

Teaching American History Project

FREEDOM OF THE PRESS VS GOVERNMENT SECRECY

From Lorraine Dooley

Grade 10-11 (Civics/US History)

Length of class period: 65 minutes

Inquiry Questions: How much freedom of the press is guaranteed by the Constitution? How does a free press influence a democracy? Is the government ever justified in keeping secrets from the press and its citizens?

Objectives: Students will analyze the primary and secondary sources provided and demonstrate critical thinking skills as they work to answer the inquiry questions.

Materials: US history textbook, copies of all documents (attached).

Activities: Prior to class, students should read the chapter/section on the Pentagon papers. This lesson could also fit into a unit of study in a civics class about the First Amendment.

Assignment: Arrange students in small groups and pass out all materials. Discuss the role of a free press including relevant historical information. Share background information about the Pentagon Papers and the recent Wikileaks situation as needed depending on the prior knowledge of the students. Students should read all of the documents and answer the questions. A class discussion should follow the group work. Assessment activity: Imagine YOU have been elected President of the US. Write your own memo outlining the approach you will take to freedom of the press and government secrecy.

Possible extension activities- Find a current events article involving freedom of the press. Make your own political cartoon about freedom of the press. Research other example or significant court cases in history involving freedom of the press.

Assessment- classwork, critical thinking essay, test

Connecticut Grade Level Expectations-

Standard 1.7 The purpose, structure, and functions of government at national levels.

Standard 1.8 The interactions between citizens and governments in the making and implementation of laws.

Standard 3.1 Use evidence to develop an interpretation of an event. Evaluate a historical event using primary and secondary sources.

How much freedom of the press should be allowed in the United States?

Student Handout: Please answer the following questions using the documents. Be prepared to share your ideas with the rest of the class.

1. *What types of sources are you analyzing?*
2. *List each source and then decide if it supports freedom of the press in American society. Explain your answer briefly.*

What is YOUR opinion about the importance of a free press today? Why?

Student Resources (Background Information and six documents)

Background Information on the Pentagon Papers

New York Times website (www.nytimes.com/topics/reference)

On June 13, 1971, The New York Times began publishing the Pentagon Papers, a documentary history tracing the ultimately doomed involvement of the United States in a grinding war in the jungles and rice paddies of Southeast Asia.

They demonstrated, among other things, that the Johnson Administration had systematically lied, not only to the public but also to Congress, about a subject of transcendent national interest and significance.

The Government sought and won a court order restraining further publication after three articles had appeared. Other newspapers then began publishing. They, too, were restrained, until finally, on June 30, 1971, the United States Supreme Court ruled, by a vote of 6 to 3, that publication could resume.

**Document 1: First Amendment
US Constitution**

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.

Document 2: Quotation from Justice Hugo Black

"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."
Justice Hugo Black (NY Times v. US, June 30, 1971)

Document 3: Political Cartoon and description



New figure on the American scene

On June 13, 1971, the *New York Times* began publishing installments of the "Pentagon Papers," documents about American involvement in Indochina from the end of World War II to the mid 1960s. The Nixon administration moved to block further publication of the papers, and Attorney General John Mitchell obtained a temporary injunction against *The New York Times*. The *Washington Post* then released two installments before being similarly enjoined. Other papers picked up the series, until June 30, when the Supreme Court rejected the government's request for a permanent injunction. The "New Figure" cartoon was one of many depicting President Richard Nixon's attempts to curb public information, partly through government control of broadcast stations owned by newspapers.

***New figure on the American scene, June 20, 1971* Reproduction of original drawing
Published in the *Washington Post***

Document 4: New York Times article

The New York Times

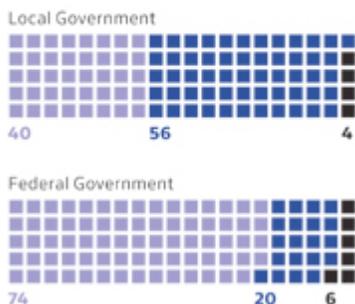
THE WAY WE LIVE NOW
In Defense of Secrecy

By NOAH FELDMAN
Published: February 10, 2009
www.nytimes.com

Given the pervasive secrecy of the Bush-Cheney administration, and the sorry consequences of that disposition, President [Barack Obama](#)'s early emphasis on openness in government seems almost inevitable. One of the first official communications issued by the new administration, on Jan. 21, ordered government agencies to adopt a presumption in favor of disclosure when responding to Freedom of Information Act (FOIA) requests and called for new FOIA guidelines to replace those promulgated under Bush. A later directive instructed the heads of all government agencies to strive for "transparency and open government." Ornamenting the first order was a quotation from the great progressive reformer Justice Louis Brandeis: "Sunlight is said to be the best of disinfectants."

PUBLIC ACCESS

Percentage of respondents who regard their local and federal governments as somewhat or very **secretive**; somewhat or very **open**; or have **no opinion**:



Source: Scripps Howard News Service and Ohio University, February 2008

There is something charming about Obama's reference to his fellow [Harvard](#) Law School graduate, right down to the fussy, lawyerly precision of the exact quote, which is often rendered more straightforwardly as "sunlight is the best disinfectant." And Obama's instinct for candor and openness is certainly a refreshing

change from the shadowy practices of the last administration. At the same time, Brandeis's metaphor, based on a medical theory now long refuted (alcohol is a much better disinfectant), can be taken too far. The effective operation of even the most democratic government requires secrecy and surprise as well as transparency and predictability.

