

An Integrated Curriculum For The Washington Post Newspaper In Education Program

## The Movie



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This resource guide may be considered a guide to viewing and discussing the Steve Spielberg-directed movie, *The Post*. The movie begins in Vietnam, moves to D.C., celebrates the Supreme Court decision which continues daily as newspapers and media inform the public.

## NO JUST ANY MOVIE

The movie is based on the real-life threat to freedom of the press when the Nixon administration brought legal action to stop *The New York Times* from publishing from the Pentagon Papers and then days later against *The Washington Post* and other newspapers. It is the story of commitment to a constitutional principle that could have endangered corporate and personal financial security. It is the story of one woman in a man's world gaining her self-confidence and finding her voice.

Newton Minow, former chair of the Federal Communications Commission and of the Rand Corporation, called *The Post* “especially significant for young people who did not live through the period of the Pentagon Papers and for those in office today who have forgotten its lessons.”

A You and Your Rights activity is included in this guide. After students have an understanding of the Supreme Court case and have viewed the movie, teachers may ask their students: “What About Today? Who Has a Right to Know?” This activity was written by Dr. Roger Soenksen, a professor in the School of Media Arts & Design at James Madison University (Virginia). He teaches Mass Communication Law, First Amendment Law, Legal Communication, and Introduction to Media Arts. In 1986 he received the Carl Harter Distinguished Teaching Award. In 1993 he was named a Madison Scholar, and most recently, he was awarded the prestigious Provost's Award for Excellence in Academic Advising in 2012. Dr. Soenksen has served on the College Media Association's College Media Law Committee as both a member and chair. Dr. Soenksen may be reached at [soenksra@jmu.edu](mailto:soenksra@jmu.edu).

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## Retropolis

# Fact checking ‘The Post’: The incredible Pentagon Papers drama Spielberg left out

BY MICHAEL S. ROSENWALD

• Originally Published December 23, 2017

When *Washington Post* reporters showed up at Ben Bradlee’s house in Georgetown to sift through the Pentagon Papers, his 10-year-old daughter Marina really was outside selling lemonade.

Bradlee’s library really did become a newsroom, his living room a legal boardroom. His wife, Tony, really did politely serve sandwiches. The phone really didn’t stop ringing.

It was,” Bradlee later wrote, “bedlam.”

While Steven Spielberg’s acclaimed new film, “The Post,” predictably Hollywoodizes the paper’s pursuit of highly secret Vietnam War documents — the scene where an eager young intern is sent to spy on the *New York Times*, for instance, never happened — the director, for the most part, accurately portrays the frantic history.

He also leaves out some really good stuff.

Like the night Chief Justice Warren Burger, holding a pistol, greeted two Post reporters at his front door in his bathrobe.

This was after Ben Bagdikian, the paper’s national editor, flew back from Boston with the papers in the seat next to him. (More on that shortly.) The Post published, the government sued, and now the issue was winding through the courts.

One night, Bradlee became worried that Justice Department officials would go directly to Burger’s house to file an appeal. “We didn’t want the government to sneak out unnoticed to Burger’s house,” Bradlee wrote

in his memoir, *A Good Life*, “so we sent our own emissaries.”

One of them was legendary (then and still) night reporter Martin Weil — “a former CIA type,” Bradlee wrote, known for his distinguished and whimsical prose. (Last year, during a long stretch of rain, Weil wrote, “The number of consecutive days of rain in Washington grew Saturday to surpass the level where the count could be kept on fingers alone.”)

