

Kelly Dutcher, Harbor Springs High School

James Madison Foundation: Freedom of the Press in the age of “Fake News”

Recommended Grade/Ability Level

High School Students

Recommended Lesson Length

60- minute lesson length

Central Engagement Question/Essential Question

Would requiring news sources to certify news as true abridge their constitutional protection of Freedom of the Press?

Overview

This lesson will first review the history of Supreme Court rulings on freedom of the press and then allow students to debate the constitutionality of a new mock law that requires media sources to verify accuracy or announce bias at the beginning of all articles, posts, or broadcasts.

Materials

1. Handout 1a and 1b: 1st Amendment and Timeline of related Freedom of the Press Cases
2. Handout 2a and 2b: Mock policy decision with justification

Objectives

1. Students will be able to understand the application of the First Amendment freedom of the press.
2. Student will be able to understand the role of the supreme court in interpreting the constitution
3. Students will be able to analyze and discuss the application of the First Amendment limits, especially prior restraint

Standards

NCSS Themes: Individuals, Groups and Institutions, Power, Authority and Governance

C3 Framework:

D2.Civ.9.9-12. Use appropriate deliberative processes in multiple settings.

D2.Civ.12.9-12. Analyze how people use and challenge local, state, national, and international laws to address a variety of public issues.

Background Information/Homework/Pre-Learning

Students should understand the function of the Supreme Court and have a basic understanding of the Bill of Rights. Students should be familiar with differing interpretations of some amendments to the constitution and the way in which vague language in law can lead to ambiguities in policy. Students should also have conservative and liberal ideologies and bias.

Anticipatory Activity/Bell-Ringer

1. Teacher will write 2 real headlines from actual news outlets, and 1 fake headline on the board. Have students write the headline they think is fake, and justify why they believe it is fake.
 - a. Sample headlines:
 - “Harambe, a dead gorilla, got over 15,000 votes for president of the United States.”¹
 - “King Cobras in A Can: Deadly Snakes Arrive in the U.S., Shipped As Potato Chips”²
 - “Pipe bomb handed back to passenger Skylar Murphy by airport guard”³
2. Once students have answered each question individually the teacher should explain that we are going to check and see how the class did at detecting real news.
3. Teacher will read each headline one at a time, for each headline, ask all students who believe it is untrue should stand. Ask 2-3 standing students what made them categorize it was fake. Also, ask 1-2 seated students to share what makes them categorize that headline as true.
 - a. Repeat this for each of the three headlines, then reveal the correct answer.
 - b. Headline 2 and 3 are true, headline 1 is false.

Activity (Activities)

4. Explain to students that today we are going to be examining the first amendment right to freedom of the press.
5. Hand out copies of *Handout 1a*, and *Handout 1b* the 1st amendment and the timeline of Supreme Court cases dealing with free press.
6. Read the excerpt of the 1st Amendment aloud to the class.
7. Ask students to think-write-pair-share their answers to the guiding questions on Handout 1A, and conduct a brief discussion on why free press is essential in a democracy.
8. Provide students with a brief history of the 1st amendment free press and examples.
 - a. Explain that in order to understand the full scope of Freedom of the Press, we must look at how the past Supreme Courts have ruled on freedom of the press issues, especially dealing with prior restraint.
 - b. Ask students to read each of the cases listed on handout 1b, and to follow the directions on the handout. This may be done in pairs or groups at the teacher’s discretion.
9. Once students have completed work on their own, review each case with students and clarify any misconceptions about each case and its application.

¹ "Quiz: Can you spot the fake stories?" BBC News, November 17, 2016, , accessed November 13, 2017, <http://www.bbc.com/news/magazine-38005844>.

² Chappel, Bill. "King Cobras In A Can: Deadly Snakes Arrive In U.S., Shipped As Potato Chips." The Two Way: Breaking News from NPR. July 26, 2017. Accessed November 13, 2017. <https://www.npr.org/sections/thetwo-way/2017/07/26/539527361/king-cobras-in-a-can-deadly-snakes-arrive-in-u-s-shipped-as-potato-chips>.

³ News, CBC. "Pipe bomb handed back to Edmonton passenger by airport guard." CBCnews. January 15, 2014. Accessed November 13, 2017. <http://www.cbc.ca/news/canada/edmonton/pipe-bomb-handed-back-to-passenger-skylar-murphy-by-airport-guard-1.2497650>.

