

# American Studies

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## “The First Rough Draft of History” The Relevance of The Pentagon Papers in the 21<sup>st</sup> Century



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A handwritten signature in black ink, consisting of a stylized 'Y' followed by a horizontal line and a small dot.

Y. Peeters

Name of student: Yuri Peeters  
Student number: s1021614

## Acknowledgements

This thesis was written as a final research paper for the pre-master study program of North American Studies at the Radboud University in Nijmegen, the Netherlands.

The motivation for this topic came after the researcher saw the 2017 film *The Post*. As a fan of historical movies involving law-related topics, *The Post* triggered an interest to dive deeper into the case of *The Pentagon Papers* and any influence it had on Freedom of Information in the United States. After starting research on the influence of *The Pentagon Papers* in the 21<sup>st</sup> Century, it became clear that most information found on *The Pentagon Papers* was connected with Freedom of the Press and whistleblowers. Therefore, it was important to change the focus of the research paper.

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## Executive Summary

*The Pentagon Papers* are mostly known as a government scandal on classified documents regarding the Vietnam War. Additionally, *The Pentagon Papers* became a victorious achievement on press freedom based on the First Amendment of Freedom of the Press. Now an important part of American history, *The Pentagon Papers* are still mentioned and displayed through media and film regularly during the 21<sup>st</sup> Century. In 2017, the film *The Post* showed the stressful court battle between the government and *The Washington Post* (including *The New York Times*) in regards to the relevance of the Freedom of the Press in the current century. Therefore, the goal of this thesis is to find out how *The Pentagon Papers* of 1971 have been relevant in the United States when it comes to Freedom of the Press in the 21<sup>st</sup> Century.

To be able to answer the question, it was important to gain more insight in the rights of Freedom of the Press and Freedom of Information. It soon became clear that other factors, such as whistleblowers and different acts, such as the Freedom of Information Act, were important to understand when it comes to Freedom of the Press and classified documents. By combining the researched information through desk research and the history of *The Pentagon Papers*, a discussion based on the research goal was written. First of all, numerous cases, such as WikiLeaks, Edward Snowden, and *The Afghanistan Papers* relate to *The Pentagon Papers* by showing the importance of publishing secret information to the public as part of the Constitutional right of the Freedom of the Press, especially in a time where stricter measures and press harassment are given by several executive administrations, including the Presidents themselves. These 21<sup>st</sup>-Century cases, as well as *The Pentagon Papers*, show how important it is for the press to keep sharing information and not become intimidated by the government, which can result in self-censorship by the press. The importance of sharing information through the press has furthermore been enhanced by the full declassification of *The Pentagon Papers* in 2011 and media portrayal of the event, such



as in the 2017 movie *The Post*. All these different forms of relevance show that *The Pentagon Papers* were a historical landmark for the press as well as relate to the importance on how such victories need to be remembered in the current day and age, as the press are publically intimidated, such as by Donald J. Trump's accusation of the press as an "enemy of the people" by publishing "fake news".

## Abbreviation List

|      |  |
|------|--|
| CIA  | Central Intelligence Agency – “The [United States] nation’s premier agency providing global intelligence in an ever-changing political, social, economic, technological, and military landscapes” (“CIA” <sup>1</sup> ).   |
| FOIA | Freedom of Information Act - “Generally provides that any person has the right to request access to federal agency records or information except to the extent the records are protected from disclosure by any of nine exemptions contained in the law or by one of three special law enforcement record exclusions” (“Frequently Asked Questions” <sup>2</sup> ).  |
| FPF  | Freedom of the Press Foundation – “The Freedom of the Press Foundation protects, defends, and empowers public-interest journalism in the 21 <sup>st</sup> Century” (“Freedom of the Press Foundation” <sup>3</sup> ).  |
| NSA  | National Security Agency: “Leads the U.S. Government in cryptology that encompasses both signals intelligence (SIGINT) and information assurance (now referred to as cyber security) products and services, and enables computer network operations (CNO) in order to gain a decision advantage for the [United States] Nation and our allies under all circumstances” (“Mission & Values” <sup>4</sup> ). |
| PFI  | Press Freedom Index – “Created by Reporters Without Borders, the PFI ranks 180 countries and regions according to the level of freedom available to journalists” (“Reporters Without Borders” <sup>5</sup> ).  |

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<sup>1</sup> “CIA”. *Central Intelligence Agency*, 2020, <https://www.cia.gov/index.html>, Accessed May, 2020.

