The story of American journalism is, like the story of the nation itself, a narrative of growth and change and struggle. Journalism’s story is marked by a series of turning points, each of them opening the door to freedom a little wider for all Americans. Throughout history, journalists have risked prison and their lives to ensure that government officials conduct their business in public and that every citizen enjoys freedom of speech. The authors of this chapter are both professors at the Missouri School of Journalism. Dr. Sandra Davidson, who also has a law degree, teaches communication and media law. Dr. Betty Houchin Winfield is a Curators Professor who is a specialist in political communication and mass media history. She is the author and coauthor of numerous books and research studies.

In the American system of government, information is crucial for citizens to form enlightened opinions and to make informed political decisions. Founding father James Madison argued that a well-informed citizenry is necessary for a democracy: “A popular government without popular information is but a prologue to a farce, or a tragedy, or both.” Madison further emphasized the important connection between public knowledge and a democracy by adding: “And a people who mean to be their own governors must arm themselves with the power which knowledge gives.” Journalism provides the public information that is necessary for a democracy to thrive.

Journalism is a necessary conduit for not only spot news about what is happening within our society, but also what citizens think about what is happening. Because journalism is essential in a democracy, the United States provides a wide range of protections for citizens’ right to know, to hear, to see, and to read information as well as to express their opinions.

Supreme Court Justice William O. Douglas once wrote that in centuries to come the United States will not be remembered for the vast technological inventions offered the world, but rather for its experiment with free expression.

This chapter recounts three centuries of stories that are building blocks for the country’s historical and legal support for free expression. These personal accounts demonstrate in various ways the worth of journalism. Each person mentioned took tremendous risks to express opinions freely and to establish the public’s right to know. Because the American Constitution and its Bill of Rights do not define who is a journalist, the right to share information and opinions belongs to everyone.

The Public’s Historic Right to Know

When a popular coffeehouse owner attempted to publish the American colonies’ first newspaper more than three hundred years ago, the Massachusetts colonial government stopped him. Benjamin Harris, a former London journalist, risked punishment for not having a license, the government’s permission, to publish his Public Occurrences, Both Foreign and Domestick. In the September 25, 1690, issue, Harris promised accuracy—to take “pains he can to obtain a Faithful Relation of all things.” Without any training except experience, Harris sought truth and proposed that “when there appears any material mistake in any thing that is collected, it shall be corrected.” Harris also had a personal sense of social responsibility; he presented memorable occurrences so that “everyone might understand public affairs.” Harris believed that the public had a right to know; his journalism would be the means.

His “occurrences” included regional events, such as fires and the health of the colony plagued with smallpox, flux, and fevers, as well as the strange disappearance of two local children. He pointed out societal dangers—the nearby “barbarous Indians” and shocking happenings on the European continent, including the French king’s indecent liberties with his daughter-in-law.

How the public responded is not known, except by inference and by legal action taken against Harris. All of Harris’s noble journalistic public goals and promises were for naught. The Massachusetts governor and counsel must have thought that the information he printed would be dangerous because four days after the first issue, they stopped Harris’s journalistic ef-
forts. Harris was presented with a restraining order with no explanation, except that he lacked a license to publish. Perhaps the officials interpreted stories of the children's disappearances and the "barbarous Indians" as criticism of their governance. Perhaps, too, the church leaders thought that the scandalous story about the French royalty was in bad taste. Although the colonial government restrained Harris's newspaper publication, the government did not imprison him. Harris, discouraged, returned to London.

While one colonial government stopped Benjamin Harris's newspaper, subsequent colonial printers continued to expose problems via their publications. They dared to criticize the government, despite risks to their safety.

One such printer was a New Yorker, John Peter Zenger.

The Right to Expose Government Corruption

Before the country's independence from Great Britain, ordinary citizens upheld the right to criticize officials. In 1735, a jury of his peers acquitted printer Zenger of the crime of "sedition libel"—the "crime" of criticizing government. Zenger had published an anonymous piece in the New York Weekly Journal that called the Crown's New York governor, William Cosby, a tyrant and oppressor. When Zenger refused to name Cosby's anonymous critics, prosecutors went after Zenger. At that time, truth was not a defense to seditious libel. The jury's role was only to decide if indeed Zenger had printed the words; the royal court judge would decide the far more important question of whether the words constituted seditious libel.