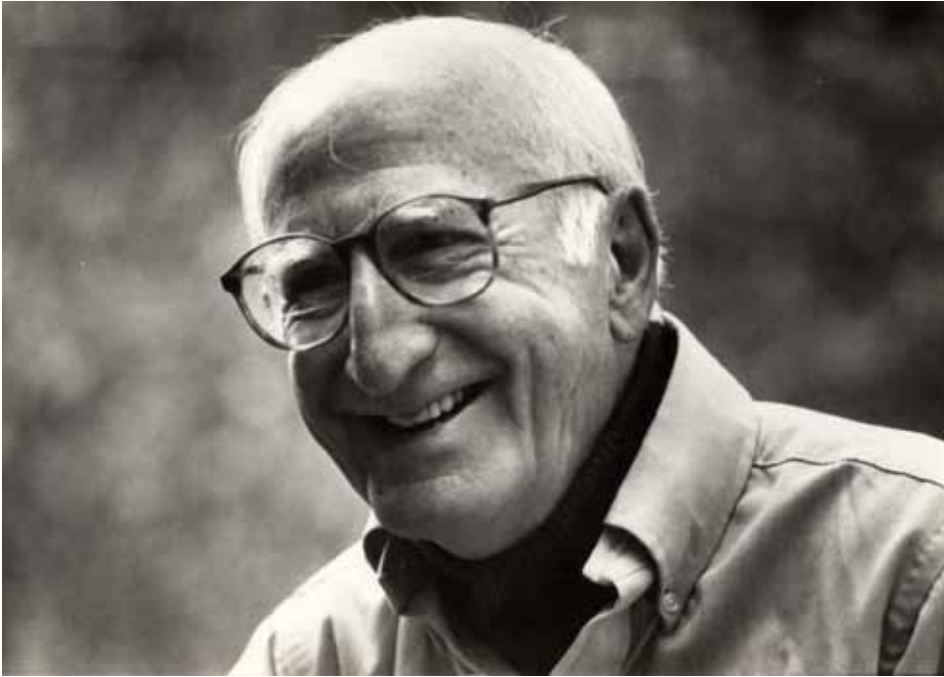


CHARLES DEL VECCHIO/THE WASHINGTON POST

**Katharine Graham and Ben Bradlee celebrate the 6-to-3 Supreme Court decision that allowed the paper to publish the Pentagon Papers.**



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COURTESY OF TED STRESHINSKY

**Ben H. Bagdikian, who had a key role at The Washington Post in the publishing of the Pentagon Papers and later became a prominent media critic and educator.**

It was around midnight. Weil, accompanied by Senate reporter Spencer Rich, rang the doorbell. Weil described what happened next in a memo for the ages:

After about a minute or two, the Chief Justice opened the door. He was wearing a bath robe. He was carrying a gun. The gun was in his right hand, muzzle pointed down. It was a long-barreled steel weapon. The Chief Justice did not seem glad to see us. Spencer explained why we were there. There was a considerable amount of misdirected conversation. It seemed for a bit that people were talking past each other. Spencer, who held up his credentials, was explaining why we were there, but the judge seemed to be saying that we

shouldn't have come. Finally, after a little more talk, everybody seemed to understand everybody. The Chief Justice said it would be all right for us to wait for any possible Justice Department emissaries, but we could wait down the street. He held his gun in his hand throughout a two or three minute talk. Sometimes it was not visible, held behind the door post. He never pointed it at us. He closed the door. We went down the street and waited for about three hours. Then we went home.

And there's Bagdikian. Oh, boy. Where to begin?

Maybe with his back.

At a shady Boston hotel where he first examined two large boxes of the papers handed to him by the

leaker Daniel Ellsberg, Bagdikian's chief concern was not prison. In his memoirs, he wrote:

What concerned me at that moment was something more absurd. I was afraid that the attempt to smuggle the papers undetected into Washington would fail because trying to carry the weight of more than ten thousand pieces of paper might throw out my vulnerable back. ... Any experienced back sufferer knows that carrying that weight in two ungainly boxes is an invitation to spinal paralysis.

One of the boxes had a cover and was wrapped tightly with twine. The other box had no cover, no twine, nothing for Bagdikian, hampered by a bad back, to grip and easily carry. "I foresaw walking into Logan Airport in Boston," he wrote, "dropping the second box and seeing the lobby floor strewn with documents, 'Top-Secret Sensitive.' "

Not ideal.

The best reporters are quick on their feet. Bagdikian had an idea: Ask the front desk clerk for rope.

Remarkably, nobody thought this was suspicious.

"He opened drawers and looked under counters and returned shrugging his shoulders hopelessly," Bagdikian wrote. "Trying to be helpful, he said that sometimes guests tied their dogs to the chain link fence around the swimming pool."

Bagdikian went outside, first noting the weather. No rain in sight. From a transporting papers perspective, that was awesome.