<sup>2</sup> “Frequently Asked Questions”, *FOIA.gov*, 2020, <https://www.foia.gov/faq.html>. Accessed March, 2020.

<sup>3</sup> “Freedom of the Press Foundation”. *Freedom Press Foundation*, 2020, <https://freedom.press/>. Accessed May, 2020.

<sup>4</sup> “Mission & Values”. *NSA*, <https://www.nsa.gov/about/mission-values/>. Accessed May, 2020.

<sup>5</sup> “Reporters Without Borders”, *RFS*, 2020, <https://rsf.org/en>. Accessed April, 2020.

- RAND            The RAND Corporation – “The RAND Corporation is a nonprofit institution that helps improve policy and decision-making through research and analysis” (“RAND”<sup>6</sup>).
- SIGAR            Special Inspector General for Afghanistan Reconstruction – U.S. Government authority “to provide independent and objective oversight of Afghanistan reconstruction projects and activities” (“About Sigar”<sup>7</sup>).

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<sup>6</sup> “RAND”, *RAND Corporation*, 2020, <https://www.rand.org/>. Accessed May, 2020.

<sup>7</sup> “About SIGAR”. *Special Inspector General for Afghanistan Reconstruction*, 2020, <https://www.sigar.mil/about/>, Accessed June, 2020.



# Table of Contents

|   |           |
|---|-----------|
| <b>ACKNOWLEDGEMENTS.....</b>  | <b>I</b>  |
| <b>EXECUTIVE SUMMARY.....</b>   | <b>II</b> |
| <b>ABBREVIATION LIST.....</b>   | <b>IV</b> |
| <b>CHAPTER 1 - INTRODUCTION.....</b>  | <b>1</b>  |
| 1.1 FREEDOM OF THE PRESS: A LITERATURE REVIEW.....                            | 2         |
| 1.1.1 Freedom Of Information.....   | 2         |
| 1.1.2 Freedom of the Press.....   | 6         |
| 1.2 RESEARCH GOAL.....  | 12        |
| 1.3 METHODOLOGY.....  | 13        |
| 1.3.1 Limitations of Research.....  | 14        |
| 1.4 THESIS STRUCTURE.....   | 15        |
| <b>CHAPTER 2 - THE PENTAGON PAPERS OF 1971.....</b>                           | <b>16</b> |
| 2.1 THE PENTAGON PAPERS.....  | 16        |
| 2.2 NEW YORK TIMES CO. V. UNITED STATES.....                                  | 18        |
| 2.3 THE AFTERMATH OF THE PENTAGON PAPERS IN THE 20 <sup>TH</sup> CENTURY..... | 20        |
| <b>CHAPTER 3 - RELEVANCE OF THE PENTAGON PAPERS IN THE 21ST CENTURY.....</b>  | <b>22</b> |
| 3.1 FULL DECLASSIFICATION OF THE PENTAGON PAPERS IN 2011.....                 | 22        |
| 3.2 21 <sup>ST</sup> CENTURY CASES V. THE PENTAGON PAPERS.....                | 25        |
| 3.2.1 WikiLeaks.....  | 27        |
| 3.2.2 Edward Snowden.....   | 29        |
| 3.2.3 The Afghanistan Papers of 2019.....                                     | 30        |
| 3.2.4 Conclusions.....  | 33        |
| 3.3 THE PENTAGON PAPERS IN FILM.....  | 34        |
| 3.3.1 The Post (2017).....  | 34        |
| <b>CHAPTER 4 – CONCLUSION.....</b>  | <b>37</b> |
| <b>BIBLIOGRAPHY.....</b>  | <b>39</b> |

