

The First Amendment in the Bill of Rights to the U.S. Constitution states,

*“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech, or of the press**; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”*



Law Day is May 1. The 2019 Law Day theme—*Free Speech, Free Press, Free Society*—focuses on these cornerstones of our representative democracy and calls on us to understand and protect these rights to ensure, as the U.S. Constitution proposes, “the Blessings of Liberty for ourselves and our Posterity.”

In the United States and around the world, freedom of speech and the press are among the most important foundations for a free society.

Join us over the next several days (weeks) as we explore the rights and responsibilities of free speech and free press and how they help us protect our free society. We will look at our long history of freedom of expression and a free press, and how we must continually strive to ensure that the key principles of the First Amendment are realized for all members of our society.

***Next: Establishing Freedom of the Press:  
The Truth Matters***

*Crown v. John Peter Zenger (1735)  
People v. Croswell (1804)*

*This is one of six Newspaper In Education features created to educate and celebrate Law Day 2019. Developed by the NYNPA News Media Literacy/ NIE Program with a set of audio podcasts made available through funding from The New York Bar Foundation.*



# ***Establishing Freedom of the Press: The Truth Matters***

Before the United States separated from England, the colonies followed the British rule of law. In the early 1730s, John Peter Zenger, a German immigrant, started publishing *The New-York Weekly Journal*. In it, he printed articles by opponents of Governor William Cosby criticizing his removal of the colony's Chief Justice from office. These articles mocked Cosby while warning against leaders who put themselves above the law. Outraged, Governor Cosby ordered copies of select issues seized and burnt and Zenger was eventually indicted for seditious\* libel.

After Zenger spent several months in jail, his trial began, but his lawyers were disbarred and prevented from defending their client. Andrew Hamilton, a Philadelphia lawyer, took over the case and offered a defense that went against traditional English law.

In England, proof of publication was all that was necessary to convict a publisher of libel. Whether the alleged libel was true or not didn't matter. Hamilton insisted that the truth should make a difference: if Zenger had published the truth, he couldn't be guilty of libel.

When the court rejected the argument, Hamilton urged jurors to decide for themselves. Believing the truth matters, the jury acquitted Zenger, refusing to find him guilty of violating a law they found unjust.

The truth as a defense of libel was brought up again in the 1804 state court case of *The People of the State of New York v. Harry Crosswell*.

Crosswell published a small paper called *The Wasp*, which aggressively criticized President Thomas Jefferson and other Republican public officials. He was tried and convicted on charges of libel and sedition by the State of New York. Alexander Hamilton represented Crosswell on his appeal. In a six-hour closing argument, Hamilton passionately advocated for freedom of the press, stating, "...the right of giving the truth in evidence, in cases of libels, is all-important to the liberties of the people. Truth is an ingredient in the eternal order of things, in judging of the quality of acts." The judges deadlocked and Crosswell's conviction stood, although he was never sentenced or retried.

Thus, a principle introduced by a jury of regular men in 1735 helped lay the foundation for one of the freedoms written into the First Amendment of the U.S. Constitution.

**Locate articles, editorials or political cartoons that report on the decisions of local, state or national government leaders. As a class, discuss how this information would be different without the protection of Freedom of the Press. Rewrite or redraw this coverage as it might be reported without the First Amendment.**

***Next: Free Speech—Fighting Injustice***

A Letter from a Birmingham Jail (1963)

\* Inciting or causing people to rebel against government authority.

## ***Free Speech—Fighting Injustice***

In 1963, the Southern Christian Leadership Conference (SCLC) led a nonviolent campaign aimed at Birmingham, Alabama, which at the time was described as the “most segregated city in America.” In an attempt to halt the SCLC’s planned actions, Circuit Judge W. A. Jenkins issued a blanket injunction against “parading, demonstrating, boycotting, trespassing and picketing.” Ignoring the injunction, the April 12 peaceful demonstration against segregation started as planned and Dr. Martin Luther King Jr., along with nearly 50 other protestors and civil rights leaders, was arrested and jailed.