But Zenger's lawyer, Andrew Hamilton, argued, "Men who injure and oppress the people under their administration provoke them to cry out and complain, and then make that very complaint the foundation for new oppression and prosecutions." Hamilton told the jurors that they, not the judge, had the right to decide if Zenger was guilty. The jury agreed and acquitted Zenger.

How important was the Zenger case? The U.S. Supreme Court later called it "the earliest and most famous American experience with freedom of the press." Zenger's acquittal, the Court said, "set the colonies afire for its example of a jury refusing to convict a defendant of seditious libel against Crown authorities." Hamilton won the case not only for Zenger but also for the people's right to know what public officials were doing, as well as to express their opinions about the officials' performance.

Times of Stress: A Threat to the Right to Criticize

The right to know and to criticize continued to play important public roles not only during the colonial fight for independence but also afterward. By the late eighteenth century when the United States inaugurated its own self-government, Americans had experienced decades of expressing their political opinions and of even seeing harsh criticisms in the then very partisan press. The value of freedom of expression to the democracy was immense. Such freedom found its way into the country's constitution, approved with a Bill of Rights in 1791. The First Amendment says that "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." What exactly that meant for journalism in 1791 remains unclear, except that the phrases appeared to mean no licensing, which means no "prior restraint," such as what had stopped Benjamin Harris a century before. Still unclear legally for journalists was whether freedom of speech and press meant freedom from punishment for seditious libel, the crime of criticizing government.

In that embryonic national era, published viewpoints promoted both political discussion and involvement in the political process. Americans had access through the press to a multitude of ideas, representing various political factions and often leading to heated political debates. The press made no claim of fairness and objectivity and openly supported either the Federalist or the Anti-Federalist party, also called the Republicans. With no journalistic standard for balance in these partisan newspapers, the political information not only told what happened, but also recounted from a partisan viewpoint what writers thought about what was happening.

At the same time, the country's earliest political leaders attempted to manage public information through various kinds of economic support to favored printers, by their own essays written under pseudonyms, and with leaked and exclusive information. Although at times both personal and vicious attacks occurred, accounts in the political newspapers aided citizens' debates and involvement as the nation was being formed. For example, the Republican editors published scathing criticisms of President George Washington's policies and actions as being too kinglike and unseemly for a democracy. By the time of the second president, John Adams, in 1797, the country was facing a potential war with France and had become deeply divided over foreign policy. Following their own revolution in 1789, the
French began reestablishing a presence in North America and thus alarmed many Americans. In 1798, President Adams and his supporters pushed through a series of oppressive acts aimed at immigration and expression. The Federalists justified the Alien and Sedition Acts as a way to meet a serious foreign threat. The Alien Acts, aimed at French immigrants, increased the U.S. residency requirement for citizenship from five to fourteen years and allowed for imprisonment and selective deportation of noncitizens. The Sedition Act targeted critics of the administration and Republican editors, many of whom were supporters of France, as well as the Republican leaders, primarily Vice President Thomas Jefferson. The Sedition Act would fine and imprison anyone making “false, scandalous and malicious” statements against the government, the president, or either house of Congress.

Signed just seven years after the passage of the First Amendment, the Sedition Act was designed to inhibit the opposition press and challenge the public’s right to criticize officials. The secretary of state spent half his time reading Anti-Federalist newspapers to ferret out seditious violators. The Federalists arrested twenty-five people and convicted ten, including a U.S. congressman, Matthew Lyon of Vermont, whose published letter accused President Adams of “ridiculous pomp, foolish adulation and selfish avarice.” Fined one thousand dollars, Representative Lyon went to jail for four months. When an Anti-Federalist editor printed a lottery to raise money for Lyon’s fine, he, too, was jailed for abetting a “criminal.” Lyon’s conviction became a cause célèbre. Vermont voters reflected Lyon to Congress by a two-to-one vote over his closest opponent.

