3.4: First Amendment: Freedom of Press
Explain the extent to which the Supreme Court's interpretation of the First and Second Amendments reflects a commitment to individual liberty.

The First Amendment contains our most cherished rights. Often our courts give them a preferred position. Governments did not give these rights to us. Rather we empower governments to protect these natural rights. The fundamental rights contained in the First Amendment are: freedom of speech; freedom of press; freedom of religion, freedom of assembly; and freedom of petition. Majority rule cannot interfere with these rights, nor can government abridge these rights. The federal judiciary often is called upon to serve as the guardian of these rights. **Provisions of the U.S. Constitution's Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**

Our highest court has recognized, "James Madison offered a series of amendments to satisfy citizens that these great liberties would remain safe and beyond the power of government to abridge. Madison proposed what later became the First Amendment in three parts, two of which are set out below, and one of which proclaimed:

> 'The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.'"

Prior restraint or censorship of the press must pass over a high bar. Freedom of the press is seen as an important tenet to representative democracy. Yet freedom of the press can be limited in certain circumstances. The Supreme Court clarified these limits in the case *New York Times* v. U.S. (1971). The government can use prior restraint when confronted by national security issues but the bar for such censorship is high. The court established a "heavy presumption against prior restraint."

New York Times Company v. U.S. (1971) is often referred to as the Pentagon Papers Case. The Pentagon Papers were thousands of pages of "top secret" documents compiled by the Secretary of Defense that documented the murky narrative of the United States involvement in the Vietnam War. One of its authors, Daniel Ellsberg, was incensed at what the Papers' revealed and chose to "leak" the documents to the New York Times. The Times began printing excerpts of the Pentagon Papers on June 13, 1971. Almost immediately the Nixon Administration saw the exposure of the Pentagon Papers in the press as a threat to national security. Ongoing peace talks in Vietnam, Nixon thought, would be jeopardized by this security breach in the American press. The Nixon Justice Department requested an injunction against the Times to stop the presses. The U.S. government had never before asked the courts to stop a national newspaper in this way. Due to the immediacy of the injunction, the Supreme Court agreed to resolve this issue within a matter of days. Provisions of the Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals. The Court returned a 6-3 decision that upheld the power and authority of the First Amendment's freedom of the press.

New York Times Company v. U.S. (1971) bolstered the freedom of press, establishing a "heavy presumption against prior restraint" even in cases involving national security. There can be little

doubt that a strong nation requires a free press. Years later Daniel Ellsberg was asked if “leaks” to the press and subsequent attempts by the government to pursue prosecution in our day bear any resemblance to the Pentagon Papers Case? Ellsberg without hesitation responded by saying, “The parallels are very strong.” Each generation will see its freedoms challenged and tested.

And what about freedom of the press in high school? Again, the U.S. Supreme Court has been empowered to decide these tricky cases. The most critical school press precedent can be found in the case Hazelwood v. Kuhlmeier (1988). The school sponsored newspaper of Hazelwood East High School ran into trouble when its principal removed articles thought to endanger the safe learning environment of the school. The articles were about divorce and teen pregnancy. The court ruled in favor of the principal’s discretionary limit on the students’ free press privileges. The court argued,

> We have nonetheless recognized that the First Amendment rights of students in the public schools "are not automatically coextensive with the rights of adults in other settings," *Bethel v. Fraser* and must be "applied in light of the special characteristics of the school environment." *Tinker.* A school need not tolerate student speech that is inconsistent with its "basic educational mission," *Fraser,* even though the government could not censor similar speech outside the school. Accordingly, we held in *Fraser* that a student could be disciplined for having delivered a speech that was "sexually explicit" but not legally obscene at an official school assembly, because the school was entitled to "disassociate itself " from the speech in a manner that would demonstrate to others that such vulgarity is "wholly inconsistent with the *fundamental values' of public-school education." We thus recognized that "[t]he determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board," rather than with the federal courts. It is in this context that respondents' First Amendment claims must be considered…*
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> We…conclude that Principal Reynolds acted reasonably in requiring the deletion from the May 13 issue of Spectrum of the pregnancy article, the divorce article, and the remaining articles that were to appear on the same pages of the newspaper…We conclude that the principal's decision to delete two pages of Spectrum, rather than to delete only the offending articles or to require that they be modified, was reasonable under the circumstances as he understood them. Accordingly, no violation of First Amendment rights occurred.

Many legal scholars have viewed the Hazelwood case as a step back since the landmark decision in Tinker v. Des Moines (1969). Yet it should be remembered, **provisions of the U.S. Constitution’s Bill of Rights are continually being interpreted to balance the power of government and the civil liberties of individuals.**