

First Amendment - Freedom Of Speech, Freedom Of The Press, Freedom Of Religion

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The First Amendment to the U.S. Constitution reads:

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.

At first glance, the First Amendment appears to be written in clear, unequivocal, and facile terms: "Congress shall make *no* law" (emphasis added) in contravention of certain religious and political principles. After a closer reading, and upon further reflection, the amendment's underlying complexities rise to the surface in the form of persistent questions that have nagged the legal system over the last two centuries. What kind of law "respect[s] the establishment of religion"? Does the First Amendment include here only laws that would establish an official national religion, as the Anglican Church was established in England prior to the American Revolution? Or does it also include laws that recognize or endorse religious activities such as the celebration of Christmas? More importantly, can people agree on what is meant by the word *religion* so that judges may know when religion is being "established" or when the right to its "free exercise" has been infringed? In the area of free speech, does the right to speak your mind include the right to use offensive language that could start a fight or incite a riot? Is **FREEDOM OF SPEECH** synonymous with freedom of expression, such that the right to condemn the U.S. government extends to offensive symbolic actions involving no written or spoken words, like burning the U.S. flag? Does **FREEDOM OF THE PRESS** protect the right to publish scurrilous, defamatory, and libelous material? If not, can the government prohibit the publication of such material before it goes to print?

The U.S. Supreme Court has confronted most of these questions. Its answers have not always produced unanimous, or even widespread, agreement around the United States. But the Court's decisions have provided a prism through which U.S. citizens have examined the appropriate limitations society may place on the freedoms protected by

the First Amendment, and have sparked colorful and spirited discussions among friends and family members, as well as politicians and their constituents.

The Founding Fathers were intimately familiar with government suppression of political speech. Prior to the American Revolution, the Crown imprisoned, pilloried, mutilated, exiled, and even killed men and women who belonged to minority political parties in England, in order to extinguish dissenting views. Many of these dissenters left England in search of more freedom in the New World, where they instead found colonial governments that stifled political dissidence with similar fervor. Maryland, for example, passed a law prohibiting "all speeches, practices and attempts relating to [the British Crown], that shall be thought mutinous and seditious," and provided punishments that included whipping, branding, fines, imprisonment, **BANISHMENT**, and death. The Free Speech Clause of the Constitution was drafted to protect such political dissenters from a similar fate in the newly founded United States.

In light of this background, the U.S. Supreme Court has afforded dissident political speech unparalleled constitutional protection. However, all speech is not equal under the First Amendment. The high court has identified five areas of expression that the government may legitimately restrict under certain circumstances. These areas are speech that incites illegal activity and subversive speech, fighting words, **OBSCENITY** and **PORNOGRAPHY**, commercial speech, and symbolic expression.

The Court has also made clear that states cannot restrict the free speech rights of candidates for judicial office. Unlike federal judges, most state judges must stand for election. In their codes of judicial conduct, states have imposed restrictions on what candidates or sitting judges may say about issues, in hopes of preserving judicial independence and assuring the public that the justice system is impartial. The Court, in *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528, 153 L. Ed.2d 694 (2002), rejected this approach as incompatible with the First Amendment. The restrictions were unconstitutional because they regulated speech based on content and burdened an important category of speech.

Speech that Incites Illegal Activity and Subversive Speech

Some speakers intend to arouse their listeners to take constructive steps to alter the political landscape. Every day in the United States, people hand out leaflets imploring neighbors to write to Congress about a particular subject, or to vote in a certain fashion on a **REFERENDUM**, or to contribute financially to political campaigns and civic organizations. For other speakers, existing political channels provide insufficient means to effectuate the type of change desired. These speakers may encourage others to take illegal and subversive measures to change the status quo. Such measures include resisting the draft during wartime, threatening public officials, and joining political organizations aimed at overthrowing the U.S. government. The U.S. Supreme Court has held that government may not prohibit speech that advocates illegal or subversive activity unless "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action" (*Brandenburg v. Ohio*, 395 U.S. 444, 89 S. Ct. 1827, 23 L. Ed. 2d 430 [1969]). Applying the *Brandenburg* test, the Court ruled that the government could not punish an anti-war protester who yelled, "[W]e'll take the fucking street later," because such speech "amounted to nothing more than advocacy of illegal action at some indefinite future time" (*Hess v. Indiana*, 414 U.S. 105, 94 S. Ct. 326, 38 L. Ed. 2d 303 [1973]). Nor could the government punish someone who, in opposition to the draft during the **VIETNAM WAR**, proclaimed, "[I]f they ever make me carry a rifle, the first man I want in my sights is [the president of the United States] L.B.J." (*Watts v. United States*, 394 U.S. 705, 89 S. Ct. 1399, 22 L. Ed. 2d 664 [1969]). Such politically charged rhetoric, the Court held, was mere hyperbole and not a threat intended to be acted on at a definite point in time.