## Chapter 1 - Introduction

This thesis is written as a final research paper for the pre-master Bachelor program of American Studies at the Radboud University in Nijmegen. The goal of the research is to find out whether *The Pentagon Papers* of 1971 have had any relevance on Freedom of the Press in the United States in the 21<sup>st</sup> Century. In a broader context, this research will find out what consequences a historical event can have on First Amendment rights in the Bill of Rights of the Constitution over a half-century later. The author's reason for choosing *The Pentagon Papers* comes from the 2017 film *The Post*, directed by Steven Spielberg, which showcases *The Pentagon Papers* as one of the most groundbreaking historical events with regards to Freedom of the Press.

Mentioned as both a historical event and government scandal of the United States, *The Pentagon Papers* can best and shortly be described as: “excerpts from classified documents outlining the history of U.S. involvement in the Vietnam War that scandalized the Administration of U.S. President Richard Nixon and led to a series of court battles that challenged the rights of a free press to criticize the government” (Mazzeno, 416). The classified documents, which were published through numerous newspapers including *The New York Times* and *The Washington Post*, were obtained by Daniel Ellsberg. *The Pentagon Papers* and its influence will be further explained in Chapter 2.

The following chapter will give an insight into Freedom of the Press and Freedom of Information in the United States, specifically the Freedom of Information Act. This way, the reader will have clear understanding of the legal protections held by citizens and the press of the United States. After explaining Freedom of the Press, the chapter will describe the research question and relevance of the thesis, followed by a theoretical and methodological framework and the limitations of the research. Finally, the chapter will conclude with the structure of the thesis as to provide an overview of the findings of this paper.

## ***1.1 Freedom of the Press: a Literature Review***

To gain better insight on the subject of Freedom of the Press, this chapter will briefly explain Freedom of Information, especially the Freedom of Information Act (FOIA) in regards to classified documents. The information gathered on Freedom of Information will be used to give a clearer description of the rules and regulations in relation to Freedom of the Press. The information in the literature review can be used as a guideline to have a better understanding of the following chapters.

### ***1.1.1 Freedom Of Information***

Freedom of Information is a broad concept that many Americans consider part of the First Amendment: “Congress shall make no law ... abridging the freedom of speech, or the press” (The Constitution of the United States<sup>8</sup>). Journalists and citizens of the United States consider the combination of Freedom of Speech and Freedom of the Press as Freedom of Information, in which they are permitted to share information based on the Constitution (Plessner, 136). With regards to Freedom of Information, the United States created the Freedom of Information Act (FOIA) in 1967, which gives the public of the United States the right to access documents from federal agencies (“Frequently Asked Questions”<sup>9</sup>). Enacted in 1966, but implemented in 1967, the FOIA became the first law that gave United States citizens and press the right to access certain information from the government, supporting Freedom of the Press and Freedom of Information (CMS, 2). Created by Congressman John Moss, the act took twelve years to eventually pass the U.S. Congress, as many government officials saw the act as a danger to federal agencies. In contrast, Moss called upon support from scientists, newspaper reporters and editors. The act was eventually reluctantly passed in 1966, when the Democrats and some Republicans in the Congress voted in favor. President Lyndon Baines Johnson, who did not agree with the concept of the FOIA,

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<sup>8</sup> “The Constitution of the United States,” Amendment 1.

<sup>9</sup> “Frequently Asked Questions”, *FOIA.gov*, 2020, <https://www.foia.gov/faq.html>. Accessed March, 2020.



eventually signed due to the amount of support for the act as well as to please voters for the upcoming elections in 1966. The FOIA also allows the press to obtain federal documents and information legally (Jones and West, 54). However, the FOIA clarifies that there are nine exemptions that may legally prevent some information being distributed, such as the first exemption, which is important in the context of this thesis: “Information that is classified to protect national security” (“Frequently Asked Questions”) (see figure 1). Still, the question that follows is: how does one precisely determine if information or classified documents falls under one of the exemptions?