"I carefully patrolled the fence in





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the semidarkness until I came upon a beautiful sight: six feet of stout rope dangling onto the ground from the fence,” Bagdikian wrote. He tied up the box with a Boy Scout knot, then “mentally thanked the unknown owner of the unknown dog, and hoped for the best.”

Even back in the 1970s, airlines were strict about carry-ons. Bagdikian, flying in first class, purchased a seat for his cargo — “an additional expense,” Katharine Graham later wrote, “the Post didn’t mind paying.” But because the second box wouldn’t fit under his seat or in the overhead compartment, he was forced to check it.

Has there ever been a more consequential piece of checked baggage?

In the movie, Bagdikian is approached by a flight attendant who sees the seat-belted box and says, “Must be precious cargo.”

“It’s just government secrets,” he replies.

The reality is far more surreal.

Bagdikian was actually approached by, of all people, Stanley Karnow, The Post’s correspondent in Hong Kong. And, of all things, Karnow was about to start a new gig at the paper — working for Bagdikian! (Perhaps Spielberg didn’t use this moment because nobody would believe it.) Karnow, like all reporters, is a paid

observer of the human condition. He wants to sit next to his new editor, but he observes a box in the seat.

“Karnow,” wrote former *Post* reporter Sanford J. Ungar, in a long *Esquire* piece, “found Bagdikian reluctant to move the package and make room for his colleague. Finally, Karnow’s jaw dropped and he said, ‘Oh you’ve got it!’ ”

Bagdikian just stared at him, finally answering, “Got what, Stanley?”

Awkward!

The Pentagon Papers landed safely in Washington. Bagdikian’s back survived. The *Post* published. Weil was not shot by the chief justice of the United States of America.

Spielberg does a fine job of characterizing the uneasy, developing relationship between Graham (Meryl Streep), a proper and deferential widow emerging as a fearsome, beloved publisher; and Bradlee (Tom Hanks), who told her he’d “give his left one” to run *The Post* and who became, thanks to his guts, instinct and bravado, the greatest newspaper editor of his generation.

The existence of each depended on the other. Their partnership, their love, ran deep. At Christmas, their tradition was to trade fawning letters. Spielberg ends “The Post” with a nod toward their next great adventure — Watergate — but here’s another way he could have faded to black.

Something like this:

Graham/Streep sits down in her study on June 30, 1971 — the day the Supreme Court makes history by ruling, 6-to-3 that *The Post, the Times* and other newspapers have the right to publish the Pentagon Papers. She pulls out her monogrammed stationery and a pen, and the camera swoops over from above, capturing her writing the following note to Bradlee (which is printed in her memoir):

We always write each other love letters at Christmas — but the paper over the last 2+ weeks is better than Christmas and it’s earlier too. There never was such a show — it was incredible. And it was only possible because of that extra 10% of the 110% that you and those under you put into it. ... It was beautiful and fun too. And it was a trip — a pleasure to do business with you as ever.

Then there’s Bradlee/Hanks in the smoke-filled newsroom, replying:

Doing business with you is so much more than a pleasure — it’s a cause, it’s an honor, and such a rewarding challenge. I’m not sure I could handle another one of these tomorrow, but it is so great to know that this whole newspaper will handle the next one with courage and commitment and style.

Roll credits.



# The People

*The Post* is based on the true story of the leak and publication of top secret documents that became known as the Pentagon Papers. In the left column are the real people at *The New York Times* (NYT) and *The Washington Post* (TWP) and, in italics, the actors who portrayed them in the movie released in December 2017. You are to match them with their job in 1971 that is found in the right column.