While Dr. King was in jail, someone smuggled him a copy of *The Birmingham News* which published a statement entitled “A Call for Unity” written by eight white clergymen. In the open letter, the clergymen expressed disagreement with the illegal protests “directed and led in part by outsiders” and urged activists to engage in negotiations and to use the courts to resolve any racial injustices.

King started writing an impassioned response on the margins of that same newspaper and eventually finished on a pad given to him by his attorneys. In the letter, King first addressed the idea of his being an outsider by stating that as the leader of the SCLC he could not sit “idly by in Atlanta” because “injustice anywhere is a threat to justice everywhere.” King went on to express his frustration with the well-meaning clergy asking for patience and wrote, “... *Wait* has almost always meant *Never*.” King even cited Chief Justice Warren’s ruling in the *Brown v. Board of Education* (1954) decision, “... justice too long delayed is justice denied.” By the early fall of 1963, King’s eloquently written, 7000 word, *Letter from a Birmingham Jail* (whole or in-part) had begun to appear in publications across the country.

His letter calling for “constructive, nonviolent tension” to force an end to unjust laws became a landmark document of the civil-rights movement and was the basis for King’s own book, “Why We Can’t Wait,” which took a look back at the successes and failures of the Birmingham Campaign. The book was released in July 1964, the same month that President Lyndon Johnson signed the Civil Rights Act.

**Both the white clergymen and Martin Luther King Jr.’s words were published by a free press — effectively amplifying their message to a larger audience. Look through the news to find examples of small groups or individuals using news media to increase their reach. Compare and contrast modern examples with those of the past. Did you find any examples of someone fighting a current day injustice?**

***Next: Free Press as “Government Watchdog”***

*New York Times v. United States* (1971)  
Pentagon Papers Case

## ***Free Press as “Government Watchdog”***

In 1967, Secretary of Defense McNamara commissioned a study of the history of U.S. decision-making of policies involving Indochina, specifically Vietnam. The resulting documents became known as the Pentagon Papers. In 1971, Daniel Ellsberg, a government researcher, copied more than 7000 pages of documents that revealed the history of the government’s actions in the Vietnam War. Ellsberg believed that Americans needed to know what was in the reports, so he gave copies of the documents to the press.

On June 13, 1971, *The New York Times* began publishing articles about and excerpts from the documents. The Nixon administration immediately obtained a court order preventing the *Times* from printing more of the documents, arguing that publishing the material threatened national security. The *Times* obeyed the injunction but appealed the courts decision.

On June 18, the *Washington Post* had begun to publish their own articles about the Pentagon Papers as well. The government sought another injunction, but this time the court refused. The government appealed its case, and in less than two weeks that case—combined with *The New York Times* appeal—was before the Supreme Court.

The Supreme Court heard arguments on June 26. The government argued that prior restraint (prohibiting information from being published) was necessary to protect national security. However, on June 30, a divided Court refused to stop publication of the Pentagon Papers because the government failed to meet their burden to justify prior restraint.

The Court’s majority decision stated that the intent of publication was not to put the U.S. in danger but to educate the American people about the Vietnam War. By preventing the *New York Times* from publishing the material, the reporters’ First Amendment rights were being violated. Many historians now credit the publishing of the Pentagon Papers with helping to end the Vietnam War.

This case has become and continues to be an important precedent in support of the First Amendment’s freedom of the press.

**Look through editions of the newspaper and other sources for examples of the news media holding the government or elected officials responsible for their actions (or in some cases, inaction). Select one and briefly write why this issue is important for the public to know about it.**

***Next: Students and their First Amendment Rights***

*Tinker v. Des Moines Independent Community SD (1969)*  
*Hazelwood School District v. Kuhlmeier (1988)*

# ***Students and their First Amendment Rights***

The landmark U.S. Supreme Court case, *Tinker v. Des Moines* (1969), defined the First Amendment rights of students in U.S. public schools finding that students or teachers do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” The ruling also recognized that an individual’s right of free speech should not “materially and substantially interfere” with the operation of the school.

*Tinker’s* applicability to student publications has since been tempered by subsequent decisions. One case upheld a school’s ability to censor student expression that is vulgar, lewd, or obscene. The other, *Hazelwood School District v. Kuhlmeier* (1988) hindered the fight for free press rights of student journalists.