#### ***The Nine Exemptions of the FOIA***

- **Exemption 1:** Information that is classified to protect national security.
- **Exemption 2:** Information related solely to the internal personnel rules and practices of agency.
- **Exemption 3:** Information that is prohibited from disclosure by another federal law.
- **Exemption 4:** Trade secrets or commercial or financial information that is confidential or privileged.
- **Exemption 5:** Privileged communications within or between agencies, including those protected by the:
  - o Deliberate Process Privilege (provided the records were created less than 25 years before the date on which they were requested).
  - o Attorney-Work Product Privilege.
  - o Attorney-Client Privilege
- **Exemption 6:** Information that, if disclosed, would invade another individual's personal privacy.
- **Exemption 7:** Information compiled for law enforcement purposes that:
  - o (A) Could reasonably be expected to interfere with enforcement proceedings.
  - o (B) Would deprive a person of a right to a fair trial or an impartial adjudication.
  - o (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
  - o (D) Could reasonably be expected to disclose the identity of a confidential source.
  - o (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.
  - o (F) Could reasonably be expected to endanger the life or physical safety of any individual.
- **Exemption 8:** Information that concerns the supervision of financial institutions.
- **Exemption 9:** Geological information on wells.

*Figure 1 – Nine Exemptions of the FOIA (source: FOIA website (“Frequently Asked Questions”))*

To answer the question, it is important to look at Executive Order 13526, which states the current standards of classifying as well as declassifying documents (Elsea, 5). The Executive Order was lastly amended in December 2009. According to the Executive Order, the President and his appointed officials may classify documents based on Constitutional power and if the documents or information are deemed to damage the national security. In addition, the information must be written, owned or even controlled by the government and must concern sensitive information as can be found in figure 2. When information is established as classified, the officer who originally classifies the information creates a declassification date on expectations of the danger of the information (Elsea, 6). If he or she cannot set a date within 10 years time, the declassification date will be marked on 10 or 25 years depending on the information. Still, the deadline of declassification can be postponed if the information or documents remain a threat to the national security. From December 2006, any classified information that has met the deadline of 25 years, can be declassified automatically if the official no longer deems the information sensitive.

***Executive Order 13526 Classified Documents***

Information or documents may be classified if containing the following subjects:

- Military plans, weapons systems, or operations;
- Foreign Government Information;
- Intelligence Activities, intelligence sources/methods, cryptology;
- Foreign relations or foreign activities of the United States, including confidential sources;
- Scientific, technological, or economic matters relating to national security;
- Federal programs for safeguarding nuclear materials or facilities;
- Vulnerabilities or capabilities of national security systems; or
- Weapons of mass destruction.

*Figure 2 – Subjects on Classifying Documents (source: (Elsea, 5).*

The first exemption in the FOIA mentions that classified documents may not be shared in order to protect the national security of the United States. This exemption regards any classified information that can harm or put endanger the interest of national security, any human life, or foreign policy, such as *The Pentagon Papers*

(Plessner, 136). However, what the Freedom of Information Act and Executive Order 13526 lack is a specific definition of what is eventually harmful to the national security or foreign policy. While it may seem clear that classified documents containing information based on Executive Order 13526 in figure 2 may not be shared, it can be counter-argued that some classified documents do not put in danger any national security, human life, or foreign policy, even if it includes this type of information (Plessner, 137). This creates difficulties in lawsuits between government and individuals or the press. In addition, while the Constitution does not forbid access to classified documents, the President of the United States has a Constitutional role to protect the country and can therefore gain authority to classify certain information through Constitutional investment of power (Elsea, 1). The FOIA is also complicated when looking at the guidelines that journalists must follow to obtain the information, as there is no consistency with regards to punishment of breaking any law or guidelines of the FOIA (Committee to Protect Journalists, 7).