- |  |  |
|--|--|
| _____ 1. Ben Bagdikian<br><i>Bob Odenkirk</i>      | a. TWP, board member   |
| _____ 2. Fritz Beebe<br><i>Tracy Letts</i>         | b. Activist, U.S. military analyst employed by the RAND Corporation; released the Pentagon Papers to NYT, TWP and other newspapers |
| _____ 3. Ben Bradlee<br><i>Tom Hanks</i>           | c. TWP national editor   |
| _____ 4. Tony Bradlee<br><i>Sarah Paulson</i>      | d. TWP, managing editor  |
| _____ 5. Daniel Ellsberg<br><i>Matthew Rhys</i>    | e. TWP, editorial writer, columnist  |
| _____ 6. Kay Graham<br><i>Meryl Streep</i>         | f. TWP, executive editor   |
| _____ 7. Meg Greenfield<br><i>Carrie Coon</i>      | g. NYT, reporter who obtained the Pentagon Papers from Daniel Ellsberg   |
| _____ 8. Robert McNamara<br><i>Bruce Greenwood</i> | h. Secretary of Defense, 1961-1968 under Presidents Kennedy and Johnson  |
| _____ 9. Arthur Parsons<br><i>Bradley Whitford</i> | i. TWP, chairman of the board of The Washington Post Company; lawyer   |
| _____ 10. Neil Sheehan<br><i>Justin Swain</i>      | j. Publisher of <i>The New York Times</i>  |
| _____ 11. Howard Simons<br><i>David Cross</i>      | k. Owner and publisher of <i>The Washington Post</i>   |
| _____ 12. Punch Sulzberger<br><i>Gary Wilmes</i>   | l. Wife of Ben Bradlee   |



## The Post, The Movie

1. Steve Spielberg directs the movie. Spielberg is known for directing *E.T.: The Extra-Terrestrial* and *Jaws*. He has won recognition for his historical movies — *Saving Private Ryan* (Best Director, Academy Awards), *Bridge of Spies* (Oscar nominee) and *Schindler's List* (7 Academy Awards). Spielberg stated about taking on *The Post*, “I need a motivational purpose to make any movie. When I read the first draft of the script, this wasn’t something that could wait three years or two years — this was a story I felt we needed to tell today.” He stated in a Post interview, “[T]his could not have been a more relevant story for our time that really made me look back and say, “My god, how does history repeat itself?”

What issues of today do you think gave Spielberg the imperative to drop another movie project to make this movie first?

2. *The Post* movie blurb summarizes: “A cover-up that spanned four U.S. Presidents pushed the country’s first female newspaper publisher and a hard-driving editor to join an unprecedented battle between journalist and government.”
  - a. Who is the publisher?
  - b. Who is the editor?
  - c. Who are the four presidents? [Extra: What were the years of their terms of office?]
3. The film is based on real-life events. List three events upon which the film is structured.
  - a.
  - b.
  - c.
4. The main story is set in 1971. What elements of the setting should be considered for verisimilitude
  - a. In the newsroom?
  - b. In the homes?
  - c. Of street scenes?
  - d. Of the characters?



**The Washington Post hosted a discussion with director Steven Spielberg and cast members of the new movie, *The Post*.**

COURTESY OF TED STRESHINSKY



5. Daniel Ellsberg could be considered a pivotal character in the film. A pivotal character launches the action between the protagonist and the antagonist or this character sets the main events of the plot in motion. Explain when Ellsberg acts as a pivotal character.
6. Does this movie have an anti-hero or villain? If not, what are the opposing forces?
7. The story unfolds against a financial backdrop. “The Washington Post Co. had negotiated and just gone public with a \$35 million stock offering. Under the terms of this offering, *The Post* was liable for a substantial claim by the underwriters if some disaster or catastrophe occurred. No one wanted to say whether an injunction, or possible subsequent criminal prosecution, qualified as a catastrophe. Just as no one wanted to mention the fact that any company convicted of a felony could not own television licenses, a fact that added another \$100 million to the stakes,” wrote Ben Bradlee in his memoir, *A Good Life*.
- Whose lives will be affected by the decision to publish the Pentagon Papers-based articles?
8. In the movie, one of Katharine Graham’s three sons, Donald, daughter, Lally, and two granddaughters, Pamela and Katharine, make appearances.
- What do they add to understanding the personal side of Katharine Graham?
  - What do they add to one of the movie’s themes. (Include the theme in your response.)
9. Tom Hanks, in an interview at *The Post*, spoke of the authenticity and its importance. When Ben Bagdikian is sitting at his typewriter, the building rumbles — just as it did when the presses in the basement of the old *Post* building were rolling. Daniel Ellsberg was added to the original screenplay — they found him and interviewed him. Why is this attention to details and research important for a movie like *The Post*?
10. “It is remarkable how more and more relevant the First Amendment theme became as we were in production,” said Josh Singer, co-writer of *The Post* and writer of *Spotlight*. Do you agree or disagree with Singer as you think of how presidents in 1971 and 2017 view the press.