Fighting Words Fighting words are words that "by their very utterance inflict injury or tend to incite an immediate breach of the peace" or have a "direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed" (*Chaplinsky v. New Hampshire*, 315 U.S. 568, 62 S. Ct. 766, 86 L. Ed. 1031 [1942]). Whereas subversive advocacy exhorts large numbers of people to engage in lawless conduct, fighting words are directed at provoking a specific individual. Generally, only the most inflammatory and derisive epithets will be characterized as fighting words.

Fighting words also should be distinguished from speech that is merely offensive. Crude or insensitive language may be heard in a variety of contexts—at work, on television, even at home. The U.S. Supreme Court

has ruled that speech that merely offends, or hurts the feelings of, another person—without eliciting a more dramatic response—is protected by the First Amendment. The Court has also underscored the responsibility of receivers to ignore offensive speech. Receivers can move away or divert their eyes from an offensive speaker, program, image, or message. In one case, the Court ruled that a young man had the right to wear, in a state courthouse, a jacket with the slogan Fuck the Draft emblazoned across the back, because persons at the courthouse could avert their eyes if offended (*Cohen v. California*, 403 U.S. 15, 91 S. Ct. 1780, 29 L. Ed. 2d 284 [1971]). "One man's vulgarity," the Court said, "is another's lyric," and the words chosen in this case conveyed a stronger message than would a sublimated variation such as Resist the Draft.

Obscenity and Pornography State and federal laws attempt to enforce societal norms by encouraging acceptable depictions of human sexuality and eliding unacceptable portrayals. Over the years, libidinous books such as *Lady Chatterly's Lover* (1951–1975) and adult movies such as *Deep Throat* (1972) have rankled communities, which have struggled to determine whether such works should be censored as immoral, or protected as art.

The U.S. Supreme Court has always had difficulty distinguishing obscene material, which is not protected by the First Amendment, from material that is merely salacious or titillating. Justice **POTTER STEWART** admitted that he could not define obscenity, but quipped, "I know it when I see it." Nonetheless, the Court has articulated a three-part test to determine when sexually oriented material is obscene. Material will not be declared obscene unless (1) the average person, applying contemporary community standards, would find that its predominant theme appeals to a "prurient" interest;(2) it depicts or describes sexual activity in a "patently offensive" manner; and (3) it lacks, when taken as a whole, serious literary, artistic, political, or scientific value (**MILLER V. CALIFORNIA**, 413 U.S. 15 93 S. Ct. 2607, 37 L. Ed. 2d 419 [1973]).

Although the U.S. Supreme Court has failed to adequately define words like *prurient*, *patently offensive*, and *serious artistic value*, literary works that involve sexually related material are strongly protected by the First Amendment, as are magazines like *Playboy* and *Penthouse*. More difficult questions are presented in the area of adult cinema. Courts generally distinguish hard-core pornography, which graphically

depicts copulation and oral sex, from soft-core pornography, which displays nudity and human sexuality short of these sex acts. In close cases that fall somewhere in the gray areas of pornography, the outcome may turn on the community standards applied by a jury in a particular locale. Thus, pornography that could be prohibited as obscene in a small rural community might receive First Amendment protection in Times Square.