Nevertheless, the FOIA ensures the important right that federal information must be made public to everyone, as it is the right of the public and the press to have this information to “exercise their democratic rights” (Stefanick, 94). Some information can be considered dangerous when placed in the wrong hands or context. This can be seen in recent years, as President Donald J. Trump mentions that information, which highlights Trump’s Administration in a negative way, is considered “fake news” (Long). The FOIA therefore wants to protect classified information through the nine exemptions, and can therefore override Constitutional protection, as the government is able to prosecute the press or individuals, should citizens or the press not adhere to one of the given nine exemptions (Forkosch, 14). This act therefore seems, on the one hand, to accept the Constitution by agreeing to publicize government and federal information, while, on the other hand, goes against the First Amendment by limiting the Freedom of the Press, such as preventing the illegal obtaining of classified information. By limiting the rights of the press through use of the President’s Constitutional authority, it can perhaps become easier for the government to use one of the nine exemptions of the



FOIA to protect certain information, which leads to the growth of the government's power and a decrease in the First Amendment's rights.

Another important aspect in regards to freedom and information is whether a citizen or the press has the Freedom "of" Information or the Freedom "to" Information (Forkosch, 11). Freedom "of" Information refers to the active collecting of information. When looking at Freedom "to" Information, the "to" can focus on the freedom to inform, the duty to inform or the right to be informed. Without Freedom "of" Information, there is no use for Freedom "to" Information as there would be no freedom to share information in the first place. This is important when looking at Freedom of the Press, as Freedom "of" Information mentions how information is collected from different sources, and the Freedom "to" Information is about sharing the information to the public (Jones and West, 53). In the case of *The Pentagon Papers*, when looking at Freedom "of" Information, it refers to Daniel Ellsberg as collector or source of the information, whereas the Freedom "to" Information focus on the publication of the documents by the newspapers, as to inform the public.

When it comes to Freedom of Information and the FOIA, we can say that there is a guideline on what can and cannot be obtained regarding government and federal information and documents. This guideline comes in the form of the nine exemptions mentioned in the FOIA (see figure 1), and most importantly with regards to classified documents when looking at *The Pentagon Papers*. However, while there is a guideline, there is no clear elaboration on whether a classified document or information (made classified by the President's Constitutional authority) is in fact a threat to the nation's security.

### **1.1.2 Freedom of the Press**

The First Amendment mentions Freedom of the Press clearly: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

(The Constitution of the United States). Though Freedom of the Press is a Constitutional right, it needs to adhere to the Freedom of Information Act and its nine exemptions. Freedom of the Press, as mentioned in the First Amendment, should give the press Constitutional protection with regards to Freedom of Information (Jones and West, 59). Still, the freedom that is mentioned is constricted by the FOIA (as mentioned before) and by individual states. The individual states in America have the right to attach certain restrictions they think are necessary to keep the Freedom of the Press open but limited (Price, 137). While it is still the Constitutional right for the press to publish what they want, the governments of these individual states mention that they will not just accept everything. The comments from these individual states results in journalists becoming more resistant in publishing certain classified information and an increase of self-censorship by the press. Journalists use self-censorship as a means to edit or delete certain information in the publication to avoid criticism or abuse. However, censorship can also hold back valuable information that is important for readers or listeners of the press to understand the full context (Rall). The Supreme Court also agrees with the individual states in limiting certain press freedom (Price, 137). Still, as part of the First Amendment, it is the Constitutional right for the press to publish what they want without prosecution or punishment (Jones and West, 53).

