



# THE WAR



## A KEN BURNS FILM

DIRECTED AND PRODUCED BY KEN BURNS AND LYNN NOVICK

### Chicago Tribune vs. US (1942): When Does Freedom of the Press Go Too Far? (A Mock Trial Simulation)

#### Grade level:

9-12

#### Subject Areas Addressed:

US History, World History, US Government and Civics;  
Language Arts; Speech (Forensics)

#### Estimated Time Required:

3-5 class periods

#### Introduction:

Throughout American History, conflict between a free press and government has been inevitable. Journalists and editors want the story to inform readers and to sell newspapers. Government wants to maintain security, and in many instances maintain their popularity ratings by not releasing information that may be damaging to a particular program, military action, or administration.

But, at no time is this tension more evident than in war. For example, during the Vietnam War, journalists often found themselves questioning the official “line” the U.S. Government was releasing about battles, casualty figures, and enemy resolve. In 1968, when Walter Cronkite announced on the CBS Evening News that the best the U.S. could hope for in that war was a stalemate, President Lyndon Johnson remarked, “If I’ve lost Cronkite, I’ve lost middle America.”

In this lesson, students will review the historic significance of a controversy involving *The Chicago Tribune*, which published a series of stories inferring that the U.S. had broken a secret Japanese code, which significantly assisted the U.S. Navy in winning one of the biggest battles of the Pacific Theater of World War II, the Battle of Midway. Did the Tribune go beyond the First Amendment right of freedom of the press in this instance? In the lesson, students will conduct a mock trial to determine if the Tribune violated the Espionage Act of 1917 and gave assistance and comfort to our enemies in reporting the story.

#### Objectives:

As a result of completing this lesson:

- Students will understand the basic concepts of freedom of the press in wartime
- Students will draw conclusions about the balance between national security and the right of the people to know about battles and military policy
- Students will express their conclusions and persuade others by developing and stating logical arguments.
- Students will gain a greater appreciation for the struggles that government officials and journalists engage in regarding protecting national interest versus the right to know.

#### Lesson Methodology:

Start the lesson by writing terms on the chalkboard or overhead projector such as “censorship,” “prior restraint” and “national security” and asking students to brainstorm what these terms mean. Write their responses on the board or overhead and try to develop a consensus among the class as to the definition of each. Ask students to consider instances in their lives where their constitutional rights may be limited in some way (for example, the First Amendment protection of the student press is usually not as broad as it is for the commercial press; students may not circulate petitions asking for the removal of school administration or teachers; school records of other students such as grades, disciplinary actions, etc. are not open to review). Lead a discussion about whether limitations on student rights and privileges are fair. (The teacher may also wish to discuss instances where teachers and administrators’ rights may be limited; for example, teachers may not be able to wear campaign buttons for candidates in the classroom; while teachers may be legally able to use tobacco, they probably are not able to do so in a school environment; and so on.)

#### GO TO CLIP

([http://www.pbs.org/thewar/search\\_details.php?id=5414&type=3](http://www.pbs.org/thewar/search_details.php?id=5414&type=3))

Next, read the following, or have it prepared on the board, overhead, or distribute copies before the start of class:

*“From our earlier discussion, we know that frequently the desires of government in regard to national security and the press ‘collide’ during wartime. How is it decided if a story is ‘good journalism,’ or possibly something that could endanger the well-being of servicemen and possibly hurt the war effort?”*

*“In 1942, the US Government started legal proceedings against the Chicago Tribune for stories it published about the breaking of a secret Japanese code in the days before the Battle of Midway. In the eyes of the government, the Tribune, and its publisher, Robert McCormick, were guilty of treason, and the Justice Department began federal grand jury proceedings to charge the paper and publisher for violating the Espionage Act of 1917.*

*“The grand jury refused to hand down indictments. But, what if they had? How might our concept of freedom of the press and the role of the press in wartime have changed if this case had been argued in open court?”*