A public uproar ensued as prosecutions continued for expressing opinions, whether orally or in written form. The acts became a contentious campaign issue during the presidential election in 1800. At that time, there was no judicial review. The Federalists lost the presidency and congressional seats. Adams was out, and opposition leader Thomas Jefferson became president. The acts expired the day before Jefferson’s inauguration. He pardoned those in jail and canceled the remaining trials. By the new century, the public’s right to have debates, even contentious ones on national and international issues, and the right to criticize its leaders had become more firmly established. Even controversial views would be tolerated, at least for a little while. Journalism would be the printed record of many controversial views about American social and political issues.

The Right to Express Even Hated Ideas

Opinions, even those expressing hated disclosures about societal injustices, are also a part of journalism. Publicly expressed viewpoints can reach an apex of controversy during times of great stress. By the mid-nineteenth century, the greatest stress occurred when the debate over slavery grew more and more heated throughout the nation. Such ever-widening national disagreement became a catalyst that eventually culminated in the Civil War. The abolition press had many Americans speaking and writing about this contentious issue of slavery, often at the expense of their own safety.

One who paid the highest price was Elijah Lovejoy, a former Presbyterian minister who established a reform and abolition newspaper, the St. Louis Observer. Lovejoy outraged St. Louis residents with his anti-Catholic editorials and attacks on local injustices, such as a district judge’s leniency in the trial of persons accused of burning a black man alive. When the city council passed a resolution denying Lovejoy’s free expression, he moved across the Mississippi River to Alton, Illinois. There, Lovejoy continued his crusade against slavery, only to have a mob destroy his office and printing press twice more. Ever determined, he persisted in his abolition stand after setting up his office a third time. Other newspapers wrote of Lovejoy’s plight, and his unwavering stand became a national cause. Anti-slavery organizations garnered financial support for him. Still, a mob demolished his office once more and, in the process, killed him. Lovejoy had become a martyr for free expression. To advocate abolition became more than an anti-slavery crusade. It became advocacy of the right to express even unpopular opinions and survive.

After the Civil War, Ida B. Wells continued the crusade of Lovejoy and other abolitionists for equal rights. In Memphis, she used her newspaper Free Speech to rally African Americans against discrimination and to encourage them to boycott erring businesses or move to more race-friendly Oklahoma or Kansas. She kept exposing Memphis’s injustices and denouncing the ever-growing numbers of lynchings, primarily in the heart of the South. When local citizens threatened her with violence and placed a bounty on her head, she moved to the safer North. Yet, like Lovejoy, Ida B. Wells persisted. For the next forty years, she publicized hundreds of lynchings.

Wells founded an Anti-Lynching Society, which she promoted for decades through articles, pamphlets, and hundreds of speeches throughout the country and in England. Her journalism created change. There were
fewer lynchings, although they did not cease. Both Lovejoy’s and Wells’s efforts demonstrated that journalism could expose an injustice, rally the public, and alter a societal wrong.

The Duty to Investigate, Expose Wrongs, and Create Societal Change

By the early twentieth century, journalism became part of the reform movement to create change. Major societal issues included the Industrial Revolution, a large immigrant population, and the corporate nature of business, all affecting the well-being of Americans. Journalism, as part of the national progressive movement for political, economic, and social reform, addressed the urban, immigration, and industrialization problems.

Investigative journalists sought to publicly expose misconduct, vice, and corruption. Wearing proudly the derogatory label “Muckrakers,” they exposed the meat-packing industry (Upton Sinclair); child labor (William Hard); the corruption in cities (Lincoln Steffens); abuses of workers (Ray Stannard Baker); the multimillion-dollar patent-medicine businesses (Samuel Hopkins Adams); and even frauds in journalism (Will Irwin). Mostly writing in magazines for longer, more developed investigations or series, these journalistic reformers included premier writers and researchers. Foremost among them was Ida Tarbell, who did a series in McClure’s Magazine on John D. Rockefeller and his monopolistic Standard Oil business abuses. In more than two thousand articles, the muckrakers’ magazine exposures were fueled with indignation, energetically well-documented and convincing. Their journalistic efforts paid off, helping to gain the passage of the 1906 Pure Foods and Drug Act, more protective child labor laws, and increased antitrust legislation.

