

McCormick Foundation Civics Program

First Amendment Summer Institute:

Day Two

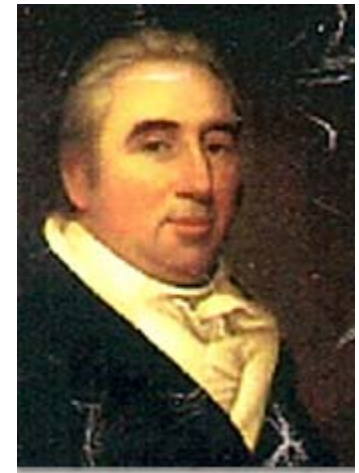
Shawn Healy

Director of Educational Programs and Resident Scholar



Supreme Court Review:

- Constitutional underpinnings
 - Article III, Section I: Supreme Court created
 - Article III, Section II: Original vs. appellate jurisdiction
- Judicial Review
 - Marbury v. Madison* (1803)
 - Case and controversy: facial and as applied challenges
 - Selective incorporation
 - Stare decisis*
- Case selection
 - Petition for Supreme Court consideration
 - Writ of certiorari* granted
 - Amicus curae* solicited and accepted
 - Oral arguments
- Decisions and opinions
 - Weekly conference
 - Majority/ per curiam/ concurring/ dissenting



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Freedom of the Press: Prior Restraint

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Freedom of the Press

○ **First Amendment:** “Congress shall make no law...abridging...the freedom of the press...”

○ **Prior Restraint Defined:**

- “A form of censorship that allows the government to review the content of printed materials and prevent their publication.”

—*Encyclopedia of the First Amendment*

- British common law generally opposed government licensing and other forms of prior restraint, and this informed the delegates of the Constitutional Convention and adopters of the First Amendment.
- The Supreme Court has ruled with strong presumption against government use of prior restraint
- The prohibition of prior restraint does not prevent punishment for prosecution after the fact, and protection from prior restraint is not absolute.

Prior Restraint

Reading Jigsaw

- Divide into groups of 4
- Answer the questions listed below, and later report to the class
- Discussion Questions:
 1. Summarize the act, article, or Supreme Court case
 2. Account for contemporaries who dissented to the law or case
 3. How does the law or case relate to prior restraint?
 4. Evaluate the historical implications of the law or case
- Readings:
 - The Sedition Act of 1798: Freedom of Press Comes Under Attack
 - The Colonel's Finest Campaign: Robert R. McCormick and *Near v. Minnesota*
 - Heart Mountain Sentinel: A Free Press Behind Barbed Wire?
 - New York Times v. United States*

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Questions?



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Freedom of the Press: Libel

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Freedom of the Press

- **First Amendment:** “Congress shall make no law...abridging...the freedom of the press...”
- **Libel Defined:**
 - Libel: “Any publication that is injurious to the reputation of another.”
 - Slander: “Speaking of base and defamatory words tending to prejudice another in his reputation, office, trade, business, or means of livelihood.”
 - During Norman times, guilt initially determined by church; later the British judicial system
 - Guilt premised on damage to reputation, liability escaped if statements proven true
 - Prior to the *Sullivan* case, a plaintiff in a libel case needed to prove the following:
 1. The defendant made the statement
 2. The statement was about the plaintiff
 3. The statement was defamatory
 4. The statement injured the plaintiff’s

Libel Continued

- ***Chaplinsky v. New Hampshire (1942):***
 - Walter Chaplinsky, a Jehovah's Witness, instigated a riot upon speaking and distributing pamphlets critical of organized religion in Rochester, NH
 - Upon arrest, he uttered, "You are a God damned racketeer" and "a damned fascist and the whole government of Rochester are fascists or agents of fascists."
 - Chaplinsky was charged with violating a NH law that prohibited offensive, derisive, or annoying words" toward others or preventing them from going about their daily lives.
 - He challenged the law on First and Fourteenth Amendment grounds
 - Justice Francis Murphy wrote for a unanimous Court, which ruled that certain spoken words that instigate violent reactions are exempt from First Amendment protections.
 - This included speech that is "lewd and obscene,...profane,...libelous,...and insulting or 'fighting words.'"



Libel Continued

- *New York Times Company v. Sullivan* (1964):
 - Facts of the case
 - Issues/ Decisions
 - Reasoning
 - Separate Opinions
 - Discussion

Libel Continued

- Fact Pattern Application: Does this constitute libel?
 - An article in a conservative magazine criticizes the lawyer of a police officer who shot and killed a youth, calling him a “Leninist” and a “Communist-frontier.” It also implicated him in a Communist plot to attack the Chicago Police during the 1968 Democratic National Convention. Many of these statements were factually incorrect and the author did little to verify them.

--*Gertz v. Robert Welch, Inc.* (1974)
 - A college athletic director is accused of fixing a football game by a weekly magazine. He sues the publisher on the grounds that the story was based on a tip provided by a man on probation, the reporter did not check the game film for evidence of a fix, nor did he have any expertise in football strategy.

--*Curtis Publishing Co. v. Butts* (1967)

Libel Continued

- Fact Pattern Application: Does this constitute libel?
 - An article in a local daily newspaper links a chain of beverage stores to organized crime. A principal stockholder that owns the chain filed suit, claiming the newspaper must prove the accuracy of this implication in order to stave off a libel judgment.
--Philadelphia Newspapers, Inc. v. Hepps (1986)
 - A high school wrestling coach is accused of lying under oath at a public meeting by a local newspaper columnist. He alleges that the column asserts that he committed perjury, and the newspaper counters that the column was opinion, and therefore protected.
--Milkovich v. Lorain Journal Co. (1990)

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