*“Our class has a chance to ‘make’ history. We’ll ‘try’ the case and determine whether it was the US Government or the Chicago Tribune was ‘in the right.’ Was the Tribune guilty of treason? We’ll investigate and find the answer.*

At this point, discuss some basic ideas about how a mock court trial is conducted, if students are not already familiar with them. (Note: In some instances, you may wish to consult with a local attorney or judge. Many attorneys are willing to speak to the class regarding how evidence is collected, court procedures, as well as rules of evidence.) Some basic rules and procedures for conducting mock trials on the middle school and high school levels can be found at the following websites:

([http://www.19thcircuitcourt.state.il.us/bkshelf/resource/mt\\_conduct.htm](http://www.19thcircuitcourt.state.il.us/bkshelf/resource/mt_conduct.htm))  
(Nineteenth Judicial Circuit Court, Lake County, Illinois)

(<http://www.peterpappas.com/journals/trial/rules.htm>)  
(Mock trial rules of evidence and procedure)

(<http://www.isba.org/Sections/rubric2.html>)  
(Illinois State Bar Association High School Mock Trial Rubric)

(<http://law.indiana.edu/webinit/tanford/Tournament/rules.html>)  
(Indiana University Law School Mock trial rules)

(<http://www.millbury.k12.ma.us/hs/law>) (Millbury, Massachusetts school district law class page which includes several pages of rules as well as links to other mock trial related sites.)

Generally, trials have the following components:

- The Judge enters the courtroom and takes the bench
- The Bailiff announces the case
- The Judge asks if the attorneys for the prosecution and defense are ready to begin
- The prosecution makes an opening statement, previewing what the government will show in the trial

- The defense makes a similar opening statement
- The prosecution begins its case (calling witnesses and conducting direct examination)
- The defense has the opportunity to cross-examine witnesses
- The prosecution has the opportunity to re-direct questions
- The prosecution rests
- The defense presents its case in the same manner as did the prosecution
- After the defense rests, the prosecution gives a closing argument
- The defense gives its closing argument
- The prosecution has a chance to give a rebuttal closing argument

In a criminal trial, the prosecution has the burden of proof to show that a crime was committed and that the defendant is guilty. Because of this, the prosecution gets to go first and gets to speak last in the trial.

Acquaint the class with basic components of the mock trial and assign roles. A list of principals in the case as well as attorney roles is included below. (Depending on the size of the class, the teacher may wish to adjust the size of the witness list and attorney duties.) Remind the class that once the trial begins, the students should remain “in character” regarding their role. Suggestion: Have students “dress the part” of professional people in the 1940s with period clothing.

(NOTE: Prior to the lesson, you may wish to spend some time considering which side will take the role of “plaintiff” or “prosecution” and “defense” in the case. For example, conduct the simulation by presuming that the government has ordered that publication of the stories should cease, and *The Chicago Tribune* is suing for the right to publish the stories. Or, elect to try the case as a criminal case where the jury must determine whether the Tribune was possibly guilty of treason for the publication. For the purpose of the lesson, roles are assigned with the Tribune being the defendant.)

### **US Government (Prosecution and witnesses):**

Francis Biddle (US Attorney General)  
Frank Knox (US Secretary of the Navy)  
Commander Mort Seligman (Executive Officer, USS Lexington, Stanley Johnston, Tribune reporter who wrote the story was a cabin mate of Seligman after Johnston’s ship was sunk in the Battle of the Coral Sea, and it was Seligman’s notes that Johnston used as the basis for his story.)

### **Chicago Tribune (Defendant and witnesses):**

Robert McCormick (Tribune publisher)  
Stanley Johnston (Tribune reporter who viewed the information about the Japanese fleet in Seligman’s cabin and wrote the related stories)  
James Loy Maloney (Tribune managing editor who asked Johnston to write the story)

Note: If the teacher desires, they may also use Cissie Patterson, a cousin of McCormick and publisher of the Washington Times-Herald who also used the story, or Joe Patterson, publisher of the New York Daily News, which also ran the story.