The reach of the **INTERNET** has led to the distribution of sexually explicit materials through cyberspace. The federal government has sought to regulate this material, but the U.S. Supreme Court has found First Amendment violations. In *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S. Ct. 1389, 152 L. Ed.2d 403(2002), the Court struck down provisions of the Child Pornography Prevention Act of 1996 (CPPA) because they censored legally protected speech as well as unprotected speech. It noted that the law sought to ban "virtual child pornography," which is produced through computer-generated imaging or youthful-looking adults. The greatest constitutional problems came from the failure of Congress to comply with each element of the *Miller* test. Congress had not required that the material be "offensive" or that it "appealed to prurient interests" in order to violate the law. This made the law overbroad under the First Amendment because all material depicting sexual conduct of persons under 18 years of age would be prohibited, despite any underlying merit or value.

Commercial Speech Commercial speech, such as advertising, receives more First Amendment protection than fighting words and obscenity, but less protection than political oratory. Advertising deserves more protection than the first three categories of expression because of the consumer's interest in the free flow of market information (*Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*, 425U.S. 748, 96 S. Ct. 1817, 48 L. Ed. 2d 346 [1976]). In a free-market economy, consumers depend on information regarding the quality, quantity, and price of various goods and services. Society is not similarly served by the free exchange of obscenity. The U.S. Supreme Court has continued to review commercial speech restrictions with a wary eye. In *Lorillard Tobacco Corp. v. Reilly*, 533 U.S. 525, 121 S. Ct. 2404, 150 L. Ed.2d 532(2001), it struck down state regulations that sought to restrict outdoor and indoor tobacco advertising that targeted minors. The Court found that the provisions were too broad and that they did not advance the state's interests in discouraging tobacco consumption. In another case, *Thompson v.*

Western States Medical Center, 535 U.S. 357, 122 S. Ct. 1497, 152 L. Ed.2d 563(2002), the Court struck down advertising restrictions on pharmacies and pharmacists, imposed by **FOOD AND DRUG ADMINISTRATION** (FDA) regulations. The Court found that the FDA had other means of regulating certain products and that regulating speech should be the last option rather than the first. In *U.S. v. United Foods*, 533 U.S. 405, 121 S. Ct. 2334, 150L. Ed.2d 438 (2001), the Court barred a government-sponsored agricultural product board from assessing fees from producers to be used in product advertisement. It concluded that the First Amendment not only addresses the banning of speech; it also prevents the government from forcing persons to express views they not agree with.

At the same time, commercial speech deserves less protection than do political orations because society has a greater interest in receiving accurate commercial information and may be less savvy in flushing out false and deceptive rhetoric. The average citizen is more prone, the U.S. Supreme Court has suggested, to discount the words of a politician than to discount the words of a Fortune 500 company. The average citizen may be more vulnerable to misleading advertising as well. Even during an election year, most people view more commercial advertisements than political advertisements, and they rely on those advertisements when purchasing the clothes they wear, the food they eat, and the automobiles they drive. Thus, the U.S. Supreme Court permits government regulation of commercial speech that is intended to prevent misleading and deceptive advertising.

Symbolic Expression Not all forms of expression involve words. The nod of a head, the wave of a hand, and the wink of an eye all communicate something without language. The television image of a defenseless Chinese student facing down a line of tanks during protests in support of democracy near Tiananmen Square in 1989 will be forever seared into the minds of viewers.

Not all symbolic conduct is considered speech for First Amendment purposes. If an individual uses a symbolic expression with the intent to communicate a specific message and under circumstances in which the audience is likely to understand its meaning, the government may not regulate that expression unless the regulation serves a significant societal interest unrelated to the suppression of ideas (*Spence v. Washington*, 418 U.S. 405, 94 S. Ct. 2727, 41 L. Ed. 2d 842 [1974]; *United States v. O'Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L. Ed.

2d 672 [1968]). Applying this standard, the U.S. Supreme Court overturned the conviction of a person who had burned the American flag in protest over the policies of President **RONALD REAGAN** (**TEXAS V. JOHNSON**, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 [1989]), and reversed the suspension of a high-school student for wearing a black armband in protest of the Vietnam War (**TINKER V. DES MOINES INDEPENDENT SCHOOL DISTRICT**, 393 U.S. 503, 89 S. Ct. 733, 21 L. Ed. 2d 731[1969]), but upheld federal legislation that prohibited the burning of draft cards (*O'Brien*). Of the government interests asserted in these three cases, maintaining the integrity of the **SELECTIVE SERVICE SYSTEM** was the only interest of sufficient weight to overcome the First Amendment right to engage in symbolic expression.

