

News War Teacher's Guide

About the Film:

News War, a four-part FRONTLINE investigation, examines the political, cultural, legal, and economic forces challenging the news media today and how the press has reacted in turn. This lesson plan is based on the second film of the series. In *Secrets, Sources & Spin, Part II*, FRONTLINE explores today's high-profile debates over the role of the press, including clashes between journalists and the government over whether or not a reporter has the right to keep a source confidential. The program includes interviews with *San Francisco Chronicle* reporters Mark Fainaru-Wada and Lance Williams, who made national headlines exposing steroid abuse in professional baseball by drawing from the athletes' own grand jury testimony, which had been leaked to the *Chronicle*. The program also features independent journalist and blogger Josh Wolf, who was jailed for refusing to turn over a videotape of a San Francisco protest to the FBI.

Watching the Film:

Teachers can either assign viewing as homework or show the film in class. The focus of the lesson plan is the final segment of the second part of *News War*, which features the story of independent journalist and blogger Josh Wolf.

A Note to Teachers:

For classes in government, civics, U.S. history, journalism, language arts, and/or current events; Grades 11, 12, and AP classes. The activities help students understand the symbiotic relationship between a free press and democracy.

Discussion Questions:

A list of questions for the class to discuss after viewing the film.

Featured Lesson Plan:

Journalists and the Constitution

By writing an *amicus brief* in the case of a freelance journalist currently imprisoned for not turning over footage to the federal government, students will become familiar with:

- ♦ The concept of news media as "watchdog" and the relationship of a free press to democracy
- ♦ The reasons for and against granting journalists the right to keep sources confidential
- ♦ The impact of government restrictions on the press

Additional Lesson Ideas:

Media-Free Democracy

Students will demonstrate comprehension of the media's role in a democracy by writing a fictional account of what life might be like in the United States if the government controlled all available news media.

Compare and Contrast

Students will research and evaluate the role of the press in other countries and explore comparisons with the issues that journalists raise in *News War*.

A Country Without Free Speech

After reviewing the 2004 Knight Foundation study results that indicated weak support for First Amendment rights among high school students, students will review the First Amendment and craft a response to a hypothetical peer who favors the removal of the First Amendment from the Constitution.

Additional Resources:

An annotated list of relevant Web sites.

Purchasing Information:

News War can be purchased from Shop PBS for Teachers

www.shoppbs.org/home/index.jsp. Also, teachers and students can watch the film streamed in its entirety on FRONTLINE's Web site

www.pbs.org/frontline/newswar.

Credits:

This teacher's guide was developed by Simone Bloom Nathan of Media Education Consultants with input from Faith Rogow of Insighters Educational Consulting. Advisers were Ellen Greenblatt, University High School, San Francisco, Debra Plafker Gutt, Stuyvesant High School, New York, and educational consultant/curriculum writer Gregory Timmons.

DISCUSSION QUESTIONS

You can use the following prompts to guide students to think more deeply about the issues raised in *News War*. [Note: The first five questions are also available in a student handout to help students focus their attention while viewing.]

1. What are "checks and balances" and why are they important in a democracy?
2. Conservative media pundit Patrick Buchanan told FRONTLINE, "The battle between the White House and the national media is the battle over who controls the national agenda." In your view, who should control the national agenda? Should either have total control over the national agenda? Why or why not? How does each of these institutions (the government and the press) represent the public?
3. Both *The New York Times* and *The Washington Post* printed stories about secret government programs. Why do some people see the papers' actions as patriotic while others think the publishers should be tried under the Espionage Act?
4. Should the *San Francisco Chronicle* reporters who wrote about steroids in baseball be held to the same standards about revealing sources as reporters who write about national security issues? Why or why not?
5. Given what you have seen in *News War*, describe the role of news media in a democracy.
6. Former White House Chief of Staff, Andrew Card, is quoted as saying "Congress has a check and balance function. The judiciary does. But not the press." Do you think the Founding Fathers would have agreed with him? Do you agree? Why or why not?
7. Under what conditions, if any, would it be appropriate for a journalist to publish or broadcast government secrets?
8. Under what conditions, if any, would it be appropriate for government to prevent media from reporting on government's programs or actions?
9. What did you think about the government arguments against the publishing of stories on the NSA (National Security Agency) wiretaps, monitoring of citizens' banking activity, or CIA detention camps?
10. Did you see any evidence of bias in the film? Why or why not?