Today, despite so much of the country’s mass media being tied to major corporations, the muckrakers’ legacy lives. Journalists are calling society’s attention to problems ranging from the Abu Ghraib tortures and Guantanamo Bay prisoner abuses to the country’s air pollution, arsenic in the water supplies, tax unfairness, and workers’ safety violations in Texas pipe manufacturing and West Virginia coal mines.

The Right to Free Expression during Wartime

In the United States, during wartime, free expression contracts. When under stress from an outside enemy, American society is less tolerant of those individuals who speak out and criticize the government’s policies and practices. When there is national anxiety, journalists have more difficulty seeking and speaking truth about governmental actions. The casualties of war include freedoms of speech, press, and petition.

During World War I, Congress passed an Espionage Act in 1917 that criminalized free expression concerning the war, and amended that act with a Sedition Act in 1918 that went even further to inhibit speech and the press. Following World War I, the Supreme Court heard the first of the cases under these acts to test the limits of the First Amendment. In Schenck v. United States (1919), Justice Oliver Wendell Holmes said, “When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight.” Charles Schenck, the general secretary of the Socialist party of the United States, had mailed leaflets to draft-age men, which told them that the draft violated the prohibition against involuntary servitude in the Thirteenth Amendment. Using Holmes’s “clear and present danger” test, the Supreme Court upheld Schenck’s conviction for conspiracy to obstruct military recruitment. “In impassioned language,” the Court said, Schenck’s writing “intimated that conscription was despotism in its worst form and a monstrous wrong against humanity in the interest of Wall Street’s chosen few.” Such language, the Court thought, constituted an unacceptable danger to the nation’s war efforts.

A week later, the high court upheld the conviction of Eugene Debs, who ran for president five times on the Socialist ticket. In Ohio, Debs told a crowd that he had just returned from a prison where he was visiting three of his friends who had aided and abetted another friend in failing to register for the draft. He eulogized those three friends and said he was proud of them. He told the jury trying him: “I have been accused of obstructing the war. I admit it. Gentlemen, I abhor war. I would oppose the war if I stood alone.” Two years later, a presidential order released Debs from his ten-year sentence.

In another World War I case, Abrams v. United States, the high Court upheld the convictions of five defendants who had been born in Russia. They had thought that a U.S. military expedition sent to Siberia to attack the Germans from the east was instead an attempt to crush the Russian revolution. They wrote two leaflets that asked for the end of producing bullets, bayonets, and cannons. At the time, calling for curtailment of production of necessary war materials was a federal offense. The five were convicted of conspiracy to encourage resistance to the war with Germany—even though they had written, “We hate and despise German militarism more than do you hypocritical tyrants.”
They received sentences of twenty years. Finally, Holmes's gag reflex had been activated, and the "Great Dissenter" penned one of his greatest dissents: "... when men have realized that time has upset many fighting faiths, they may come to believe... that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market."

Holmes's legal view was half a century ahead of his time. The people who expressed dissenting viewpoints to an unpopular war had risked imprisonment and were convicted. Their courageous efforts eventually helped protect even unpopular expressions during wartime.

Journalism's Duty to Criticize for the Benefit of Democracy

Especially in times of turmoil, the press has a duty to criticize public officials for the benefit of democracy. The Supreme Court made this clear in 1931 when the country was suffering extreme economic hardship. The United States had endured World War I and the great stock market crash of 1929. The Great Depression and Prohibition were in full swing, along with bootlegging gangsters such as Al Capone and Bugsy Malone. Some public officials undoubtedly were on the gangsters' payrolls.

Jay Near and his partner used the Saturday Press to charge that Minneapolis government officials, including the police chief, were in cahoots with local gangsters. After the paper's first issue, gangsters shot but did not kill Near's partner. Near wrote that the prosecuting attorney was not doing enough to clean up the situation. Not surprisingly, Near's public declaration so angered the prosecuting attorney that he sought to close the newspaper under the Minnesota nuisance statute that permitted shutting down any "malicious, scandalous and defamatory newspaper." The trial judge ordered Near to close his newspaper or be fined and then jailed for up to a year. Upon appeal, the U.S. Supreme Court ruled that the prior restraint authorized by the Minnesota statute was inconsistent with liberty of the press.