### Court Officials and Personnel:

A judge

Attorneys for the Tribune and a legal team for the US government (the student assigned to play Attorney General Biddle should also be an attorney).

A court bailiff

Jury members

Note: The teacher may wish to assign attorney roles to several students to give more opportunities for the class to participate, for example, one student might give opening statements, another conduct direct examinations, a third conduct cross-examinations, and a fourth give closing arguments.

The teacher may decide to ask a student to serve as judge, presuming that student is able to act on objections and knows the rule of law. In addition, the teacher may ask any remaining students in class to serve as jury members.

Next, allow adequate time for students to research the case and develop legal arguments supporting their side of the case. The attorneys should also make themselves familiar with the rules of evidence and the law. The teacher should arrange the classroom, or room where the trial will take place, to reasonably resemble a courtroom. While courts may vary from state to state, a good basic courtroom set up diagram can be found at <http://www.factmonster.com/ipka/A0769420.html>.

Once students have had sufficient time to research their roles, the trial can begin. While in real court, attorneys usually do not have time restrictions as to arguments and questioning periods, because of time constraints due to class schedule, the teacher may wish to limit these aspects of the mock trial to fit a schedule.

Once both sides have completed their cases and closing arguments, the jury should be allowed to vote or deliberate on a verdict. Before deliberations begin, the judge should remind the jury of the charges against the newspaper officials, and remind the jury of any specific points of the law (the Espionage Act of 1917) that are pertinent to the case.

Once the jury reaches a verdict (or the remaining class members vote on a verdict), the jury foreman should announce the verdict, and the judge should adjourn the proceedings.

After “court” is adjourned, it is strongly suggested that a de-briefing session be held with the students. Suggested questions to address in the de-briefing include:

- Did the verdict seem reasonable based on the evidence?
- In this case, was the definition of “treason” vague?

- If the government won the case, would the decision open the door for other cases where reporters divulged information that might be considered “damaging” to national security?
- If the defense won the case, could the verdict make it more difficult for the government to conduct a war if reporters have a great deal of latitude in giving the public information?
- Can the government legitimately restrict or forbid reporters from traveling with troops or observing military actions?

### Assessment:

Once the trial is complete, evaluate student participation and research based on a rubric of the student’s creation, based on local standards and benchmarks, or use a rubric such as the one located at <http://www.isba.org/Sections/rubric2.html>. Criteria the teacher may wish to evaluate include: historical accuracy, speaking ability, cooperation, and staying in character.

### Extension Activity:

*The Chicago Tribune* issue discussed in the trial is not the only instance where government interest and news media have been at odds. Ask students to review other cases involving censorship and prior restraint and write reports about the facts and decisions in those cases. Significant cases that may be of interest to students include: the 1971 “Pentagon Papers” case (New York Times vs. US); Schenck vs. US (1919); Abrams vs. US (1919); and Near vs. Minnesota (1931).

Visit the “SEARCH AND EXPLORE”

[http://www.pbs.org/thewar/search\\_home.htm](http://www.pbs.org/thewar/search_home.htm)) section of THE WAR web site for more information about censorship during World War II.

### Resources:

<http://www.pbs.org/weta/reportingamericaatwar>

(PBS’s Reporting America at War, includes a great deal of background information about World War II reporting as well as various correspondents from that era.)

[http://www.law.cornell.edu/uscode/uscode18/usc\\_sec\\_18\\_00000793---000-.html](http://www.law.cornell.edu/uscode/uscode18/usc_sec_18_00000793---000-.html)  
(Text of the Espionage Act of 1917)

<http://law.jrank.org/pages/6568/Espionage-Act-1917.html>  
(Further readings on the Espionage Act of 1917)

<http://www.time.com/time/magazine/article/0,9171,850033,00.html>  
(Story from TIME magazine regarding case of the Chicago Tribune being cleared in a case about a story regarding the Battle of Midway in 1942)

