indiv. publication and its ownership. (As we shall see later, broadcast media are in a different situation, because of licensing by govt, but they are not, over-all, doing well with info. functions either.)

*anything
substantial*

We are in a bind here. For if the print media were required to perform certain functions, that would mean they were controlled, and the implication is that they would be controlled by government, and that would be a form of censorship.

who else would do it

As we shall see, history more than adequately tells us that those who govern like to keep their secrets, and are able to see their own actions in the best light. This country is constitutionally opposed to press control by government, and the price we pay is much trivia, ~~(and schlock)~~ and sometimes pure irresponsibility. (Murdoch clip?)

→ *Locanda*

To summarize, the law we have is the sparse working in the First Amendment, as interpreted by the courts, esp. U.S. Supreme Court. *+ Legislation from that* **FREEDOM NOT ABSOLUTE.**

*Justice
O'Connor*
[How SUPREME COURT is CONSTITUTED.]

Throughout its history, the Supreme Court, whatever its membership, has ruled against prior censorship (prior restraint). Although it came perilously close in the Pentagon Papers case to admitting some circumstances where prior restraint might be acceptable.

EARL

*Warren =
1953-69*
The Warren Court increased the power of the press -- gave it more protection. Remember this is always at a price -- in this case of private indiv. ~~in~~ in such areas as libel and fair trial.

WARREN

1969-86
The Burger Court has gone in the reverse direction -- it is called by some First Amendment lawyers, "Nixon's revenge." The current court has been ruling that reporters have no more rights than any other members of the public -- refusing to admit any special conditions needed by reporters to perform the informational function under the Constitution.

the dearest access

Further, it has allowed ~~ransacking~~ by law enforcement officials of newspaper files. (In Zurcher v. Stanford Daily the court approved use of the search warrant, which cannot be challenged in court before the search is carried out.

A
The key question is: If the public is to get the information it needs in a democracy, ~~what~~ *prolonged* protection is needed for newsgatherers?

So there are ~~great~~ *prolonged* arguments, right now, about confidentiality of sources, and about what is called the chilling effect: the reluctance of sources to talk with reporters if their names and unpublished details can be compelled in court, and the reluctance of newsgatherers to pursue stories which may cause jail terms or fines or huge legal bills. This leads to a form of what is called censorship at the source. If people will not talk to reporters, or reporters and editors decide not to go after certain stories which may cause them trouble, the public will not get information it needs.

current
So the Burger court has upheld the mechanics of no prior restraint, ~~in the~~ but has not acknowledged lack of confidentiality of sources as another category of prior restraint.

Many lawyers and journalists are concerned that the Burger court is being punitive to the press and therefore the public. We will simply have to wait and see what it does next, and what ~~the~~ future courts do. The law changes -- it is organic, not static. The temper of the times makes a difference. The individual appointees to the court make a difference. (That's why this one is called Nixon's revenge.)

Let's consider, however, the other side of the coin. Not the concerned, responsible, First Amendment journalist who understands his or her obligation to provide the public with information so that the public may rule -- but the irresponsible, ~~or kind trivial~~ *as trivial* journalist.

The Rupert Murdochs of the ~~media~~ country; or the local newspaper publisher who decides it's too troublesome to report anything ~~z~~ thorny and significant -- who does not investigate reporting but simply collects the money for the adv. The numerous radio stations whose DJ's simply rip and read wire service copy. The television news shows which are dominated by froth and happy talk.

(other examples?)

there is a
Understand, there are honorable exceptions in every medium, but we are talking here about the very considerable amount of trivia and irresponsibility.

What ~~is~~ can be done about it? From a Constitutional point of view, the government cannot and should not censor -- although the courts may award damages, after the fact, for such indiscretions as libel, (damage to reputation).

And the Supreme Court, historically, has ~~tolerated~~ tolerated a considerable amount of trivial, sensational, unethical publication to avoid the encroachment of censorship. Court opinions have been laced with statements like these:

Justice Arthur **Goldberg** in Times v. Sullivan, the most famous libel decision of modern times (1964). "In my view, the 1st ~~and 14th~~ Amendments to the Constitution afford to the citizen and to the press an absolute, unconditional privilege to criticize official conduct despite the harm which may flow from excesses and abuses."

based Justice Hugo **Black**, in the same case: "An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment."

Majority opinion in Rosenbloom v. **Metromedia** (1971): "We are aware that the press has, on occasion, grossly abused the freedom it is given by the Constitution. All must deplore such excesses. In an ideal world the responsibility of the press would match the freedom and public trust given it. But from the earliest days of our history, this free society, dependent as it is for its survival upon a vigorous free press, has tolerated some abuse."

"To insure the ascertainment and publication of the truth about public affairs, it is essential that the First Amendment protect some erroneous publications as well as true ones."

As we'll see later in the quarter when we talk about theories of the press, a famous group called the Hutchins Commission tried to devise a way to get more responsibility without censorship, but it has so far proved an insoluble problem.

A suggestion I like is that informed consumers can do much, if they will. Knowledgeable and reasoned complaints tend to get a lot of mileage in any news organization I've ever known, and we'll talk about this throughout the course, discussing what the news consumer can do to improve the information produced by the various mediums.

News organizations, because they have the constitutional privilege of guarding the public's right to know, have developed what we call a watchdog role. Not all of them live up to this role, by a long shot, but those who do, watch public officials and agencies to see whether they're living up to their public trust -- and then blow the whistle when they do not.

Increasingly, there's a belief that the watchdog role must be broadened to include what we refer to as quasi-public institutions. The oil companies are a good example, and in fact are multi-national. But how about companies with monopoly status -- such as Ma Bell's telephone co? How about major defense contractors such as Boeing? How about any organization that gets substantial amounts of government money -- that is, your tax dollars and mine? There are few easy answers, anymore, to what is public and what is private, but for the moment let's return to government concerns.