Given the backdrop of the Prohibition era, the U.S. Supreme Court declared that "the administration of government has become more complex, the opportunities for malfeasance and corruption have multiplied, crime has grown to most serious proportions, and the danger... emphasizes the primary need of a vigilant and courageous press, especially in great cities."

Although the decision was 5 to 4, Near v. Minnesota has withstood the test of time. Instead of permitting restraint of the press, the Court encouraged the press to be "courageous and vigilant," not timid or intimidated. The First Amendment's "chief purpose," according to the Court, was "to prevent previous restraint upon publication." The Court also used another term for previous restraint — "censorship." Although the Court did not go so far as saying the press could never be censored, it made clear that prior restraint could only occur in "exceptional cases" involving obscenity or some areas of national security, such as the movement of troops during wartime. Later, the Court added that the press could occasionally be restrained to ensure a defendant a fair trial.

Nevertheless, the "character and conduct" of public officials, such as the Minnesota city officials, "remain open to debate and free discussion in the press," the Court declared. If a newspaper made false accusations, the public officer would just have to use the libel laws.

Thus, an uncensored press, unleashed from prior restraint, is at least free if not duty-bound to be "courageous and vigilant" in exposing governmental corruption, but the press must attempt to give truthful accounts.

Protection from Libel Suits

During another period of great societal unrest, the 1960s civil rights movement, oral and written expressions in the South became quite contentious. To speak for equality in many Southern regions meant facing the same kinds of violent reactions as did Ida B. Wells and Elijah Lovejoy a century before. This time the issue was school integration. Following the Supreme Court ruling in Brown v. Board of Education (1954) that separate schools were not equal, civil rights workers risked their lives to integrate public schools. The public debates became heated, and Southern newspapers that supported integration were boycotted and speakers were jailed.

One such reaction caused the U.S. Supreme Court to greatly change the nation's libel law concerning public officials. The case involved the New York Times, which had published a political advertisement, "Heed Their Rising Voices," written by a civil rights group protesting brutal police treatment of Montgomery, Alabama, college students and the Rev. Dr. Martin Luther King, Jr. The copy did contain some factual errors. L. B. Sullivan, the Montgomery police commissioner, took offense at what he considered to be personal criticism, although he was not identified by name. Sullivan sued for libel and won $500,000. The Times appealed the judgment.
In 1964, the Supreme Court ruled in favor of the newspaper in the landmark case of New York Times Co. v. Sullivan, emphasizing that the press could be wrong when criticizing public officials for official conduct and still receive First Amendment protection. Libel cases had become too easy for public officials to win in court and could create a “chilling” effect on the media, the Court thought. So the Court decided to thaw public debate on public issues by making it much more difficult for public officials to win libel suits. As a result of this ruling, public officials must prove the media acted with “actual malice” — “knowledge that a statement is false, or reckless disregard of whether it is true or false.”

In curbing public officials’ ability to win libel cases, the Court spoke of “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” The Court also spoke of the necessity of providing “breathing space”: “[E]rroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the ‘breathing space’ that they need to survive.”

In short, freedom to criticize public officials includes freedom to err—so long as the errors are not intentional or reckless. The threat of libel actions cannot be used to stifle critical comments about public officials. Three years later, the Supreme Court extended the “actual malice” requirement to public figures, again giving leeway to the press. Today, a president, governor, or mayor finds it mighty difficult to sue for libel, even if the statement is exaggerated about the official’s fitness for office, conduct in office, moral character, private sexual conduct, or close connections with industry. Some say that journalists sometimes go too far and do not check their facts carefully enough and that too many mistakes are made, yet leeway for the press means that the debate involving public officials, public actions, and public decisions will be robust.

The Triumph of the Right to Know over Secrecy

The right to know what is happening in a democracy is constantly tested during wartime. While the Vietnam War raged on in 1971, a reporter from the New York Times received photocopies of a secret forty-seven-volume study of the history of the U.S. involvement in Vietnam, commonly known as the “Pentagon Papers.” Prepared by the Defense Department, the study was to be kept secret, but one of the authors, former Pentagon employee Daniel Ellsberg, had turned against the war and leaked copies to the Times.