**Bonus.** Select a minor character — from the newsroom, legal team, reporters and editors, board, friends or extras. What intrigues you about this individual? What does he or she add to the storyline and a theme of the movie?





# After Viewing *The Post*

*In the opening of the film, Steven Spielberg provides two scenes to give background for the plot. The opening places and people in this prologue will have their roles to play in the main narrative.*

1. The movie begins in \_\_\_\_\_ (year) in \_\_\_\_\_ (country).
2. We overhear soldiers talk. They are not fond of the man from the U.S. embassy who is attached to their unit. He is \_\_\_\_\_.
3. As the rain pours, the men are on patrol. What action takes place?
4. The next scene takes place on an airplane. The same man is called forward to answer questions posed by the Secretary of Defense \_\_\_\_\_ (name).
5. The plane has landed. As he walks behind the Secretary of Defense, the camera captures his facial expression. What bothers him?

*The movie shifts to Washington, D.C., The Washington Post building and the homes of Katharine Graham and Ben Bradlee.*

6. Meryl Streep plays Katharine Graham. She is a wealthy widow, a mother and grandmother, and often the only woman present in business settings.
  - a. Describe how Meryl Streep portrays Graham.
  - b. What is the movie audience to understand of Graham's view of her role in the media world she inherited after her husband's suicide?
  - c. What is the turning point in her professional life?
7. Ben Bagdikian's effort to locate and talk to Daniel Ellsberg illustrate
  - a. Dogged determination to get the story
  - b. The importance of friendship and trust
  - c. Respect leading to action
  - d. All of the above
8. Daniel Ellsberg could be considered a pivotal character in the film. A pivotal character launches the action between the protagonist and the antagonist or this character sets the main events of the plot in motion. Explain when he plays the pivotal character.
9. *The New York Times* reporting team met for months in \_\_\_\_\_ (where) as they reviewed and confirmed Pentagon Paper content. *The Washington Post* group of reporters and editors met \_\_\_\_\_ (where) for 12 hours as they read, sorted and annotated 4,000 some pages. Why did both groups meet in remote newsrooms?



10. What motivates Ben Bradlee to push for publication from the Pentagon Papers within hours of receiving the documents?
11. Why do you think Marina Bradlee at her lemonade stand outside the Bradlee home — and her sales indoors — were included in the movie?
12. A retirement party for Harry Gladstein, *The Post's* veteran circulation vice president, is being held at Katharine Graham's home. At the same time, Post reporters, editors, executives and lawyers are meeting at Ben Bradlee's home.
  - a. What were the people at the Bradlee home doing?
  - b. How are these simultaneous actions handled by the cinematographer and director? (split-screen, split-edit, back-and-forth, sound?)
  - c. How is tension achieved between Bradley and the lawyers?
  - d. Why is the focus on Katharine Graham?
13. Katharine Graham is the owner and publisher of *The Washington Post*. It is her decision whether or not to publish on June 18, 1971. What's at stake? Name three of the factors she must weigh as she makes her decision and says, "Okay. Let's go. Let's publish."
  - a.
  - b.
  - c.
14. Tony Bradlee accepts the takeover of her home, serves sandwiches and works on her artwork. But her role in the film is more than this. She understands what Katharine has done. What does she understand about the personal impact for Graham's life and that on other women in the work place?
15. What is the significance of the Nixon administration seeking injunction against *The Washington Post*, as it had against The New York Times Co.?
16. What is the importance of Ben Bradlee bringing newspapers from around the country to show Katharine Graham?
17. As Ben Bradlee and Katharine Graham exit the courthouse, the camera follows Graham. What theme is re-enforced through this scene?
18. The movie might have ended with Katharine Graham smiling and celebrating with Ben Bradlee the Court decision. It didn't.
  - a. What is the final scene of the movie?
  - b. Why do you think Spielberg ends the movie with this event?
- 19-20. Read the following quotation from Justice Hugo Black's majority decision in *The New York Times Co v. United States*. This case was decided with *United States v. Washington Post Co. et. al*. This was the first time in the history of the American republic that newspapers had been restrained by the government from publishing a story. Explain what the Court's decision meant for 1971 and for now.