10. Explain that we will now examine a proposed law:
 - a. A law to protect the common good by requiring a label certifying truth. This law will apply to print sources and broadcast news, as well as online posts made on news websites, blogs, and other social media outlets. Publishing or reposting “fake news” that leads to harm can result in a fine.
11. Have each student get a partner; partner A will receive handout 2A (the law is constitutional), partner B will receive handout 2B (the law creates prior restraint.) Students should read the side of the argument they are assigned and prepare to convince his or her partner that their side is correct.
 - a. Once students have completed reading their side, and answer answering the guiding questions, have students with like sides gather to discuss their answers to the guiding questions, and their overall opinions of the constitutionality of the proposed law.
 - b. It may be helpful to assign a group facilitator for each group, someone who will ensure that everyone is given a chance to voice their opinion about the case. During this time the teacher should circulate among the groups to ensure that each group understands their side of the argument.
12. Once the groups have completed their discussion of their side, students will return to their partner. They will participate in a “mini-debate” in which each student is given 1 minute to debate his or her partner.

Wrap-Up

13. At the end of the mini-debate, the class will together decide on the constitutionality of the law.
 - a. Make a list on the board, or butcher paper with all of the arguments for each side, then ask each students to “cast a vote” in the decision.
 - b. Discuss the decision of the “class court”
 - c. Then discuss that a Supreme Court chief justice would then assign the majority opinion of the court. Also, acknowledge that anyone voting in the minority would have the opportunity to write a dissenting opinion.

Assessment

14. Exit ticket or Homework

- a. Students can write a reflection on the central question: *What can the government do to support the common good in an era of “Fake News”* The reflection should use examples from the case studies and the Supreme Court precedents to support the student’s opinion.

Extensions:

Fake Or Real? How To Self-Check The News And Get The Facts:

<https://www.npr.org/sections/alltechconsidered/2016/12/05/503581220/fake-or-real-how-to-self-check-the-news-and-get-the-facts>

Quiz: Can you spot the fake stories?

<http://www.bbc.com/news/magazine-38005844>

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Handout 1a:

Amendment I

“Congress shall make no law... abridging the freedom of speech, or of the press
.....⁴”

Guiding Questions:

1. In this context, what does the word abridging most likely mean?

2. How are freedom of speech and freedom of press related?

*“In the First Amendment the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government’s power to censor the press was abolished so that the press would remain forever free to censure the government.”
Supreme Court Justice Hugo Black New York Times v. United States (1971)⁵*

3. Justice Hugo Black argues free press must be given protection “*to fulfill its essential role in our democracy.*” What role does free press play in a democracy?

⁴ Staff, LII. "First Amendment." LII / Legal Information Institute. February 05, 2010. Accessed November 13, 2017. https://www.law.cornell.edu/constitution/first_amendment.

⁵ UL-Lafayette Computing Support Services. Accessed November 13, 2017. <http://www.ucs.louisiana.edu/~ras2777/amgov/nyt.html>.

Handout 1 B

Directions: Read and annotate each Supreme Court Case below each case applies either to freedom of the press and prior restraint. For each case write the court's opinion in your own words and explain how the case might apply to censoring the press for "fake news"

Timeline of related Freedom of the Press Cases From The Bill of Rights Institute⁶

Near v. Minnesota (1931) The Supreme Court held that the law authorizing the injunction was unconstitutional as applied. History had shown that the protection against previous restraints was at the heart of the First Amendment. The Court held that the statutory scheme constituted a prior restraint and hence was invalid under the First Amendment. The Court established as a constitutional principle the doctrine that, with some narrow exceptions, ***the government could not censor or otherwise prohibit a publication in advance (prior restraint)***, even though the communication might be punishable after publication in a criminal or other proceeding.⁷ This decision also extended protection of press freedom to the states through the Fourteenth Amendment.⁸

New York Times v. Sullivan (1964) The First Amendment protected all statements about public officials unless the speaker lied with the intent to defame.

Garrison v. Louisiana (1964) A Louisiana law that punished true statements made with "actual malice" was overturned. The Court ruled that unless a newspaper shows reckless disregard for the truth it is protected under the First Amendment. Therefore, laws may only criminalize statements that are ***knowingly false or made with a reckless disregard for their truth or falsity***. This limitation on libel statutes is in line with the precedent the Court established in *New York Times v. Sullivan*, and there is no reason that the freedom of speech protections should apply differently to a civil libel statute than to a criminal one.