In *City of Erie v. Pap's A. M.*, 529 U.S. 277, 120 S. Ct. 1382, 146 L. Ed. 2d 265 (2000), the U.S. Supreme Court ruled that a **ZONING** ordinance that barred nude-dancing establishments did not violate the First Amendment, again using the symbolic-expression standard. In that case, the city of Erie, Pennsylvania, had not sought to ban the expressive conduct itself (nude dancing), thus the zoning law was content-neutral. The city had a right under its **POLICE POWERS** to protect public health and safety. It also had a legitimate reason for the law: the harmful, secondary effects of nude dancing establishments in a community.

Religion

Establishment Clause Prior to the American Revolution, the English designated the Anglican Church as the official church of their country. The church was supported by taxation, and all English people were required to attend its services. No marriage or baptism was sanctioned outside of the church. Members of religious minorities who failed to abide by the strictures of the church were forced to endure civil and criminal penalties, including banishment and death. Some American colonies were also ruled by persecutorial theocrats, such as the Puritans in Massachusetts.

These English and colonial experiences influenced the Founding Fathers, including Jefferson and Madison. Jefferson supported a high wall of separation between church and state. Furthermore, Jefferson, a student of the Enlightenment (an eighteenth-century philosophical movement whose members rejected traditional values and embraced rationalism), opposed religious influence on the business of government. In turn, Madison, a champion of religious minorities,

opposed government interference with religion. For Madison, the establishment of a national church differed from the Spanish Inquisition "only in degree," and he vociferously attacked any legislation that would have led the colonies down that path. For example, Madison led the fight against a Virginia bill that would have levied taxes to subsidize Christianity.

The thoughts and intentions of Madison have been the subject of rancorous discord among the U.S. Supreme Court justices who have attempted to interpret the Establishment Clause in a variety of contexts. Some justices, for example, cite Madison's opposition to the Virginia bill as evidence that he opposed only discriminatory government assistance to particular religious denominations, but that he favored nonpreferential aid in order to cultivate a diversity in faiths. Thus, the left posterity with three considerations regarding religious establishments: (1) a wall of separation that protects government from religion and religion from government; (2) a separation of church and state that permits nondiscriminatory government assistance to religious groups; and (3) government assistance that preserves and promotes a diversity of religious beliefs.

The U.S. Supreme Court attempted to incorporate these three considerations under a single test in *Lemon v. Kurtzman*, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971). In *Lemon*, the Court held that state and federal government may enact legislation that concerns religion or religious organizations so long as the legislation has a secular purpose, and a primary effect that neither advances nor inhibits religion nor otherwise fosters an excessive entanglement between church and state. Under this test, the U.S. Court of Appeals for the Fifth Circuit invalidated a Mississippi statute that permitted public school students to initiate nonsectarian prayers at various compulsory and noncompulsory school events (*Ingebretsen v. Jackson Public School District*, 88 F.3d 274 [1996]). By contrast, the Court has permitted state legislatures to open their sessions with a short prayer—because, the Court says, history and tradition have secularized this otherwise religious act (*Marsh v. Chambers*, 463 U.S. 783, 103 S. Ct. 3330, 77 L. Ed. 2d 1019 [1983]).

The Court has made seemingly inconsistent rulings in other areas, as well. For instance, it permitted a municipality to include a Nativity scene in its annual Christmas display (*Lynch v. Donnelly*, 465 U.S. 668, 104 S. Ct. 1355, 79 L. Ed. 2d 604 [1984]), whereas it prohibited a county

courthouse from placing a crèche on its staircase during the holiday season (*Allegheny v. ACLU*, 492 U.S. 573, 109 S. Ct. 3086, 106 L. Ed. 2d 472[1989]). In *Allegheny*, the Court said that nothing in the county courthouse indicated that the crèche was anything other than a religious display, whereas in *Lynch*, the Nativity scene was part of a wider celebration of the winter holidays. Such inconsistencies will continue to plague the Court as the justices attempt to reconcile the language of the Establishment Clause with the different considerations of the Founding Fathers.