Cathy Kuhlmeier was the editor of her high school newspaper, *The Spectrum*. The May 1983 edition included an article about teen pregnancy and another about divorce both with student interviews. In the teen pregnancy article, the students’ names were changed to protect their identity. In the divorce article, written permission to publish had been granted by those interviewed and their parents. Before publication the principal removed two pages that included the two articles that he found objectionable. In total, seven stories were eliminated and the students only found out about the change upon delivery of the printed editions.

In response, Cathy Kuhlmeier and two fellow reporters, with the help of the American Civil Liberties Union, filed suit against the school in January 1984 on the grounds that their First and Fourteenth Amendment rights had been violated.

In May 1985, the district court judge in a bench trial ruled that no violation of First Amendment rights had occurred, and held that school officials may restrict student speech in activities that “are an integral part of the school’s educational function” as long as the restriction has “a substantial and reasonable basis.”

On appeal in 1986, the U.S. Court of Appeals for the Eighth Circuit reversed the district court’s decision citing the school newspaper as a “public forum” and “a conduit for student viewpoint.”

Ultimately, the Supreme Court heard the case and overturned the circuit court with its 5-3 split decision that schools could censor student expression as long as their actions were “reasonably related to legitimate pedagogical (teaching) concerns” thus impacting student voice to this day.

**In the newspaper or online, find examples of people exercising free speech in different ways. Then write a personal column, discussing the ways you and your peers exercise freedom of speech in your daily lives. A free press provides a platform to report important issues from many points of view. As a class, discuss your thoughts and opinions about potential censorship of student journalists.**

***Next: Free Speech, Free Press and  
the Future of Our Free Society***

***#BlackLivesMatter, #NeverAgain,  
#CureHazelwood and the New Voices Movement***

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# ***Free Speech, Free Press and the Future of Our Free Society***

The events and judicial decisions very briefly reviewed in this series are in no way comprehensive but merely several key highlights from U.S. history of our First Amendment rights of free speech and a free press. Often times, it was the action of an ordinary citizen or group standing up for what they believed to be right that initiated positive change.

Many Americans continue to use freedom of speech and the press to bring attention to current injustices, that in some cases, echo those of the past.

One such group, Black Lives Matter, was originated by three women in response to the shooting death of Trayvon Martin, an unarmed African-American teenager in 2012. With highly visible actions including former NFL player, Colin Kaepernick kneeling before the national anthem, the movement has garnered national attention. Black Lives Matter continues to promote a “call to action and response to state sanctioned violence against black people, as well as the virulent anti-black racism that permeates our society.”

Not unlike Mary Beth and John Tinker, recent student leaders protested and formed the #NeverAgain movement standing up to advocate change. The movement grew out of the February 2018 school massacre of 17 students and staff members in Parkland, FL. The students used traditional and social media to help organize local and national student walk-outs and demonstrations calling for gun control legislation.

New Voices USA is a movement to guarantee meaningful press freedom for student journalists in public schools. In 2018, 30 years after the Hazelwood decision, the movement redoubled efforts to #CureHazelwood and worked to advocate for legislation to “restore the Tinker standard of student expression in America’s high schools” one state at a time. Currently, 13 states have passed New Voices legislation and the group’s ultimate goal is to extend these free press protections to include student journalists at public and private colleges and universities. As the Society of Professional Journalists stated in a resolution calling on schools to enact more balanced policies, “it is well-documented the Hazelwood censorship clause impedes an educator’s ability to adequately instruct and train students in professional journalistic values and practices.”

While we might disagree with some popular movements, our form of government is dependent on a public forum of open ideas and debate. “We the People” owe it to the First Amendment champions of the past to continually work together to ensure that the key principles of the First Amendment—free speech and a free press—are realized for all members of our society.

**Look for news reports across all media platforms that inform of groups and individuals expressing their free speech rights. Imagine our nation without freedoms guaranteed in the First Amendment. What would we know about current social or political injustices? How would people stand up for the greater good in our society?**

For more resources based on this year’s Law Day theme go to <http://tinyurl.com/lawday2019guide>.

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