To find that the President has "inherent power" to halt the publication of news by resort to the courts would wipe out the First Amendment and destroy the fundamental liberty and security of the very people the Government hopes to make "secure." No one can read the history of the adoption of the First Amendment without being convinced beyond any doubt that it was injunctions like those sought here that Madison and his collaborators intended to outlaw in this Nation for all time.

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# What Meryl Streep and ‘The Post’ can teach us about the power of being a female boss

BY MARGARET SULLIVAN  
Media Columnist

• Originally Published December 17, 2017

I met Katharine Graham exactly once. It was at a white-tie dinner in Washington, a year or so before she died in 2001.

Four decades separated us in age. She had long since stepped down as publisher of *The Washington Post*, and I had recently been named editor of the *Buffalo News* — the first woman to hold that top newsroom job at my hometown paper.

She was, by then, an icon — and certainly an idol of mine. So I searched to find something to chat with her about, and managed to let her know that I admired her. Though I doubt that I used the words “courage” or “inspiration,” I wish I had.

Now, through Meryl Streep’s portrayal of Graham in the new movie “The Post,” a new generation of women — and girls — will get the chance to meet her, too. Maybe they’ll even be intrigued enough to seek out her Pulitzer Prize-winning autobiography, *Personal History*, which tells the story of an insecure widow who inherited control of a newspaper and rose to meet



**Washington Post publisher Katharine Graham and executive editor Ben Bradlee leave court after a ruling allowing *The Post* to continue publishing the Pentagon Papers.**

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challenges she never anticipated, changing the world along the way.

Whether they encounter her on the screen or on the page, they’ll find that Graham has plenty to say to them, especially at this fraught moment in the history of women in America.

“The movie is about a woman finding her voice,” producer Amy Pascal recently told *Post* film critic Ann Hornaday.

Referring to the reckoning on sexual misconduct that dominates today’s headlines, Pascal added,

“And what’s happening right now is women realizing they haven’t had a voice in a very long time.”

At the film’s premiere last week in Washington, many of the luminaries in attendance had a connection to the story or the newspaper that told it: *Post* owner Jeffrey P. Bezos and publisher Fred Ryan; former chairman Donald Graham; Judith Martin, also known as Miss Manners; Watergate reporter Carl Bernstein; and even Daniel Ellsberg, who leaked the secret papers revealing the U.S. government’s shameful lies about the



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Vietnam War — first to the *New York Times*'s Neil Sheehan.

(Why, then, isn't this story primarily about the *Times*, which broke the Pentagon Papers story and won the Pulitzer Prize for it? Tom Hanks, in an onstage chat with *The Post*'s executive editor, Martin Baron, made it simple: "Well, they didn't have Katharine Graham, in all honesty. If they'd had a Katharine Graham, it would be — we'd be calling it '*The Times*.'" )

But also in the audience were many prominent media women who know all too well what it feels like to be the only woman in a boardroom, or who have struggled to assert their hard-won authority in jobs never held by a woman before.

For them, the narrative is personal.

A famous 1971 photo of Graham, with the *Post*'s executive editor Ben Bradlee, leaving a Washington courthouse "was emblazoned on my mind," said Susan Goldberg, editor in chief of National Geographic

magazine. Goldberg wasn't even in high school when the Supreme Court ruled against the Nixon administration's effort to restrain the *Times* and *The Post* from further publication.

The image became a touchstone over the years as Goldberg faced many days — many years — when she was the only woman in the room or the only woman around the table of decision-makers. She was the first female editor of the *San Jose Mercury News*, the first female editor of the *Cleveland Plain Dealer*, the first woman in charge of Bloomberg's Washington bureau, and the first woman in her current job.

"We'll be in a much better place as a society when there are fewer female 'firsts,' and having a woman in charge — whether in journalism or law or finance or politics — is less notable because it is just the normal course of doing business," Goldberg told me.

Sexual harassment is, of course, as much about power as about sex. Hollywood mogul Harvey Weinstein was able to prey on aspiring actresses because he had so much control.