On the surface, it might seem that more and better information about the government's decisions (and decision-making processes) is always preferable, especially if the information is provided before events transpire. As good-government advocates are right to remind us, if the public learns of an important decision only after it has been made, advocacy groups and concerned citizens cannot influence it. They can only give their endorsement or disapproval after the fact and hope it has some effect the next time around. When it comes to the proposal and drafting of legislation, we expect public engagement, even as we acknowledge that special-interest groups can use that process to torpedo innovative laws in the way the insurance industry brought down health care reform during President Clinton's first term.

The value of transparency also applies to the financial markets — which is what Brandeis had in mind when he spoke of “sunlight.” The [derivatives](#) that gave rise to the current economic crisis were opaque to almost everyone. Ascertaining the true value of such complex instruments was (and remains) mind-bendingly difficult. Indeed, in the absence of a central clearinghouse or of regulatory disclosure requirements — of the sort now being proposed by Treasury Secretary [Timothy Geithner](#) — it was impossible for anyone to know just how many obligations were owed and owned, and by whom.

Yet there are many circumstances in which secrets are critical. Consider the quotidian business of government inspection: it requires the element of surprise, or else regulated industries could game the system by preparing for oversight on specified days and places. A grander example comes from diplomacy. Whether to negotiate with Iran is an important topic of debate, but the actual negotiation, and even the steps leading up to it, cannot successfully be conducted under the glare of public scrutiny. Neither side would take the risks necessary for real engagement as long as its high-risk efforts could be exposed to denunciation and ridicule if it failed.

The financial bailout has its own needs for secrecy. It is essential for Congress to debate what sorts of industries or companies should be saved and how, and it must authorize the money, just as it must pay for a war. But the decisions to bail out AIG and to let [Lehman Brothers](#) fail, whatever their merits, were the sorts of immediate, crisis-driven judgment calls that could not have reasonably been subjected to extensive public debate, or that would have been improved by public lobbying and interest-group advocacy. If specific companies could lobby for bailouts, and their competitors could argue against, the bailouts would turn into political football — which is what arguably distorted the effort to bail out the auto companies.

The balance of transparency and secrecy is not always easy to strike, of course. Consider the question of whether to make public the interrogation tactics to be used on suspected terrorists. Public discussion and deliberation is crucial to ensure that interrogation will proceed within the bounds of law and without torture. Yet it does not follow that the specific methods we use should be shared with the public, since doing so might invite training by terrorists in how to evade or withstand them.

Obama presumably knows all this; his pronouncements about transparency so far have been so general as to be largely symbolic. That he issued a statement urging his subordinates to “increase and improve opportunities for public participation in government” without providing any specifics suggests that he wants to change the background tone of government — but also that he recognizes the limits of transparency.

Recognizing these limits may seem a bit cynical, especially after eight years of an administration that favored secrecy excessively and executed its policies poorly. But our constitutional system allows us to set boundaries on openness, provided the public remains the final arbiter of whether it benefits from being kept out of the loop. The test must always be whether the public, after the fact, considers itself better off — and that judgment can be made by only the public itself, as it recently was, by way of elections. If we know more about what our government is doing in the next four years than we did in the last eight, that will be to our advantage. We shouldn’t forget, though, that when it comes to secrecy, transparency, like sunlight, is only a figure of speech — one that disappears the closer you look at it.

Noah Feldman, a contributing writer, teaches law at Harvard University and is a fellow at the Council on Foreign Relations.

Document 5: Memorandum

www.whitehouse.gov

Transparency and Open Government

Memorandum for the Heads of Executive Departments and Agencies

SUBJECT: Transparency and Open Government

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use. Executive departments and agencies should harness new technologies to put information about their operations and decisions online and readily available to the public. Executive departments and agencies should also solicit public feedback to identify information of greatest use to the public.

Government should be participatory. Public engagement enhances the Government's effectiveness and improves the quality of its decisions. Knowledge is widely dispersed in society, and public officials benefit from having access to that dispersed knowledge. Executive departments and agencies should offer Americans increased opportunities to participate in policymaking and to provide their Government with the benefits of their collective expertise and information. Executive departments and agencies should also solicit public input on how we can increase and improve opportunities for public participation in Government.

Government should be collaborative. Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of Government, and with nonprofit organizations, businesses, and individuals in the private sector. Executive departments and agencies should solicit public feedback to assess and improve their level of collaboration and to identify new opportunities for cooperation.

I direct the Chief Technology Officer, in coordination with the Director of the Office of Management and Budget (OMB) and the Administrator of General Services, to coordinate the development by appropriate executive departments and agencies, within 120 days, of recommendations for an Open Government Directive, to be issued by the Director of OMB, that instructs executive departments and agencies to take specific actions implementing the principles set forth in this memorandum. The independent agencies should comply with the Open Government Directive.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the Federal Register.

BARACK OBAMA

Document 6: political cartoon



**PENTAGON
PAPERS II:
THE WIKILEAKS** R

AS USUAL, THE SEQUEL
DOESN'T COME CLOSE
TO THE ORIGINAL.

YEAH... I MISS
VIETNAM-ERA
DECEPTION AND
OUTRAGE!

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