However, a loophole has been discovered, in which the federal government can legally charge or sue the press. As the First Amendment only protects the freedom to publish, it does not protect the way the information of the published article is gathered (Jones and West, 53). This is where the FOIA plays an important role. When referring back to Freedom “to” Information, which states the freedom of publishing information, and Freedom “of” Information, which explains the way the information is obtained, Freedom “to” Information falls under the Constitutional right for the press to publish information, whereas Freedom “of” Information is not protected through the First Amendment. This leaves the press vulnerable to search warrants or subpoenas by the government when it comes to access of classified information. In general, sources from reporters have limited to no protection, as congressmen mention that the press

functions adequately and receive federal privilege through the First Amendment (Koningisor, 1181). This means that journalists and their sources don't receive sufficient defense when called to federal court, and therefore the federal government can ask to publicize sources (Koningisor, 1180). Still, some sources are protected by different acts, such as the Whistleblower Protection Act (Whitaker, 2). The government also mentions that classified documents and violation of any of the nine exemptions of the Freedom of Information Act will be considered a crime and will receive consequences. This means that when members of the press publish classified documents, they may not be sued in regard to their Constitutional right of Freedom of the Press, however, they can be sued in regards to the way the classified documents were obtained, such as by whistleblowers (Jones and West, 53). This shows that the Freedom of Information Act has much significance to the Freedom of the Press and that the First Amendment does not necessary protect the press fully, especially the source of the information. When looking at the sources used by the press, classified documents mostly come from whistleblowers (Committee to Protect Journalists, 7).

A whistleblower is a person or organization that uses unlawful activities (in contrast to other sources) to inform other people of wrongdoing, fraud or corruption (Goel and Nelson, 2332). Due to the Espionage Act of 1917, in which the government has the right to gain information of as well as prosecute the source when it comes to distributing classified documents, these whistleblowers are no longer protected. Therefore, since 1917, it became difficult for the press to hide their sources. As a result, the government can sue the press in regard to the way that the information was obtained. However, there have been Whistleblower Acts that in return protect certain sources. The Whistleblower Protection Act of 1989, later on part of the Whistleblower Protection Enhancement Act of 2012, gives certain whistleblowers (figure 3) legal protection against prosecution (Goel and Nelson, 2331). It is also important to acknowledge that the Whistleblower Protection Act can only be issued if: "a personal action (such as a change in the working environment) that was taken because of a protected disclosure made by a covered employee" (Whitaker, 2). The Whistleblower



Protection Act (or Whistleblower Protection Enhancement Act) is only applicable for certain federal (covered) employees (see figure 3) and protects the employee from any punishment when the information is leaked regarding illegal or indecent government activities. While the Whistleblower Protection Act did not exist for Daniel Ellsberg during *The Pentagon Papers*, the act becomes relevant when looking at whistleblower cases after 1989, as the act was created to give more legal protection to federal employees. When looking at protected disclosure, the covered employee can share this information if there is certain reasonable belief of “evidence in regards to violation of law, rule or regulation as well as danger to public health or safety” if “the disclosure is not prohibited by law or if kept a secret by Executive Order” (Whitaker, 6). This means that classified documents cannot be made public if the Executive Order refers the document as secret. Still, the Whistleblower Protection Act is a certain, albeit restricted, step towards protection of certain sources. Even more, the federal government agrees that whistleblowers should gain more protection (Goel and Nelson, 2339), however when looking at recent cases of whistleblowers, such as with WikiLeaks and Edward Snowden, it seems that the federal government does not seek to want to protect the whistleblowers and even prosecutes them (Rall). This contradiction makes it confusing for whistleblowers to understand their rights as laid out the Whistleblower Acts, the FOIA, Freedom of the Press, and in what the government deems as “treason”. When looking at “treason”, Ellsberg defines the term as: ““Damaging the reputation of a particular administration or a particular individual”” (Kobrick, 97). Still, while some government officials and public citizens deem whistleblowers as “traitors”, others consider the acts of whistleblowers to be an act of heroism, as it should be a moral responsible act to inform the public (Weiskopf and Willmott, 480).

