

## The First Amendment: Freedom of the Press

### Overview

Students will examine the freedoms granted to the press by participating in a partner evaluation of the rights and limitations outlined for the media, as well as examine the constitutionality of the Sedition Acts and other governmental decisions.

### Courses

Civics and Economics  
US History

### North Carolina Essential Standards for Civics and Economics

- CE.C&G.1.4 - Analyze the principles and ideals underlying American democracy in terms of how they promote freedom (i.e. separation of powers, rule of law, limited government, democracy, consent of the governed / individual rights –life, liberty, pursuit of happiness, self-government, representative democracy, equal opportunity, equal protection under the law, diversity, patriotism, etc.
- CE.C&G.1.5 - Evaluate the fundamental principles of American politics in terms of the extent to which they have been used effectively to maintain constitutional democracy in the United States (e.g., rule of law, limited government, democracy, consent of the governed, etc.
- CE.C&G.2.3 - Evaluate the U.S. Constitution as a “living Constitution” in terms of how the words in the Constitution and Bill of Rights have been interpreted and applied throughout their existence (e.g., precedents, rule of law, Stare decisis, judicial review, supremacy, equal protections, “establishment clause”, symbolic speech, due process, right to privacy, etc.)

### North Carolina Essential Standards for American History I

- AH1.H.5.1 - Summarize how the philosophical, ideological and/or religious views on freedom and equality contributed to the development of American political and economic systems through Reconstruction (e.g., natural rights, First Great Awakening, Declaration of Independence, transcendentalism, suffrage, abolition, “slavery as a peculiar institution”, etc

### Essential Questions

- How does the US Constitution define and protect the rights of citizens?
- What rights are granted under the First Amendment?
- What freedoms and limitations does the press have?
- What constitutes a violation of privacy?
- What is seditious libel and how is it interpreted?
- What was the Sedition Act of 1798?
- How did the trial of John Peter Zenger help establish freedom of the press?
- What does the public have a right to know about its president?

### Materials

- A recent edition of *The National Inquirer*
- Freedom of the Press, handout attached
- Freedom of the Press Answer Key, handout attached
- Freedom of the Press Political Cartoon, attached

### Duration

45 minutes (time varies based on amount of student discussion)

## Procedure

### What Constitutes "News"?

1. As a warm up, show students a copy of *The National Inquirer*, or another tabloid, and read a headline featuring a story that is obviously false. Ask students:
  - How would you classify a magazine such as this and the stories it runs?
  - How would you feel if these types of things were written for the world to read about you?
  - How do celebrities respond to such tabloids? Can you think of recent examples of celebrity reactions regarding fabricated stories? (Point out that while some celebrities sue, others ignore the outrageous stories.)
  - What amendment establishes "Freedom of the Press"? What types of limitations exist on this freedom?
  - Do you believe that the press should have more or less restrictions on their freedom? Explain.
2. Tell students that they will be exploring Freedom of the Press by determining what is and is not permissible in terms of rights and limitations. Give students that attached Freedom of the Press handout to complete in partners or individually, instructing them to use their textbooks and the Internet (if available) as a resource. When students have had sufficient working time, go over the answers.
3. Next, project the attached political cartoon involving freedom of the press. Discuss:
  - What do you see here? (Encourage students to point out all symbols, images, text, etc.)
  - Why is the reporter off to the side tied? How do you interpret his expression? What does this reporter symbolize?
  - What is taking place in this image? Why is this labeled "The Ventriloquist"?
  - What message is the artist trying to convey? What evidence in the political cartoon makes you think this?
4. Explain to students that this political cartoon is regarding Geoffrey Nyarota, former editor of *The Daily News*, an independent daily in Zimbabwe. Nyarota wrote articles exposing corruption and human rights abuses under the presidency of Mugabe. He was arrested numerous times for his articles.
5. Ask students to consider the involvement of the press in politics, particularly in the public and private lives of political figures. Ask students to note instances in current or past events when politicians have been in the press for positive, negative, public, and personal reasons. Discuss:
  - What does the public have a right to know about its politicians (i.e. president, governor, legislators, etc?)
  - How do we differentiate between media invasion of privacy and legitimate reporting?
  - Do you believe that our press today has too much or too little freedom in reporting? Explain.
  - What laws protect citizens and/or politicians from invasion by the press? (Discuss seditious libel, slander, and defamation.)
  - When did America determine freedom of the press was a necessary protection?

### History of the Press in America

6. Explain to students that freedom of the press has not always been a right in America. Provide students with a bit of history regarding American press:
  - John Hancock was the first person to write newspapers in the British colonies in North America, published "by authority," that is, under license from and as the mouthpiece of the colonial governors. The first regularly published newspaper was the Boston News-Letter of John Campbell, published weekly beginning in 1704. The early colonial publishers were either postmasters or government printers, and therefore unlikely to challenge government policies.
  - The first independent newspaper in the colonies was the New-England Courant, published in Boston by James Franklin beginning in 1721. A few years later, Franklin's younger brother, Benjamin,

purchased the Pennsylvania Gazette of Philadelphia, which became the leading newspaper of the colonial era.