<http://www.time.com/time/magazine/article/0,9171,932814-1,00.html>  
(Story from TIME regarding calling of grand jury to investigate Chicago Tribune story about Battle of Midway)

(<http://www.fdrlibrary.marist.edu/psf/box4/t47ao02.html>)  
(FDR Library files including letter from Secretary of the Navy Frank Knox to Attorney General Francis Biddle recommending that the Chicago Tribune as well as Reporter Stanley Johnston be investigated for possible violation of the Espionage Act of 1917 for publishing the story, "United States Navy Knew in Advance about Jap Fleet". A copy of the story (both a transcript and actual clipping) are also available in this file. The related clipping of the story is from the archives of the Washington Times-Herald, who picked up the story from the Tribune.)

(<http://www.washtimes.com/op-ed/20060510-093239-5715r.htm>)  
(Washington Post editorial connecting Trib case (above) with more recent similar incident of warrantless surveillance of al Qaeda suspects)

(<http://www.ibiblio.org/hyperwar/PTO/Magic/COMINT-CoralSea/PartTwo.html>)  
(Scroll down to page 66-70) ("A Priceless Advantage: US Navy Communications Intelligence and the Battles of Coral Sea, Midway, and the Aleutians"; contains information regarding the Johnston case and the resulting investigation)

(<http://www.newseum.org/warstories/essay/secretcy.htm>)  
(Essay by Harold Evans regarding "Reporting in a Time of Conflict". Includes information about Chicago Tribune story on the Battle of Midway, as well as issue of censorship in more recent conflicts, and mentions Pentagon Papers case)

([http://judiciary.senate.gov/testimony.cfm?id=1928&wit\\_id=5387](http://judiciary.senate.gov/testimony.cfm?id=1928&wit_id=5387))  
(2006 Testimony before the Senate Judiciary Committee by Gabriel Schoenfeld, senior editor of Commentary Magazine, regarding publication of classified information by journalists)

([http://www.americanheritage.com/articles/magazine/ah/1987/8/1987\\_8\\_64.shtml](http://www.americanheritage.com/articles/magazine/ah/1987/8/1987_8_64.shtml))  
(American Heritage story about a similar story "leak" from the Chicago Tribune in the days immediately before Pearl Harbor)

(<http://cjrarchives.org/issues/2006/4/mccollam.asp>)  
(2006 Columbia Journalism Review story entitled "The End of Ambiguity" which highlights several freedom of the press versus classified information)

## Standards:

### US History:

**Benchmark 4:** Understands how World War II influenced the home front (e.g., the impact on science, medicine, and technology; how Americans viewed their achievements and global responsibilities at the war's end; how minorities contributed to the war effort and the contradiction between their treatment at home and the goals that they were fighting for in Europe; the effects of the relocation centers on Japanese American families)

**Benchmark 7:** Understands how World War II influenced American society (e.g., how the war fostered cultural exchange and promoted nationalism and American identity, the effects on gender roles and the American family)

### Civics:

**Benchmark 3:** Knows what constitutes political rights (e.g., the right to vote, petition, assembly, freedom of press), and knows the major documentary sources of political rights such as the Declaration of Independence, United States Constitution including the Bill of Rights, state constitutions, and civil rights legislation

### Language Arts:

**Benchmark 1:** Uses criteria to evaluate own and others' effectiveness in group discussions and formal presentations (e.g., accuracy, relevance, and organization of information; clarity of delivery; relationships among purpose, audience, and content; types of arguments used; effectiveness of own contributions)

**Benchmark 7:** Uses a variety of verbal and nonverbal techniques for presentations (e.g., modulation of voice; varied inflection; tempo; enunciation; physical gestures; rhetorical questions; word choice, including figurative language, standard English, informal usage, technical language) and demonstrates poise and self-control while presenting

**Benchmark 8:** Responds to questions and feedback about own presentations (e.g., clarifies and defends ideas, expands on a topic, uses logical arguments, modifies organization, evaluates effectiveness, sets goals for future presentations)

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