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

**Historical Background:**

Over the years the Supreme Court has disagreed on the limits that can be placed on the 1st Amendment guarantees of freedom of speech and press. In 1971, the Court faced these issues again in a case brought by the *New York Times*. The newspaper had obtained a copy of documents known as “The Pentagon Papers“-an internal Defense Department report that detailed government deception with regard to the Vietnam War. The Pentagon Papers surfaced at a time when the American people were deeply divided on the question of United States involvement in the war. The *New York Times* fought for the right to publish the papers under the umbrella of the 1st Amendment.

**Circumstances of the Case:**

The Pentagon Papers, officially known as “History of U.S. Decision-Making Process on Viet Nam Policy,“ were illegally copied and then leaked to the press. The *New York Times*and the*Washington Post* had obtained the documents. Acting at the Government's request, the United States district court in New York issued a temporary injunction-a court order-that directed the *New York Times* not to publish the documents. The Government claimed that the publication of the papers would endanger the security of the United States. The *New York Times* appealed the order to the United States Supreme Court, arguing that prior restraint-preventing publication-violated the 1st Amendment.

**Constitutional Issues:**

Are the freedoms provided by the 1st Amendment absolute? Did the threat to national security outweigh the freedom of press guaranteed by the 1st Amendment? Did the publication of the Pentagon Papers in fact pose a threat to national security?

**Arguments:**

*For the New York Times*: The 1st Amendment's guarantee of freedom of the press protects the newspaper in the publication of these documents. One of the few restraints on executive power in matters of national defense is a knowledgeable population. The press must be free to inform the American people. In addition, the Government has failed to show that publication of the Pentagon Papers would endanger national security.

**For the United States:**

The 1st Amendment does not guarantee an absolute freedom of the press, especially when the nation's security is involved. The Court must strike a balance between the fundamentally important right to a free press and the equally important duty of the Government to protect the nation. Allowing the publication of these documents would establish a dangerous precedent for future cases involving national security.

**Decision and Rationale:**

By a 6-3 decision, the Court ruled in favor of the *New York Times*. In the judgment, the Court cited a prevailing precedent, noting: “Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.“ In other words, the Court would not be favorably disposed to stifling the press on the order of the government.

Justices Hugo Black and William Douglas, members of the majority, held that the 1st Amendment is absolute. Justice Black called it “unfortunate“ in his view “that some of my Brethren [fellow justices] are apparently willing to hold that the publication of news may sometimes be enjoined. Such a holding,“ he wrote, “would make a shambles of the First Amendment.“

Justice Byron White, joined by Justice Potter Stewart, believed that while there are situations in which the 1st Amendment may be abridged, they had to “concur in today's judgments, but only because of the concededly extraordinary protection against prior restraints enjoyed by the press under our constitutional system.“ Although the justices thought that the *New York Times* had probably gone too far in publishing the Pentagon Papers, they found nothing in the law to prevent the newspaper from doing so.

Deferring to responsibilities of the Executive, Chief Justice Warren Burger dissented. Given those vast responsibilities, Burger noted, the Executive also had to be given broader authority. “In these cases, the imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex modern government and specifically the effective exercise of certain constitutional powers of the Executive,“ Burger wrote. “Only those who view the First Amendment as an absolute in all circumstances-a view I respect, but reject-can find such cases as these to be simple or easy.“

The decision reinforced the Court's stance against prior restraint and has often been noted in subsequent prior restraint cases. In the spring of 2000, a Texas district court judge ordered the Associated Press (AP) not to publish a story about a state-guaranteed loan to a Texas shrimp farm. Lawyers for the AP cited the *New York Times* case in their argument. The judge lifted the order after two days of hearings.