

**PAIRING A PRIMARY & SECONDARY SOURCE**

For use with "The President vs. the Press" on p. 18 of the magazine

# 'A Free and Unrestrained Press'

One of history's most famous clashes between the president and the press revolved around the publication of the Pentagon Papers in 1971. These papers were a study of U.S. involvement in Vietnam that had been prepared by the Department of Defense between 1967 and 1969. They were highly classified and not at all flattering to the American presidency: They showed that for years, presidents had misled the American public about the situation in Vietnam. In 1971, as American sentiment against the war mounted, a defense analyst who had worked on the report leaked

the papers to *The New York Times*, which published them. To President Richard M. Nixon, this was the last straw in an already strained relationship with the press. Though Nixon's presidency was not covered in the report, his administration ordered the press to halt publication. This order was soon overturned by the Supreme Court in a historic First Amendment ruling. Below are two excerpts from the Court's ruling. Read them in conjunction with the article on the presidency and the press, then answer the questions at the bottom of this page.

## ***New York Times Co. v. United States***

### **Justice Hugo Black wrote one of six concurring opinions that formed the majority decision\*:**

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. . . . [W]e are asked to hold that . . . the Executive Branch, the Congress, and the Judiciary can make laws . . . abridging freedom of the press in the name of 'national security.' . . . To find that the President has 'inherent power' to halt the publication of news . . . would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make 'secure.' . . . The word 'security' is a broad,

vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security. . . . The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged.

### **Justice Harry Blackmun wrote one of three opinions that dissented from, or disagreed with, the ruling:**

The First Amendment, after all, is only one part of an entire Constitution. Article II of the great document vests in the Executive Branch primary power over the conduct of foreign affairs, and places in that branch the responsibility for the Nation's safety. Each provision of the Constitution is important, and I cannot subscribe to a doctrine of unlimited absolutism for the First Amendment at the cost of downgrading other provisions.

\*In the 6-3 ruling in this case, each justice wrote an opinion.

## **Discussion Questions**

- 1. What is the purpose and tone of each excerpt?**
- 2. What does Justice Black see as the role of the press in this country?**
- 3. How does Justice Black respond to concerns about the press and national security?**
- 4. What does Justice Blackmun mean by "unlimited absolutism" for the First Amendment, and why does he argue against it?**
- 5. Based on the *Upfront* article and the excerpts above, why do you think so many presidents have had contentious relationships with the press?**

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