- During this period, newspapers were unlicensed, and able freely to publish dissenting views, but were subject to prosecution for libel or even sedition if their opinions threatened the government. The notion of "freedom of the press" that later was enshrined in the United States Constitution is generally traced to the seditious libel prosecution of John Peter Zenger by the colonial governor of New York in 1735. (Source: [http://www.newworldencyclopedia.org/entry/Freedom\\_of\\_the\\_press](http://www.newworldencyclopedia.org/entry/Freedom_of_the_press))

### John Peter Zenger

7. Project and describe the following scenario to students, allowing them to gather in partners or small groups and discuss for approximately 5 minutes. (Make sure to discuss the meaning of the word seditious and libel before breaking up.)
  - Imagine... You are a juror in the year 1735, getting ready to make a decision regarding **John Peter Zenger**. Zenger, a German born New York printer, has charged with **seditious libel** by colonial authorities after printing a series of negative articles about the governor of the New York Colony and his political corruption.
  - The information Zenger printed was factual, however the judge has told you that the common law does not permit truth as a defense. Thus, he has instructed you and the other jury members that all you can decide is whether or not Zenger published the articles. If he is the publisher, which Zenger is not denying, then he is to be found guilty.
  - As a juror, how will you respond? Will you follow the judge's orders? Will you branch out and come to your own decision? Is John Peter Zenger guilty of seditious libel in your opinion? Discuss and come to a verdict. Be ready to present your verdict to the rest of the class.
8. After discussing, allow students to share their group thoughts with the class at large. Ensure they understand how the case played out, and how it affected the future of free press by explaining:
  - "The jury ignored the judge's orders and found Zenger not guilty since the information contained in the articles he published was true. Many Americans believed that this case not only established an important right of freedom of the press, but also proved the importance of the jury as a check on arbitrary government." (Source: *We the People, the Citizen and the Constitution*)

### The Alien & Sedition Acts, 1798

9. Explain to students that even though the trial of John Peter Zenger may have been a step towards establishing freedom of the press, there were still other steps backwards. Ask students:
  - What do you know about the Alien and Sedition Acts, particularly the Sedition Act of 1798?
10. Discuss the fact that the **Sedition Act** was enacted **July 14, 1798**, with an expiration date of March 3, 1801, and made it a crime to publish "false, scandalous, and malicious writing" against the government or its officials. This was part of the **Alien and Sedition Acts**, which were four laws passed by the **Federalists** in Congress in 1798 during the administration of **President John Adams**. Proponents claimed they were designed to protect the United States from alien citizens of enemy powers and to stop seditious attacks from weakening the government. The **Democratic-Republicans**, like later historians, attacked them as being both unconstitutional and designed to stifle criticism of the administration, and as infringing on the right of the states to act in these areas. They became a major political issue in the elections of 1798 and 1800. (Source: *Wikipedia Online*) Discuss:
  - What might be beneficial in making it illegal to publish "false, scandalous, and malicious" writing?
  - Why can passing such a law be a "slippery slope?"
  - Do you agree with the Federalists or the Republicans in regard to the Alien and Sedition Acts? Explain.

### The Espionage Act of 1917 and the Alien and Sedition Acts of 1918

11. Next, explain that even through the Sedition Act expired in 1798, similar acts have been passed throughout history. Discuss the Espionage Act of 1917 and the Sedition Act of 1918, sharing with students:

- The **Sedition Act of 1918** was an amendment to the **Espionage Act of 1917**, passed at the urging of President Woodrow Wilson, who was concerned that any widespread dissent in a time of war could threaten American victory. The Espionage Act had made it a crime to help wartime enemies of the US, but the Sedition Act made it a crime to utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the US government, flag, or armed forces during war. The act also allowed the Postmaster General to deny mail delivery to dissenters of government policy during wartime.
- The US Supreme Court grappled with these issues in the case ***Schenck v. United States (1919)***. During this case, the United States Supreme Court actually upheld the Espionage Act of 1917 and concluded that a defendant did not have a First Amendment right to free speech against the draft during World War I. Charles Schenck was the Secretary of the Socialist party and was responsible for printing, distributing, and mailing 15,000 leaflets to men eligible for the draft that advocated opposition to the draft. These leaflets contained statements such as; "Do not submit to intimidation", "Assert your rights", "If you do not assert and support your rights, you are helping to deny or disparage rights which it is the solemn duty of all citizens and residents of the United States to retain." Ultimately, the case served as the founding of the "clear and present danger" rule.
- While these acts were viewed as attempts by the US government to limit freedom of speech and freedom of the press, in so much as it was related to criticism of the government during a time of war, the Sedition Act was not repealed until 1921, throughout which time numerous people were imprisoned for taking part in anti-war protests or for speaking out.

