

# Obama's Battles With The Press Do Not Rival Nixon: *New York Times v. United States*

[By Donald Scarinci](#)

President Barak Obama has received criticism in the wake of reports that the Justice Department seized phone records for telephone lines used by reporters and editors at The Associated Press. The government was trying to determine the source of leaked information in an AP article about a CIA operation that prevented an al-Qaida bomb plot.

This is not the first time that a [government investigation of media leaks](#) has triggered the ire of civil liberties groups. In fact, it pales in comparison to the controversies during the Nixon Administration, which went all the way to the U.S. Supreme Court in *New York Times Co. v. United States* or better-known as the "Pentagon Papers" case.

## *The Facts of the Case*

President Richard Nixon sought to use his executive authority to prevent the *New York Times* and the *Washington Post* from publishing the contents of a classified study entitled "History of U.S. Decision-Making Process on Viet Nam Policy." The administration argued that prior restraint was needed to protect national security, citing several provisions of the Espionage Act.

The question before the Court was whether the executive branch's need to maintain the secrecy of information can trump the First Amendment's guarantee of freedom of the press.

## *The Supreme Court's Decision*

In a 6-3 decision, the majority of the Supreme Court sided with the newspapers, upholding their right to publish the report. As noted by justices in a brief per curiam opinion, "Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." The Court agreed with the lower court that the government had not met that burden.

In a series of concurring and dissenting opinions, the justices generally agreed that governmental restraint on the press is very rarely justified. As Justice Potter Stewart explained, "In absence of governmental checks and balances, the only effective restraint upon executive policy and power in [these two areas] may lie in an enlightened citizenry - in an informed and critical public opinion which alone can here protect the values of democratic government."

Even the three dissenting justices, lead by Chief Justice Warren E. Burger, did not so much argue with the ultimate result of the case, but the swiftness with which the Court arrived at its conclusion. While he shared the majority's resistance to prior restraints against publication, Burger cautioned that the superiority of the [First Amendment](#) should not be absolute, particularly

when “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.”