New York Times v. United States (1971) A claimed threat to national security was not justification for prior restraint on publication of classified documents (the Pentagon Papers) about the Vietnam War.⁹

Nebraska Press Association v. Stuart (1976) A judge's order that the media not publish or broadcast statements by police in a murder trial was an unconstitutional prior restraint. The gag order violated the First Amendment rights of the press and the community.

⁶ "Freedom of the Press." Bill of Rights Institute. Accessed November 13, 2017.

<https://www.billofrightsinstitute.org/educate/educator-resources/landmark-cases/freedom-of-the-press/>.

⁷ "Near v. Minnesota ex rel. Olson." Oyez. Accessed November 13, 2017. <https://www.oyez.org/cases/1900-1940/283us697>.

⁸ "Garrison v. Louisiana." Oyez. Accessed November 13, 2017. <https://www.oyez.org/cases/1964/4>.

⁹ "New York Times Company v. United States." Oyez. Accessed November 13, 2017. <https://www.oyez.org/cases/1970/1873>.

Handout 2 A

Proposed law:

A law to protect the common good by requiring a label certifying truth. This law will apply to print sources and broadcast news, as well as online posts made on news websites, blogs, and other social media outlets. Publishing or reposting “fake news” that leads to harm can result in a fine.

Your position is in favor of the law. You will argue that it is constitutional.

Justification:

- Fake news is news that is not true. It could be partially true. It could appear to be true, but it is not verified. In some cases, it is based on opinion stated as fact, at other time it is completely fabricated. Currently, there is little legal punishment for reporting or reposting news that is not true.
- If citizens can't trust the news, it will lose its power to help keep the American democracy free.

Below: please list what you believe the strongest part of your argument is. Also, add additional information from the cases above that will help your argument

Handout 2 B

Proposed law:

A law to protect the common good by requiring a label certifying truth. This law will apply to print sources and broadcast news, as well as online posts made on news websites, blogs, and other social media outlets. Publishing or reposting “fake news” that leads to harm can result in a fine.

Your position is against the law. You will argue that it is unconstitutional.

Justification:

- More dangerous than fake news, is censorship of news. When unpopular news that doesn't hold the “majority view” is censored by the government, the solution should be more freedom of the press, not less.
- Requiring news to be “certified” is a form of prior restraint. Supreme Court has declared that prior restraint should only be used in extreme cases. It was declared unconstitutional in other cases including *New York Times v. United States* and *Nebraska Press Association v. Stuart*

Below: please list what you believe the strongest part of your argument is. Also, add additional information from the cases above that will help your argument

End Notes:

Cengeri, Jane Lindholm Ric. "Living In The Era Of Fake News." Vermont Public Radio. Accessed November 13, 2017. <http://digital.vpr.net/post/living-era-fake-news#stream/0>.

Chappel, Bill. "King Cobras In A Can: Deadly Snakes Arrive In U.S., Shipped As Potato Chips." The Two Way: Breaking News from NPR. July 26, 2017. Accessed November 13, 2017. <https://www.npr.org/sections/thetwo-way/2017/07/26/539527361/king-cobras-in-a-can-deadly-snakes-arrive-in-u-s-shipped-as-potato-chips>.

Davis, Wynne. "Fake Or Real? How To Self-Check The News And Get The Facts." NPR. December 05, 2016. Accessed November 13, 2017. <https://www.npr.org/sections/alltechconsidered/2016/12/05/503581220/fake-or-real-how-to-self-check-the-news-and-get-the-facts>.

"Freedom of the Press." Bill of Rights Institute. Accessed November 13, 2017. <https://www.billofrights.org/educate/educator-resources/landmark-cases/freedom-of-the-press/>.

"Garrison v. Louisiana." Oyez. Accessed November 13, 2017. <https://www.oyez.org/cases/1964/4>.

"Near v. Minnesota ex rel. Olson." Oyez. Accessed November 13, 2017. <https://www.oyez.org/cases/1900-1940/283us697>.

News, CBC. "Pipe bomb handed back to Edmonton passenger by airport guard." CBCnews. January 15, 2014. Accessed November 13, 2017. <http://www.cbc.ca/news/canada/edmonton/pipe-bomb-handed-back-to-passenger-sky-lar-murphy-by-airport-guard-1.2497650>.

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