The antidote, then, is not only finding one's voice. It's also creating a world — no, insisting on a world — where women hold power, too.

"The answer to creepy men is being the boss" was how Tina Brown, former editor of *Vanity Fair* and the *New Yorker* magazines, put it last week as she promoted her new book at the Jefferson Hotel in Washington.

These days, there still aren't enough women in authority — not in news organizations, not in Hollywood, not in business, not in politics.

Decades later, it's still hard for women to speak their truths and to be fully heard. But more and more, that's changing.

At the end of *The Post*, Katharine Graham leaves the Supreme Court and moves through a crowd of young women, their faces aglow with admiration for the woman who screwed up her courage, took on a big fight and won.

The literal truth of this triumphant scene is debatable, but as metaphor it is dead on. And it couldn't be more timely.

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*Margaret Sullivan is The Washington Post's media columnist. Previously, she was The New York Times public editor, and the chief editor of The Buffalo News, her hometown paper.*





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# Cinematic Vocabulary

**Cinematography** The art and technique of film photography, the capture of images and lighting effects. The cinematographer is responsible for capturing or recording-photographing images for a film through visual recording devices, camera angles, film stock, lenses, framing and arrangement of lighting.

**Composer** Creative artist who writes the musical component (score) of a movie's soundtrack

**Director** Creative artist who has complete artistic control of all phases of a film's production; responsible for translating or interpreting a script into a film, for guiding the performances of the actors, and for supervising the cinematography and film crew

**Docudrama** Movie that tells a story about real events, presented in a dramatized form; in addition to actors, news footage and recordings, event photographs, testimony and sound may be incorporated (also, history movie)

**Documentary** Non-fiction (factual), narrative film with real people (not performers or actors)

**Pace** Speed or tempo of the dramatic action, which is usually enhanced by the soundtrack and the speed of the dialogue

**Pivotal character** A pivotal character launches the action between the protagonist and the antagonist or sets the main events of the plot in motion.

**Point of view** Perspective from which the story is told

**Prologue** Speech, preface, introduction or brief scene preceding the main action or plot of a film

**Scene** Single, complete and unified dramatic event, action, unit or element of film narration; block of storytelling within a film, much like a scene in a play; normally occurs in one location and deals with one action

**Screenwriter** Individual who writes an original screenplay or adapts another work into a film

**Script** Written text of a film; a blueprint for producing a film, detailing the story, setting, dialogue, movements and gestures of actors, and the shape and sequence of all events in the film

**Setting** Time period and place in which the film's story occurs. Includes climate, landscape, people, social structure, economic factors, customs, moral attitudes and codes of behavior

**Sound** Audio portion of a film including dialogue, music and effects

SOURCE: Film Terms Glossary  
(<http://www.filmsite.org/filmterms.html>)



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**YOU AND YOUR RIGHTS****What About Today?  
Who Has a Right to Know?**

In June 1971 in *The New York Times Company v. United States* (1971) (together with *United States v. Washington Post Co. et al*) the Supreme Court was asked to answer this question: “Did the Nixon administration’s efforts to prevent the publication of what it termed ‘classified information’ violate the First Amendment?” (<https://www.oyez.org/cases/1970/1873>)

The Supreme Court stated that the Government carried a heavy burden to show justification for imposing prior restraint. “[F]or the first time in the 182 years since the founding of the Republic, the federal courts are asked to hold that the First Amendment does not mean what it says, but rather means that the Government can halt the publication of current news of vital importance to the people of this country.” The Court ruled that the Government had not met this burden. The press could print from the Pentagon Papers. (<http://caselaw.findlaw.com/us-supreme-court/403/713.html>)

**Your Assignment**

You are to apply this U.S. Supreme Court decision to the following scenarios. There are stakeholders who are impacted when a federal employee considers and decides to go to the press with incriminating information. These include the employee, the federal agency, the current administration, media and the public. Remember that as you work through these hypotheticals there is not a “right” or “wrong” answer.



LOC.GOV

**U.S. Supreme Court  
Justice Hugo L. Black**

“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. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.”

