

# THE CORNERSTONE PAPERS

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ON THE FIRST AMENDMENT



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## America's Free Press: Now More Than Ever

Barbara Cochran

A free press, as guaranteed by the First Amendment, has been an essential ingredient in the most important events of our history. In the past 50 years, a free press spread the news of the civil rights struggle in the South, exposed the realities of the war in Vietnam, and uncovered illegal activities in the Nixon White House. Now, when America has been attacked on its own soil, it is more important than ever to defend our democracy. It is more important than ever to protect our free press.

September 11 taught many, many lessons. One was a reminder of the important public service performed by the free press. The government, as well as the public, received information instantaneously from news media cameras trained on the towers of the World Trade Center. The news media became the most immediate conduit for the government to convey important information to the people. Television and radio offered hours of continuous coverage and newspapers added pages and sections. The

news media sought to provide context and comfort during one of the most difficult periods in our nation's history.

The horrifying nature of the attacks and the fact that they were carried out on American soil unleashed a torrent of fear and patriotic fervor. These feelings, widespread among the public and throughout government, unfortunately have created an uncomfortable climate for a free press. The government is determined to manage its message. The public fears that secrets will be revealed and a dangerous situation will become even more perilous. In a climate like this, a free press has been hampered, and there is scant public support for challenges to government control.

The most obvious obstacles imposed by government on the press have come from the Pentagon. Veteran correspondents who have covered the Defense Department for years, even through the restrictions imposed during the Gulf War, say they have never seen tighter restrictions. For the first time in history, American military

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forces were deployed abroad without any press accompaniment. Reporters not only were barred from traveling with special forces units to Afghanistan (an understandable prohibition), they were also denied positions on the carrier Kitty Hawk where those units were based, and were prohibited from accompanying the 10th Mountain Division, a regular Army unit, to the region. Even after the U.S. military established a base near Gardez in Afghanistan, they refused to admit a party of American journalists covering action in the area, forcing them to spend the night in their cars, at the mercy of local bandits.

Information about the war has been limited, imprecise, and less than timely. It is released at the Pentagon, thousands of miles from the action, in briefings that have been cut back from daily to twice weekly. Secretary Donald Rumsfeld has made it clear that leaks will not be tolerated. The veteran correspondents say their sources have dried up.

So far, the public seems unperturbed by the absence of independent reporting, probably because there has been no major catastrophe. But Americans are still concerned about the welfare of their sons and daughters among the troops. Only a free press can bring them those stories.

“The press was protected so that it could bare the secrets of government and inform the people,” wrote Justice Hugo Black in his opinion in the Pentagon Papers case. “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 shots and shell.”

The message management conducted so skillfully at the Pentagon is being practiced elsewhere at the federal level. Within days of September 11, government databases began disappearing from the Internet. OMB Watch, a public interest group that monitors information sources, reported that the Nuclear Regulatory

Agency removed its entire Web site and that information was removed from the sites of the Department of Energy, the Geological Survey, the Federal Energy Regulatory Commission, the Environmental Protection Agency, the Federal Aviation Administration, the Office of Pipeline Safety, the National Imagery and Mapping Agency, and many others.

The Freedom of Information Act, an invaluable tool for journalists seeking to scrutinize government activity, is under siege. Soon after September 11, Attorney General John Ashcroft issued a directive to federal agencies that they

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would get support from the Justice Department for denying FOIA requests if there were a “sound legal basis.” That directive reversed earlier policy and put an increased burden on those seeking the information.

In another blow to FOIA, the Administration proposed that the new Department of Homeland Security should have much broader grounds to withhold information than is specified in the current law. The Secretary of Homeland Security would also be able to suspend civil service protections for employees, including protection for whistleblowers.

Like the military war on terrorism, the legal war against suspected terrorists is taking place out of view. The government has revealed nothing about 1,100 non-citizens who have been held in custody since the weeks after September 11. Likewise, the detainees rounded up in Afghanistan and shipped to Guantanamo Bay Air Force Base in Cuba cannot be interviewed or even identified. If they, or anyone



else, should ever be tried by a military tribunal, that tribunal will be closed to the press.

When information has become available outside normal government channels, government officials have resorted to jaw-boning in the absence of any legal or administrative method of keeping the information out of public view. In an unusual move, National Security Adviser Condoleezza Rice arranged a conference call among network news presidents to urge them to use restraint before airing video of Osama bin Laden. The news executives agreed to review any video before they broadcast it, and it was some months before video of Osama bin Ladin was used on American networks.

The Administration has gone to some lengths to find the government sources of certain stories. A *National Review* writer was detained after attending a State Department press briefing by security officials who wanted to question him about the source of a story he had written on possible corruption in the issuing of visas at the U.S. embassy in Saudi Arabia.

Defense Secretary Donald Rumsfeld said that anyone who had leaked a story about plans for an Iraqi invasion should “be imprisoned,” a chilling message to anyone who might think about talking to a reporter.

Why does any of this matter? If we are at war, shouldn't concerns about security trump any other issues? Shouldn't the press give way to government claims that information and access should be off limits? And won't the press risk the loss of popular support if it becomes too aggressive?

As Justice Black said, the chief reason the press was protected by the First Amendment was so it could serve as the independent watchdog for the people on government activity. Looking back in our history, we can see numerous instances when press scrutiny corrected a failing policy. President John Kennedy said he regretted that his

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administration persuaded the *New York Times* to water down its report about plans for the Bay of Pigs invasion, believing that exposure of the plan would have averted disaster.

Questions that the public set aside in the first weeks and months after September 11 are coming to the fore, begging to be answered. Where did our intelligence failures occur and, more importantly, what has been done subsequently to correct those problems? The attacks revealed major flaws in our air transportation security system. What other flaws exist? How safe are our ports, rail transportation, nuclear power plants, and water supplies? We have been told the enemy is seeking biological, chemical, and even nuclear weapons. How prepared are we to deal with those kinds of attacks?

The public looks to the press to find credible answers to those questions and to hold public officials accountable for securing our safety. A free press exists for times like these. It is not a time to allow government to close its doors and shut its files. Now, as much as at any time in our history, the public needs a press that is free, fair, and independent.

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The Cornerstone Papers are published under the auspices of the Cornerstone Project, The Media Institute's public awareness and education program celebrating the First Amendment. The goal of Cornerstone is to give the American public a renewed appreciation of the importance of free speech and free press.

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