Free Exercise Clause The Establishment Clause and the Free Exercise Clause represent flip sides of the same coin. Whereas the Establishment Clause focuses on government action that would create, support, or endorse an official national religion, the Free Exercise Clause focuses on the pernicious effects that government action may have on an individual's religious beliefs or practices. Like the Establishment Clause, the Free Exercise Clause was drafted in response to the Framers' desire to protect members of religious minorities from persecution.

The Framers' understanding of the Free Exercise Clause is illustrated by the **NEW YORK CONSTITUTION OF 1777**, which stated, [T]he free exercise and enjoyment of religious ... worship, without discrimination or preference, shall forever ... be allowed ... to all mankind: *Provided*, that the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State. (N.Y. Const. Art. 1 § 3)

The New Hampshire Constitution of 1784 similarly provided that "[every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt ... in his person, liberty or estate for worshipping God" in a manner "most agreeable" to those dictates, "provided he doth not disturb the public peace" (N.H. Const. Pt. 1, Art. 5).

These state constitutional provisions not only provide insight into the Founding Fathers' original understanding of the First Amendment, but they also embody the fundamental tenets of modern free exercise **JURISPRUDENCE**. The U.S. Supreme Court has identified three principles underlying the Free Exercise Clause: (1) no individual may be compelled by law to accept any particular religion or form of

worship; (2) all individuals are constitutionally permitted to choose a religion freely in accordance with their conscience and spirituality, and the government may not inhibit their religious practices; and (3) the government may enforce its criminal norms against persons whose religious practices would thwart a compelling societal interest. Rarely is a law that infringes upon someone's religious beliefs or practices supported by a compelling state interest. The U.S. Supreme Court has held that no compelling societal interest would be served by actions that conflict with deeply held religious beliefs, such as coercing members of the Jehovah's Witnesses to salute the U.S. flag in public schools (*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 [1943]); denying unemployment benefits to Seventh-Day Adventists who refuse to work on Saturdays (*Sherbert v. Verner*, 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 [1963]); or requiring Amish families to keep their children in state schools until the age of 16 (*Wisconsin v. Yoder*, 406 U.S. 205, 92 S. Ct. 1526, 32 L. Ed. 2d 15 [1972]). However, a compelling government interest is served by the federal revenue system, so no member of any religious sect can claim exemption from taxation (*United States v. Lee*, 455 U.S. 252, 102 S. Ct. 1051, 71 L. Ed. 2d 127 [1982]).

A different question is presented when the government disputes whether a particular belief or practice is religious in nature. This typically happens when conscientious objectors resist the federal government's attempt to conscript them during wartime. Some draft resisters object to war on moral or ethical grounds that are unrelated to orthodox or doctrinal religions. If a **CONSCIENTIOUS OBJECTOR** admits to being atheistic or agnostic, the government asks, then how can that objector avoid **CONSCRIPTION** by relying on the First Amendment, which protects the free exercise of religion? In an effort to answer this question, the U.S. Supreme Court explained that the government cannot "aid all religions against non-believers," any more than it can aid one religion over another (*Torcaso v. Watkins*, 367 U.S. 488, 81 S. Ct. 1680, 6 L. Ed. 2d 982 [1961]). Thus, as long as a person "deeply and sincerely holds beliefs which are purely ethical or moral in source and content but that nevertheless impose upon him a duty of conscience to refrain from participating in any war at any time, those beliefs" are protected by the First Amendment (**WELSH V. UNITED STATES**, 398 U.S. 333, 90 S. Ct. 1792, 26 L. Ed. 2d 308 [1970]). A belief—religious, moral, or ethical—that manifests itself in a person's selective opposition to only certain wars or military conflicts is not protected by the Free Exercise Clause.