FEATURED LESSON PLAN

Journalists and the Constitution

Background Information for Teachers:

In 2004, with support from the John S. and James L. Knight Foundation, two University of Connecticut professors, Dr. David Yalof and Dr. Kenneth Dautrich, surveyed more than 100,000 high school students and 8,000 teachers about their attitudes towards the First Amendment. "The Future of the First Amendment" study found that:

- ♦ Students were "less likely than adults to think that people should be allowed to express unpopular opinions or newspapers should be allowed to publish freely without government approval of stories."
- ♦ Only 51 percent of students thought that newspapers should be allowed to publish freely without government approval of stories.

In a 2006 follow-up study, the percentage of students who thought that "the First Amendment went too far in the rights it guarantees" increased from 35 percent to 45 percent.

With these survey results as a backdrop, this lesson plan is designed to help students think about the First Amendment, the meaning of "freedom of the press, " and the symbiotic relationship between a free press and democracy.

Prior to doing the activity, preview Parts I and II of *News War* at www.pbs.org/wgbh/pages/frontline/newswar/view/. The lesson is based on the story of Josh Wolf, which is approximately five minutes long and contained within segment 15 of Part II.

Objectives:

Students will become familiar with:

- ♦ The concept of news media as a "watchdog" and the relationship of a free press to democracy
- ♦ The reasons for and against granting journalists the right to keep sources confidential
- ♦ The impact of government restriction of the press

Materials:

- ♦ "Background Readings" student handout
- ♦ "Questions for Viewing" student handout
- ♦ High-speed Internet access for students or a DVD of *News War: Secrets, Sources & Spin, Part I & II*
- ♦ Space on a Web site or another way for students to share written work with each other

Time Needed:

Three to six class periods, depending on students' prior knowledge and choices about what is assigned as homework or completed in class.

Procedure:

1. Background

- ♦ Distribute "Background Readings" and discuss with students:
 - The Founding Fathers' views on the free press and why and how the media acts as a "watchdog"
 - "Selected Acts and Court Decisions Related to a Free Press"
 - Department of Justice policies on subpoenaing reporters

2. View the Film

- ♦ Distribute the "Questions for Viewing" handout for students to review prior to viewing. View *News War: Secrets, Sources & Spin, Part I*.
- ♦ Show the second hour of *News War* or assign students to view it online at www.pbs.org/frontline/newswar/view/. Note that if students are watching online, Part II begins with Chapter 9. If viewing in class, stop the film prior to Chapter 15, the last segment in the film.
- ♦ After viewing, discuss students' responses to the questions on the handout and/or in the discussion question section of this lesson plan. This can be done as a whole class or in small groups.

3. The Josh Wolf Case

- ♦ Tell students that Josh Wolf is a journalist currently in jail and show the final segment of *News War* -- the first part of Chapter 15.
- ♦ Ask students to define *amicus brief* (for example, "a brief presented by someone interested in influencing the outcome of a lawsuit but who is not a party to it." thefreedictionary.com)
- ♦ Assign students the task of developing a one- to three-page mock *amicus brief* supporting either the government's or Wolf's position. For more information on writing an amicus brief, go to **Street Law's Course in Practical Law** www.glencoe.com/sec/socialstudies/street_law/textbook_activities/unit_web_activities/unit01b.php
- ♦ Ask students to review the handout "Background Readings: Part Three, Subpoenaing Reporters," which outlines current Justice Department policy for obtaining information from the media. For further understanding of the DOJ guidelines, have them look at the interview excerpts on the guidelines found in the "Reporter's Privilege" section of the *News War* Web site at: www.pbs.org/frontline/newswar/interviews. They can also read the interviews with former Attorney General John Ashcroft's spokesman Mark Corallo, and current Attorney General Alberto Gonzales' spokeswoman Tasia Scolinos.
- ♦ Highlight the challenge of this assignment: the students must go beyond a persuasive essay to develop a legal argument, basing their position on the Constitution or a subsequent legal decision that could serve as a precedent. Explain that students are not required to use the technical legal terms and format of a real *amicus brief*.
- ♦ Share with students possible resources to aid in developing their briefs, including the Constitution and the Web sites listed in the "Background Readings" and

"Additional Resources" sections of this guide. They should also look at the interview excerpts on "reporter's privilege" on the *News War* Web site at: www.pbs.org/frontline/newswar/interviews. In addition, point students to the extended interviews with Josh Wolf, former prosecutor Randall Eliason, First Amendment attorney Floyd Abrams and *Washington Post* editor Len Downie.