12. Discuss:

- What was the reasoning behind the Espionage Act and the Sedition Act? What was taking place during this time period? Did the government have any valid reasons or points in passing these laws?
- In your opinion, is dissent in a time of war unpatriotic? Is it dangerous? Does it impair our country from winning whatever conflict we are a part of? Explain.
- What is your opinion of the Court's decision in *Schenck v. US*?
- Are there any modern laws that are similar to the Espionage Act or Sedition Act? Explain.
- How can we most effectively balance freedom with safety?

13. End class with a discussion of recent events regarding the First Amendment's freedom of the press/speech. For example, teachers might:

- Ask students to evaluate the press's effectiveness in reporting on our current president and his/her decisions. Have students discuss a specific current event pertaining to freedom of the press, such as President Obama's signing of the Freedom of the Press Act.
- Compare the freedom of the press in the US to that of other countries

14. As a homework assignment, teachers can instruct students to find a current event discussed in the media (i.e. television, newspaper, Internet, etc.) that relates to freedom of the press/speech and bring it the following day for further discussion.

## Freedom of the Press

Directions:

1. Read each statement and determine whether or not the statement is true or false.
2. Circle T (true) or F (false)
3. In the space provided underneath each, explain your answer.

T	F	1. A state may stop the publication of a newspaper that is running a series of articles offering evidence connecting several public officials with local gangsters.
T	F	2. During the Vietnam War, the government was able to stop the publication of secret government documents leaked to the press that revealed several presidents misled us concerning early details of the war.
T	F	3. In a sensational murder case, a judge may issue a gag order that prohibits the press from reporting on a pretrial hearing ensuring that a defendant receives a fair trial.
T	F	4. If a judge feels that publicity would adversely affect a defendant, he may close a criminal trial from the press and the public.
T	F	5. Reporters all across the country have the right to keep the source of their information confidential.
T	F	6. A television station that broadcasts explicit adult material at a time when children might be watching can be taken off of the air.
T	F	7. Movies are considered part of the press and, therefore are protected from censorship by the First Amendment.
T	F	8. A state or local government can ban a movie after proving at a judicial hearing that the movie is obscene.

### Freedom of the Press Answer Key

T	F	<p>1. A state may stop the publication of a newspaper that is running a series of articles offering evidence connecting several public officials with local gangsters.</p> <p>In <u>Near v. Minnesota (1931)</u>, the Supreme Court established the principle of “no prior restraint.” A Minnesota state law had prohibited the publication of any “malicious, scandalous and defamatory” periodical, and <i>The Saturday Press</i> had printed several articles charging public corruption in the city, calling officials “grafters and Jewish gangsters.” The local court rulings had tried to shut down the paper.</p>
T	F	<p>2. During the Vietnam War, the government was able to stop the publication of secret government documents leaked to the press that revealed several presidents misled us concerning early details of the war.</p> <p>The <i>New York Times</i> obtained copies of a set of classified documents (Pentagon Papers) that had been stolen from the Defense Department and leaked to the press. The government tried to stop publication, citing national security issues. The Court said this was an embarrassment to the government but not a security issue. This case, <u>The New York Times v. the United States (1971)</u>, upheld the no prior restraint precedent.</p>
T	F	<p>3. In a sensational murder case, a judge may issue a gag order that prohibits the press from reporting on a pretrial hearing ensuring that a defendant receives a fair trial.</p> <p>A grand jury hearing is closed to the public. It is a group of 16-23 people who hear details of a case and decide whether to indict. Since it is not a trial, and the publicity could affect the outcome, the sessions are secret. This is meant to be protection against an overzealous prosecutor.</p>
T	F	<p>4. If a judge feels that publicity would adversely affect a defendant, he may close a criminal trial from the press and the public.</p> <p>In the case of <u>Richmond Newspapers v. Virginia (1980)</u>, it was decided that a trial courtroom is a public place where the people and a representative of the media have a right to be present. Therefore, a judge can limit press coverage but can never ban the press from a courtroom.</p>
T	F	<p>5. Reporters all across the country have the right to keep the source of their information confidential.</p> <p>In <u>Branzburg v. Hayes (1972)</u>, the Court said that the First Amendment does not guarantee any special privileges to reporters. Privileges must come from Congress, which has not granted any. Therefore, thirty states have passed “shield laws” that protect reporters’ rights to keep a source confidential.</p>
T	F	<p>6. A television station that broadcasts explicit adult material at a time when children might be watching can be taken off of the air.</p> <p>The Federal Communications Act of 1934 said that radio and television are the public’s property and that the public airways must be licensed by the Federal Communications Commission.</p>
T	F	<p>7. Movies are considered part of the press and, therefore are protected from censorship by the First Amendment.</p> <p>In the case of <u>Burstyn v. Wilson (1952)</u>, liberty of expression by means of motion pictures was guaranteed as part of the 1<sup>st</sup> and 14<sup>th</sup> amendments.</p>
T	F	<p>8. A state or local government can ban a movie after proving at a judicial hearing that the movie is obscene.</p> <p>A state or local government can ban a movie after a review board declares it to be obscene according to the case of <u>Tertel Film Corporation v. Cusack in (1968)</u>.</p>

Freedom of the Press Political Cartoon



THE VENTRILOQUIST