As a result of whistleblower prosecutions, several whistleblowers that were involved in cases of Freedom of the Press have created the Freedom of the Press Foundation (FPF). The FPF is a non-profit organization created in 2012 to “protect, defend, and empower public-interest journalism in the 21<sup>st</sup> Century” (“Freedom of the

Press Foundation”<sup>10</sup>). Among the founders of the FPF, is whistleblower Daniel Ellsberg, who leaked *The Pentagon Papers* in 1971 to the press (Greenwald). Part of the founding of the FPF comes from increase of hostility since 2009 towards whistleblowers and press by the federal government in relation to classified documents, especially during the Obama and Trump Administrations (Susca). The goal of the FPF is to ensure press freedom in the United States, as mentioned in the First Amendment (“Freedom of the Press Foundation”). Besides protecting the press, the FPF also wants to focus on protecting the sources. When looking at the publishing of certain news, the FPF wants to take public and legal actions to protect whistleblowers, the FOIA, and the freedom of spreading government secrecy. The FPF was founded on the basis of transparent (in this case open and free) journalism: “from publishing *The Pentagon Papers* and exposing *Watergate*, to uncovering the NSA’s warrantless wiretapping program and secret prisons” (“Freedom of the Press Foundation”). This transparent journalism would only work by the courage of whistleblowers in sharing sensitive information to journalists, who can therefore publish the information to the public. Therefore, organizations, such as FPF, highlight both the importance and endangerment of Freedom of the Press.

#### ***Covered Employees in the Whistleblower Protection Act***

##### **Covered**

“Current and former employees, or applicants for employment to positions in the executive branch of government in both the competitive and the excepted service, as well as positions in the Senior Executive Service”.

##### **Exemptions**

- “Confidential, policy-determining, policy-making, or policy-advocating character” of employees in competitive services.
- Positions exempted by the President based on a determination that it is necessary and warranted by conditions of good administration.
- Federal workers employed by: Postal Service or Postal Rate Commission, the Government Accountability Office, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Security Agency, and any other executive entity that the President determines primarily conducts foreign intelligence or counter-intelligence activities.

Figure 3 – Covered Employees of the Whistleblower Protection Act (source: (Whitaker, 2))

<sup>10</sup> “Freedom of the Press Foundation”. *Freedom Press Foundation*, 2020, <https://freedom.press/>. Accessed May, 2020.

When looking at Freedom of the Press, it can be said that the term “Freedom” is limited through different acts, laws and rights. Freedom of the Press is a Constitutional right and therefore gives the press the right to publish what they want. However, there is a loophole when it comes to gaining information from a source, as the Constitution does not protect the way the information was obtained. In cases when classified documents are published, the source, most of the times whistleblowers, can in certain cases, such as *The Pentagon Papers*, be sued by the government through the Espionage Act of 1917. Not only does the First Amendment not protect whistleblowers, but it also does not protect the press in regards to gaining the information. This is where the Freedom of Information Act plays an important role, as the Act clearly mentions that prosecution can happen with regards to breaking any of the nine exemptions, such as classified documents. This clearly shows that Freedom of Information and Freedom of the Press are therefore intertwined. However, a question that needs to be answered is to see if Freedom of the Press has become more limited during this century than it has been before by demonstrating the relevance of *The Pentagon Papers* of 1971 in the 21<sup>st</sup> Century with regards to Freedom of the Press.

## 1.2 Research Goal

When looking at Freedom of Information and Freedom of the Press, there is still some information that remains difficult or unclear through the several laws, rights and acts that exist. There is also notably limited information regarding the effects of violating certain acts and regulations (such as violation of the Freedom of Information Act) as well as certain obstacles against Freedom of the Press that have caused the press to become more vulnerable (such as harassment). To find out if these violations or obstacles have an effect on Freedom of the Press in current and future cases, this research will focus on the historical case of *The Pentagon Papers*. This case has been one of the most important historical events at the forefront of whether the publishing of classified documents was seen as a right of Freedom of the Press or as a violation of and a danger to national security. Using *The Pentagon Papers* as a case study, this thesis will determine the relevance of a historical event on Freedom of the Press in the 21<sup>st</sup> Century. Therefore, the main research question is:

**How have *The Pentagon Papers* of 1971 been relevant to the United States of America in regards to Freedom of the Press in the 21<sup>st</sup> Century?**

This will become significant in the course of American Studies, as by using *The Pentagon Papers* as case study, the thesis will shed some more light on *The Pentagon Papers* itself and its aftermath, as well as explain the relevance of the historical event in future cases of Freedom of the Press in the United States. As Freedom of the Press is mentioned in the First Amendment, it can be said that Freedom of the Press is an important factor in the American way of life.