First Amendment - Freedom Of The Press

The American Revolution was a revolution of literature as well as politics. The colonists published a profusion of newspaper articles, books, essays, and pamphlets in opposition to various forms of British tyranny. Thomas Paine's *Common Sense* (1776) and Thomas Jefferson's Declaration of Independence (1776) are two well-known and influential examples of revolutionary literature published in the colonies. A free press, the Founding Fathers believed, was an essential check against despotism, and integral to advancing human understanding of the sciences, arts, and humanities.

The Founding Fathers did not agree on how best to protect the press from **ARBITRARY** government action. A majority of the Founding Fathers adhered to the English common-law view that equated a free press with the doctrine of no **PRIOR RESTRAINT**. This doctrine provided that no publication could be suppressed by the government before it is released to the public, and that the publication of something could not be conditioned upon judicial approval before its release. On the other hand, the English **COMMON LAW** permitted prosecution for libelous and seditious material after publication. Thus, the law protected vituperative political publications only insofar as the author was prepared to serve time in jail or to pay a fine for wrongful published attacks.

A minority of Founding Fathers adhered to the view articulated by **JAMES MADISON**: "The security of the freedom of the press requires that it should be exempt, not only from previous restraint of the executive, as in Great Britain; but from legislative restraint also; and this exemption, not only from the previous inspection of licensers, but from the subsequent penalty of laws." Madison was concerned that authors would be deterred from writing articles that assailed government activity if the government were permitted to prosecute them following release of their works to the public. Before 1964, the Madisonian concept of a free press found very little support among the fifty states. Not only was subsequent punishment permitted for seditious and libelous publications, but in many states, truth was not a defense to allegations of **DEFAMATION**. If a story tended to discredit the reputation of a public official, the publisher could be held liable for

money damages even if the story were accurate. In states where truth was allowed as a defense, the publisher often carried the burden of demonstrating its veracity. Newspapers and other media outlets soon flooded the courts with lawsuits alleging that these **LIBEL** laws violated their First Amendment rights by "chilling" the pens of writers with the specter of civil liability for money damages.

In the seminal case [**NEW YORK TIMES V. SULLIVAN**](#), 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), the U.S. Supreme Court extended First Amendment protection for print and electronic media far beyond the protection envisioned by the English common law. Before money damages can be assessed against a member of the media for a libelous or defamatory statement, the Court held, the injured party, not the publisher, must demonstrate by "clear and convincing" evidence that the statement not only was false but also was published with "actual malice." Actual malice may be established only by proof that the media member recklessly published a statement without regard to its veracity or that it had actual knowledge of its falsity. In arriving at this standard, the Court balanced society's need for an uninhibited flow of information about public figures, particularly elected officials, against an individual's right to protect the integrity and value of his or her reputation. The twentieth century also saw the U.S. Supreme Court strengthen the doctrine of no prior restraint. In [**NEAR V. MINNESOTA**](#), 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931), the Court ruled that there is a constitutional presumption against prior restraint that may not be overcome unless the government can demonstrate that **CENSORSHIP** is necessary to prevent a "clear and present danger" of a national security breach. In [**NEW YORK TIMES V. UNITED STATES**](#), 403 U.S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822(1971), the Court applied this presumption against the U.S. **DEPARTMENT OF JUSTICE**, which had sought an **INJUNCTION** to prevent the publication of classified material that would reveal the government's secrecy and deception behind the U.S. involvement in the Vietnam War. If this classified material, also known as the Pentagon Papers, had threatened U.S. troops by disclosing their location or movement, the Court said, publication would not have been permitted.

In *Bartnicki v. Vopper*, 532 U.S. 514, 121 S. Ct. 1753, 149 L. Ed.2d 787 (2001), Court confronted an intriguing issue involving the privacy of wireless phone conversations and the right of the press to report these conversations. It had to consider whether the government could punish the publication because the information was obtained in violation of

the WIRETAPPING laws. The government had argued that the laws sought to protect the privacy and to minimize the harm to persons whose conversations had been illegally intercepted. The Court ultimately concluded that these privacy interests were outweighed by the "interest in publishing matters of public importance." Because the people involved in the intercepted call were public figures, engaged in public matters, they had surrendered some of their privacy rights.