— **Justice Hugo Black,**  
majority decision  
*The New York Times Co. v  
United States*, (No. 1873)  
Argued: June 26, 1971  
Decided: June 30, 1971

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**Scenario One: Tips, Sources and the Press**

You are an editor of a large town, traditional newspaper. Joe Talk, a government contractor, has contacted you. Joe stated that he worked for the National Security Administration (NSA) and had access to thousands of pages of “Top Secret” documents. He wants to expose the illegal activities of the federal government by this agency. He claims that the government has been spying on its citizens through personal computers, cell phones and iPad tablets. Answer the questions below based on your understanding of the Pentagon Papers ruling.

1. Will you accept the documents? Does Joe have a “reasonable belief” that the information is true? Make sure you explain your justification(s) for your decision?
2. Let’s conclude that you decided not to accept the documents. You hear that Joe has contacted an editor in another state, and she has decided to accept the documents with the intent of publishing the information. Should you contact the NSA to let them know that they have a whistleblower in their organization willing to breach Top Secret protections and/or reveal the editor’s name who has accepted the documents? Why? If yes, who within NSA would you contact?
3. You have decided to discuss options with your staff before you take the documents from Joe. A member of your staff is an attorney and points out that receiving top secret documents is illegal. It violates the 1917 Espionage Act. Provisions of that legislation made it a crime to disclose national defense information to persons unauthorized to receive it and to transmit classified data on communication intelligence. Another staff member states that the First Amendment supersedes legislation and would protect the paper if it published the contents of the documents. Based on this information, what would you do as the editor? Justify your actions.
4. Your corporation has ownership of a traditional newspaper, a television station, and a popular web site. If you decided to accept the documents, which vehicle would you use for the original release of the information? Why?

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**Scenario Two: When Is a Secret a True Secret?**

You are a citizen who has a popular blog. You have been approached by Jane Talk, a government contractor, with official documents. She wants you to publish them so your savvy online readers will know about government access to their computers, cell phones and tablets.

1. What do you need to know about Jane before you decide to accept the documents?
2. What process would you employ to verify the information she has given to you? If you were an editor of a traditional newspaper, what process would you employ to verify the authenticity of the documents given to you by Jane?
3. You are a private citizen. Should the verification process be the same regardless of the media format — or should newspapers be expected to verify information more than broadcasters? Or more than independent bloggers who have complete freedom to post whatever they want? Should you be considered a citizen journalist with the rights and responsibilities of the press?
4. Why do you think Jane Talk approached a blogger rather than a newspaper reporter? Do you take responsibility for what you post on your blog? Do you think today's young citizens view your online news source as reliable as a print newspaper?



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**Scenario Three: The Whistleblower**

The Whistleblower Protection Act is a federal law that protects federal government employees from retaliation for disclosing information about dishonest or illegal activities occurring at a government organization.

The law prohibits a federal agency from taking action, or threatening to take action, against an employee or applicant for disclosing information that he or she believes violated a law, compliance rules or other regulation. The disclosed information could include reports of mismanagement wrongdoing, the waste of funds, an abuse of authority, and/or a potential risk to public health or safety. The act empowers the U.S. Office of Special Counsel has jurisdiction over allegations of federal whistleblower retaliation and investigates federal whistleblower complaints.

You are a federal official. You have found out about an employee in your Department leaking documents to the editor of the local newspaper. You also know that the information passed on to the editor is truthful.

1. Do you try to prevent the publication of the information by going to the Inspector General of the agency or Department of Justice, hoping to secure a court injunction?
2. Should the U.S. government prosecute the editor under the 1917 Espionage Act to the full extent of the law? Do you prosecute the employee for espionage? Justify your response.
3. Does the truth of the leak influence your decision? Why?

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“What About Today? Who Has a Right to Know?” was written by Dr. Roger Soenksen, a professor in the School of Media Arts & Design at James Madison University (Virginia). He teaches Mass Communication Law, First Amendment Law, Legal Communication, and Introduction to Media Arts. In 1986 he received the Carl Harter Distinguished Teaching Award. In 1993 he was named a Madison Scholar, and most recently, he was awarded the prestigious Provost’s Award for Excellence in Academic Advising in 2012. Dr. Soenksen has served on the College Media Association’s College Media Law Committee as both a member and chair. Dr. Soenksen may be reached at *soenksra@jmu.edu*.