4. Share and Revise Briefs

- ♦ Facilitate students' sharing their briefs with classmates by posting the briefs online in an accessible classroom forum or in class.
- ♦ Allow students to edit their briefs based on what they learn from reading those of their peers. Collect the final briefs. (With advanced students, you might discuss how their experience writing a legal argument was different from or similar to their other persuasive writing.)
- ♦ As a class, discuss which of the arguments in the briefs seem to be the strongest and why. Guide students to explain exactly what makes an argument convincing (e.g., well-written, clear tie to legal precedent, entertaining, etc.).

Methods of Assessment:

Classroom participation

Review of *amicus briefs* for writing, comprehension and ability to apply legal concepts related to freedom of the press to current, real-life situations.

STUDENT HANDOUT:
Background Readings: Part One

HISTORICAL CONTEXT:

The Founding Fathers felt strongly about a free press. Notes from the federal constitutional convention reveal that there was not much discussion on the need to protect those rights, because most took it as a given. However, the framers of the Bill of Rights had a narrow view of the extent of protections for freedom of the press, limited to political discussion and a concern over libel or slander of a public figure. Issues that surround freedom of the press today, such as leaks, threats to national security, revealing reporters' sources, or even political bias, were not considered at that time. Over the years, various acts of legislation and court decisions have affected the freedom of the press and added complexities and different interpretations. Review the First Amendment, the following quotations from some of the nation's founders about freedom of the press, and the summaries of related laws and court decisions. These provide background to assist in the preparation of your *amicus brief*.

THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

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. (Ratified 1791)

"The only security of all is in a free press. The force of public opinion cannot be resisted when permitted freely to be expressed."

Thomas Jefferson

"Whoever would overthrow the liberty of a nation must begin by subduing the freedom of speech."

Benjamin Franklin

"Nothing could be more irrational than to give the people power, and to withhold from them information without which power is abused. A people who mean to be their own governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both."

James Madison

"When the press is free and every man able to read, all is safe."

Thomas Jefferson

Background Readings: Part Two
SELECTED LAWS AND COURT DECISIONS
RELATED TO A FREE PRESS

(The full text of each law or court decision is available at the Web site listed beneath the description.)

Alien and Sedition Acts (1798)

This set of four acts passed by the Federalist Party, led by President John Adams, made it illegal for anyone to publish anything that might "defame" the government. The acts were declared illegal by Thomas Jefferson in 1801 during his term as president. See especially the Sedition Act, Section 2:

<http://www.loc.gov/rr/program/bib/ourdocs/Alien.html>

Espionage Act (1917)

Passed during World War I, the act made it illegal to obtain or share information that might interfere with the success of the armed forces or attempts to defend the country. The Sedition Act (passed in 1918 as an extension of the Espionage Act and not to be confused with the 1798 version) made it illegal to speak out against the government. It was repealed in 1921:

<http://www.firstworldwar.com/source/espionageact.htm>

Freedom of Information Act (1966)

This spells out what kinds of government documents must be made available to the public and under what circumstances documents can be withheld or redacted:

http://www.law.cornell.edu/uscode/uscode05/usc_sec_05_00000552----000-.html

New York Times Co. v. United States (1971)

The Supreme Court found that the U.S. government did not have the right of prior restraint to keep the newspaper from publishing the Pentagon Papers:

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=403&invol=713>

Branzburg v. Hayes (1972)

The Supreme Court found that "reporter's privilege" does not exist, i.e., reporters do not have an inherent constitutional right to keep sources confidential:

http://www.oyez.org/cases/case/?case=1970-1979/1971/1971_70_85

Background Readings: Part Three SUBPOENAING REPORTERS

Current policy from the U.S. Department of Justice United States Attorneys' Manual:

9-13.400 News Media Subpoenas; Subpoenas for Telephone Toll Records of News Media; Interrogation, Arrest, or Criminal Charging of Members of the News Media

In recognition of the importance of freedom of the press to a free and democratic society, it is the Department's policy that the prosecutorial power of the Government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues. Accordingly, Government attorneys should ordinarily refrain from imposing upon members of the news media forms of compulsory process which might impair the news gathering function. In all cases, members of the Department must balance the public's interest in the free dissemination of ideas and information with the public's interest in effective law enforcement and the fair administration of justice. The policies, procedures and standards governing the issuance of subpoenas to members of the news media, subpoenas for the telephone toll records of members of the news media, and the interrogation, indictment, or arrest of members of the news media are set forth in 28 C.F.R. § 50.10.

The Attorney General's authorization is normally required before the issuance of any subpoena to a member of the news media or for the telephone toll records of a member of the news media. However, in those cases where the media member or his or her representative agrees to provide the material sought *and* that material has been published or broadcast, the United States Attorney or the responsible Assistant Attorney General may authorize issuance of the subpoena, thereafter submitting a report to the Office of Public Affairs detailing the circumstances surrounding the issuance of the subpoena. 28 C.F.R. § 50(e).

Before considering issuing a subpoena to a member of the news media, or for telephone toll records of a member of the news media, Department attorneys should take all reasonable steps to attempt to obtain the information through alternative sources or means. 28 C.F.R. § 50.10(b).

In addition, Department attorneys contemplating issuing a subpoena to a member of the news media must first attempt negotiations with the media aimed at accommodating the interests of the trial or grand jury with the interests of the media. 28 C.F.R. § 50.10(c).

Negotiations with the affected media member must also precede any request to subpoena the telephone toll records of any member of the news media, so long as the responsible Assistant Attorney General determines that such negotiations would not pose a substantial threat to the investigation at issue. 28 C.F.R. § 50.10(d).

Department attorneys seeking the Attorney General's authorization to issue a subpoena to a member of the news media, or for telephone toll records of a media member, must

submit a written request summarizing the facts of the prosecution or investigation, explaining the essentiality of the information sought to the investigation or prosecution, describing attempts to obtain the voluntary cooperation of the news media through negotiation and explaining how the proposed subpoena will be fashioned as narrowly as possible to obtain the necessary information in a manner as minimally intrusive and burdensome as possible. Specific principles applicable to authorization requests for subpoenas to members of the news media are set forth in 28 C.F.R. § 50.10(f)(1)-(6), and for subpoenas for telephone toll records of members of the news media in 28 C.F.R. § 50.10(g)(1)-(4). The Department considers the requirements of 28 C.F.R. § 50.10 applicable to the issuance of subpoenas for the journalistic materials and telephone toll records of deceased journalists.

Except in cases involving exigent circumstances, Department attorneys must also obtain the express approval of the Attorney General prior to the interrogation or arrest of a member of the news media for an offense which he or she is suspected of having committed during the course of, or arising out of, his or her coverage or investigation of a news story, or while he or she was engaged in the performance of his or her official duties as a member of the news media. The Attorney General's authorization must also precede the presentment of an indictment to a grand jury or the filing of an information against a member of the news media for any such offense. 28 C.F.R. § 50.10(h)-(l).

In cases or matters under the supervision of the Criminal Division, any request for the Attorney General's authorization pursuant to 28 C.F.R. § 50.10, and any related questions or concerns, should be directed to the Policy and Statutory Enforcement Unit of the Office of Enforcement Operations. In cases or matters under the supervision of other Divisions of the Department of Justice, the appropriate Division should be contacted.

In light of the intent of the regulation to protect freedom of the press, news gathering functions, and news media sources, the requirements of 28 C.F.R. § 50.10 do not apply to demands for purely commercial or financial information unrelated to the news gathering function. 28 C.F.R. § 50.10(m).

STUDENT HANDOUT

Questions for Viewing

Read these questions before viewing. As you watch the film, use this sheet to jot down notes about things you see that help you answer each question.