On June 13, a Sunday, the Times printed its first story in a series based on the “Pentagon Papers.” Less than forty-eight hours later, the newspaper received a telegram from the U.S. attorney general, John Mitchell, saying that any more Pentagon Papers articles would bring about “irreparable injury to the defense interests of the United States.” The Times did not bow to the attorney general and instead shared its story with the Washington Post. A lower court that had issued a temporary restraining order to stop the Times rescinded the order four days later. Judge Murray Gurfein wrote, “These are troubled times. There is no greater safety valve for discontent and cynicism about the affairs of Government than freedom of expression in any form. This has been the genius of our institutions throughout our history.” Immediately, a federal appeals court reversed Judge Gurfein’s decision and demanded further hearings before the Times printed any more of its Pentagon Papers series.

In tribute to the importance the Supreme Court places on attempts to shut down the press, the Court heard arguments in the case on June 26, 1971, just thirteen days after the first story ran. The Court issued its decision only four days later. The government’s argument could not stand because the government could not prove how the Pentagon Papers breached national security. The Court ruled for freedom of the press, even during wartime, and gave the message that the people had the right to know how their country got involved in war without having to wait until the war was over. In this case, freedom of the press prevailed over the government’s feeble claims of national security. The newspapers could and did print the history of that long and agonizing Vietnam War.

The People’s Right to Know Political Extremes

A pioneer broadcaster, Edward R. Murrow, was known for setting a standard of the best of broadcast news for almost twenty years. During World War II, Murrow’s “This . . . Is London” CBS updates brought the Battle of Britain into American living rooms. During the Cold War, in television documentaries on the show See It Now, Murrow and his coproducer, Fred Friendly, examined various Cold War issues, among them the tactics of Senator Joseph McCarthy, who for four years made charges without supporting evidence. McCarthy timed his accusations to correspond with immediate deadlines, meaning that the press had no time to investigate his charges. The senator alleged that there were hundreds of Communists in the State Department and, later, the rest of the government, including individual
Army officers. The press dutifully reported his statements and speeches, which he paced so that rebuttals and denials never caught up with the stories.

On March 9, 1954, Murrow devoted an entire See It Now program to Senator McCarthy’s accusations and tactics, using McCarthy’s own words. Murrow took a great risk when he dared to speak out at a time when few yet opposed the senator publicly, including the president. The broadcaster concluded his devastating portrait of the senator’s actions with these words:

We will not be driven by fear into an age of unreason if we dig deep in our history and our doctrine, and remember that we are not descended from fearful men who feared to write, to speak, to associate and to defend causes that were for the moment unpopular. This is no time for men who oppose Senator McCarthy’s methods to keep silent. . . . We can deny our heritage and our history, but we cannot escape responsibility for the result.

On April 6, McCarthy responded to Murrow’s See It Now program with accusations about the broadcaster, but they did not resonate.

The subsequent Army-McCarthy hearings allowed TV cameras and microphones to bring the public face to face with McCarthy’s tactics of character assassination. McCarthy lost credibility and the Senate later censured him. Journalism had helped the public see the contradictions of the senator’s media manipulations and abusive power.

So What Good Is Journalism?

The long journalism journey from 1690, when the Massachusetts colonial government shut down Benjamin Harris’s newspaper, is marked by journalists who strove to inform citizens about what officials were doing, who warned of dangers to the country’s ideals, who investigated potential wrongdoings, and who advocated reform.

Journalists who have provided the news about government and stood up to tyranny, slavery, and corrupt officials have given Americans the information they need to judge their rulers and make decisions. Some have sacrificed their safety and their lives for their principles. All have advanced the cause of the people’s right to know and have access to information, as well as the country’s freedom of expression.

Journalism is the lifeblood of democracy. Journalism is a necessary con-

dition for the United States’ form of government. It keeps information flowing, nourishing all segments of society from the single individual to the body politic. If the flow of information from journalists stopped, then what would result? Madison said it best—“a farce, or a tragedy, or perhaps both.”

Sources

You can learn more about the people and the cases who have made history in these readings.

James Madison


Benjamin Harris


John Peter Zenger


Allen and Sedition Acts


Ida B. Wells-Barnett


Elijah Lovejoy


Muckrakers


World War I, Espionage and Sedition Acts

Jay Near

New York Times Co. v. Sullivan


Pentagon Papers Case


Edward R. Murrow