^{An}
~~The most~~ extraordinary example of this watchdog role in action was the long investigative chore by Bob Woodward and Carl Bernstein of the Washington Post, which won them a Pulitzer prize, and led to the resignation of Richard Nixon. We'll look at this in detail late in the course, but for now let me just say that this Watergate scandal, as it has come to be immortalized, brought tension between news people and government to a head. But an important point to note is that some tension between press and government is natural, and serves us well. We cannot individually watch our public servants. So the most serious elements of the press -- those which understand and honor the constitutional process -- have performed it for us.

These tensions between press and govt are sometimes healthy, sometimes merely quarrelsome, but, again, we put up with the quarrelsome to get the benefits of the rest.

The First Amendment does away with the English king's demand, and the bane of the Colonial press, that anything published had to be published by authority -- that is, with the king's permission. But for the Constitution to say there shall be freedom of the press is one thing -- to make sure that freedom of information continues to exist requires eternal vigilance.

A good press historian, John Tebbel, in *The Compact History of the American Newspaper*, puts it this way (p. 11): "...the history of the American newspaper is a record of the Establishment's effort to control the news and of private individuals to disclose it without restriction."

He goes on to suggest that this is not a plot in which govt. officials are always the villains and publishers always the voice of the people. If we look at the history, the inevitable conclusion is that motives have been mixed on both sides. Some officials are as just as Moses, while some publishers have only profits in mind.

The point to remember is that the press ought to be fulfilling an information and watchdog function for us, and that when it doesn't happen, we are in danger as a free, self-governing people, because we don't know what's going on.

ROLE OF THE PRESS

We have been dealing for some days with The Constitutional Need for Information and -- starting with the Enlightenment we worked our way down through the documents of government, including the First Amendment. We have looked a bit at the roles of Congress and the courts, and now we finish with roles of press and citizens.

In a constitutional sense, we want the press (let's call it the news media) to provide us with significant information in a fair and accurate way.

Where in the documents of govt does it say the media must do this? It doesn't. The First Amendment merely says that there shall be freedom of the press (Congress shall make no law...) and we've seen that even that is not strictly true, bec. Congress has made some laws, which have been allowed by the courts. We looked at libel as an example of that.

Most elements of news media are bent on ~~informing us~~ entertaining us rather than informing us. That's no constitutional problem -- they can do as they like.

The framers of the Constitution hoped that editors would take it upon themselves to keep citizens informed because, as we saw in the comments of Justice Douglas and Prof. Meiklejohn, the view of the Enlightenment is that if citizens are to be self-governing, they must be well informed.

In the past we have had enough sources of significant information to get by on. In a world of increasing concentration of ownership it is an open question whether this will continue to be true.

Perhaps the Internet will provide us resources -- if we can assess their credibility and if they are not co-opted by mega-corporations.

The best defense against the loss of vital information is citizen awareness, and here we come to

THE ROLE OF CITIZENS

Recall that the thinkers of the Enlightenment believed that ordinary people are smart enough to control their own destinies -- and that they are willing. The founders of this country ~~always intended us~~ saw an active and enlightened citizenry as essential.

If we do not see to the community welfare, then who will? Into any vacuum come a variety of special interests -- all too happy to tell us how we should proceed for their benefit. Washington, DC is full of lobbyists. Who lobbies for the rest of us?

We need to support the best of the lobbyists -- and to be heard from individually in phone calls, E-mail, letters -- on a range of issues and after we gather enough information to know what we're talking about.

By contrast, a majority of eligible voters did not even go to the polls two years ago -- and that's not even contemplating how many got there without being prepared adequately.

WHAT WE CAN DO is ~~start~~ get ourselves going, and maybe some people we know. I've talked to a few of you who are working on friends and family.

information → analysis → opinion/action
→ Campaign finance reform - not playing in Peoria.

ROLE OF PRESS→ PRESS AS WATCHDOG

This consists of reporting the routine affairs of govt at all levels, as well as the special function of investigative reporting, which we'll consider later.

Of total media content, only a small part qualifies as information in this constitutional sense. Most is entertainment. Or a meld: infotainment; docudrama, happy news.

It's an open question of when we descend to the level of so little information

that we can no longer effectively run our lives, individually or in community. *No law...*

How do you know what food is safe to eat? Which bridges are safe to cross? Whether the air you breathe is clean? How do we find out whether the people in govt. whose salaries we pay are serving faithfully?

We will be discussing these questions and others during the quarter.

Times: ERIC NALDER

WHAT'S A CITIZEN TO DO?

To begin with, examine the media available, *analyze* ~~rate~~ programs and print sources according to adequacy, and let them know what you think. Praise work well done; tell them to get with it when the work is shoddy. A postcard or a phone call can make a difference.

And, work at *building* a diversity of credible sources. Your research papers in this class are aimed at that.

Make choices

HANDOUT: Douglas et al
as summary

#

U.S. CONSTITUTION

Ideals & machinery of government
~~equality under law;~~
~~individual rights;~~
~~community rights.~~

Legislative

enacts laws
required ~~by~~ ~~for~~
~~orderly and humane~~
~~society~~ to fulfill
ideals & make
machinery work.

Executive

carries out
the laws

Judicial

settles interpretation
of laws; declares
invalid those laws
which violates
Constitution

CITIZENS:

watchful knowledge
translated to action
to keep govt. and
press fulfilling
democratic functions

THE PRESS: watchdog role
(extrapolated from First Amendment)
Oversees government to provide
necessary information ~~to~~ to
citizens.