1. What are "checks and balances" and why are they important in a democracy?

2. Conservative media pundit Patrick Buchanan told FRONTLINE, "The battle between the White House and the national media is the battle over who controls the national agenda." In your view, who should control the national agenda? Should either institution have total control over the national agenda? Why or why not? How does each of these institutions (the government and the press) represent the public?

3. Both *The New York Times* and *The Washington Post* printed stories about secret government programs. Why do some people see the papers' actions as patriotic while others think the publishers should be tried under the Espionage Act?

4. Should the *San Francisco Chronicle* reporters who wrote about steroids in baseball be held to the same standards about revealing sources as reporters who write about national security issues? Why or why not?

5. Given what you have seen in *News War*, describe the role of news media in a democracy.

ADDITIONAL LESSON IDEAS

Media-Free Democracy

Assign students to write a fictional account of what life might be like in the United States if the government controlled available news media. You might follow-up by having the class read and discuss George Orwell's *1984*.

Compare and Contrast

Assign students to research the role of the press in a non-democratic country and compare the issues central to journalists in that country with the issues that journalists raise in *News War*. You may use a resource such as the companion Web site of the independent film "Democracy on Deadline"

<http://www.pbs.org/independentlens/democracyondeadline/film.html> that profiles journalists in Sierra Leone, Nigeria, Mexico, Israel, Palestine, Russia, and the United States.

A Country Without Free Speech

After reviewing the 2004 Knight Foundation study results

[<http://firstamendment.jideas.org/index.php>] that indicated weak support for First Amendment rights among high school students, have your students review the First Amendment and craft a response to a hypothetical peer who favors the removal of the First Amendment from the Constitution.

ADDITIONAL RESOURCES:

A Note About Internet Resources

Students need to be aware that Web sites sometimes present only one view of an issue. Encourage them to think about Web sites even as they are reading. Guiding questions as they review Web sites are: What did you learn from this site? What didn't you learn from this site? Who sponsors this site? What bias might the sponsor have? How current is the site?

News War

<http://www.pbs.org/wgbh/pages/frontline/newswar/>

The companion site to the FRONTLINE documentary includes the opportunity to watch the full program online in high-quality video, interviews with more than 50 journalists and public officials, a primer on freedom of the press, and an extensive set of background readings and links. Click on "Site Map" to easily find the resources you need.

PBS Teacher Source

www.pbs.org/teachersource/

A search for "media ethics" connects to dozens of excellent lesson plans.

A Hidden Life

<http://www.pbs.org/wgbh/pages/frontline/teach/hiddenlife/addl.html#2>

This lesson extension from the FRONTLINE program *A Hidden Life* allows students to understand the extent to which student publications are or are not protected by the First Amendment.

U.S. Department of State

<http://usinfo.state.gov/products/pubs/rightsof/press.htm>

This page provides a history of the development of legal protections for a free press.

<http://usinfo.state.gov/products/pubs/principles/freepress.htm>

This page provides the official U.S. government explanation of the role of a free press.

Teach the First Amendment

<http://teachfirstamendment.org/>

This Web site is a project of Ball State University's J-Ideas Project and funded by the John S. and James L. Knight Foundation to encourage greater visibility for the First Amendment in school curricula and to gather teaching materials related to the First Amendment.

FindLaw

<http://caselaw.lp.findlaw.com/data/constitution/amendment01/>

FindLaw is a commercial Web site that connects visitors to legal services and that provides resources to practicing attorneys. This page annotates case law related to the First Amendment and might be especially helpful for students as they prepare their *amicus briefs*.

The Oyez Project

<http://oyez.org>

Oyez is an online project that archives oral arguments made before the Supreme Court. It includes concise case summaries covering key issues and final decisions.

Poynter Institute

<http://www.poynter.org>

The Web site of this journalism school contains a wealth of resources related to journalism and ethics, including dozens of articles related to use and protection of confidential sources.

Benjamin Franklin

http://www.pbs.org/benfranklin/13_wit_read.html

The Web site for this PBS special on Ben Franklin includes the full text of his famous "Apology for Printers," which defends the press' need to print the truth, even when doing so offends or upsets people.