

## Prior Restraint

**prior restraint** Practice that would allow the government to censor a publication before anyone could read or view it.

Under the guarantee of freedom of the press, the media may disclose the names of juvenile offenders although they usually choose not to do so. (© Robert Sullivan/AFP/Getty Images)

The authors of the Constitution and the Bill of Rights agreed with the famous English jurist William Blackstone, who wrote that authors and publishers may only be tried for legitimate criminal violations once their article is published and their words have entered into the marketplace of ideas. He rejected the notion that government had the right to exercise **prior restraint**, the ability to prevent publication of material to which it objected.<sup>61</sup> The U.S. Supreme Court embraced this position in the 1931 case of *Near v. Minnesota*, in which it invalidated a Minnesota law intended to prevent publication of material deemed to be malicious, scandalous, and defamatory.

The Court did note, however, that the government's interest in protecting national security, regulating obscenity, or preventing the incitement of violence may justify prior restraint in the most exceptional cases. The Nixon administration cited national security considerations in 1971, when it attempted to restrain *The New York Times* and *The Washington Post* from publishing the "Pentagon Papers," a series of articles about U.S. involvement in Vietnam based on government documents. The Court rejected the administration's argument, ruling that government may not prevent the press from exercising its right to criticize public officials and its duty to inform readers.

The "Pentagon Papers" case seems to have settled the matter of prior restraint, as the Court has heard no further cases of significance in this area. After the terrorist attacks on September

11, 2001, however, the Department of Defense requested that journalists refrain from publishing information that could harm the country's national security. The department also hinted that the government might demand to review stories before publication or broadcast. As of this time, however, the government has censored no articles.

## Government Control of Media Content

Governments have sometimes attempted to exert control over the media's content by prohibiting the publication of certain information. For example, states often pass laws prohibiting the publication of certain criminal matters in order to protect the victim, the offender, or the fairness of the trial. In *Cox Broadcasting Corporation v. Cohn* (1975), however, the Court ruled that the press has a First Amendment right to report the names of rape victims obtained from judicial records that are open to the public. The Court has also invalidated a state law that prohibits the publication of the identity of juvenile offenders,<sup>62</sup> and it has struck down a trial judge's gag order that prohibited the press from covering a pretrial hearing for fear of prejudicial pretrial publicity.<sup>63</sup>

Governments have also attempted to control the print media by mandating the publication of certain information, but only with certain limits. In one case, the Court struck down a Florida statute that required newspapers under certain circumstances to print articles written by candidates for political office. In a unanimous decision, the Court ruled that the government has no constitutional authority to order the newspaper to publish an article. To allow such a law would limit the editorial decision-making power of the paper, increase its costs, and perhaps discourage political and electoral coverage.<sup>64</sup>

Traditionally, radio and television have not been as free from government control as the print media. As discussed