### 1.3 Methodology

The research focuses on the relevance of *The Pentagon Papers* in the 21<sup>st</sup> Century. For the term relevance, it was decided to look in what way *The Pentagon Papers* are referenced argumentatively to support why the historic event influences or impacts contemporary visions of Freedom of the Press. Therefore, the research for this thesis was done through use of secondary sources via desk research. These secondary sources resulted in a data collection of both quantitative and qualitative methods. First of all, it is important to focus on specific information from these sources to be able to interpret the information, resulting in the collection of qualitative research. To make sure the information that is gained is correct or supported by other sources, it is also important to use a quantitative research method.

The literature review of the thesis was mostly written with the use of peer-reviewed articles. These sources were collected via the use of the Radboud University Library and other research databases, such as ResearchGate and JStor. The literature review was created by a “Content Analysis”, as the idea of a specific hypothesis was created beforehand and the goal of the literature review was to dive deeper into certain themes of the hypothesis, mainly Freedom of the Press. The information gathered for the research part itself came from a mixture of research databases and online news articles, to interpret certain information that is important to the research goal or question. During the research, the hypothesis changed, as the data that was collected focused more on Freedom of the Press than Freedom of Information. Therefore, this research also uses “Grounded Analysis,” as by collecting qualitative data, information could be used to explain certain theories or implement certain situations.

Data collected for this thesis was used by searching specific keywords in both the title and text of different articles or news sites. First of all, the most important keywords used during the search were *The Pentagon Papers*. It was important to find articles and documents that included this topic, as this is the main hypothesis for the thesis. Other important keywords included: *The Post*, WikiLeaks, Edward Snowden, *The Afghanistan*

*Papers*, and Full Release (of *The Pentagon Papers*). These keywords were used for the research section of this thesis. For the literature review, it was important to understand both Freedom of Information and Freedom of Speech. Therefore, these keywords were used to search specific information. After writing the literature review and having made a start on the research, other important keywords that came up were: whistleblowers and Freedom of Information Act.

### **1.3.1 Limitations of Research**

The research conducted for this thesis also has its limitations. First of all, it was only possible to use previously written information, as this was one of the guidelines mentioned in the course syllabus. Interviews or questionnaires might have given more variety of views that could perhaps have affected the outcome of the thesis. However, this research still manages to answer the research question and give a deeper insight of the relevance of *The Pentagon Papers* in the 21<sup>st</sup> Century. It is still advised that researchers use a more qualitative approach on the amount of cases that have been relevant or related to *The Pentagon Papers* for future studies. Finally, another limitation is that there may have been other factors that have influenced the change in Freedom of the Press over the years beside *The Pentagon Papers*. As this is a case study, it would be interesting for future studies to find out what other factors played a role in the change of Freedom of the Press. What new acts and laws were created over the last century in relation to Freedom of the Press? And why? These questions came up during the research and can be used for future studies.

## 1.4 Thesis Structure

This subchapter will explain the structure of the thesis. Before Chapter 1, acknowledgements have been written to thank contributors of this thesis as well as to give an explanation on why this thesis subject was chosen. This is followed by an executive summary, which explains to the reader briefly what can be found in this thesis. The following chapters will be explained further:

Chapter 2: *The Pentagon Papers*. This chapter will give an explanation of *The Pentagon Papers* of 1971. The chapter will mostly focus on the publishing of *The Pentagon Papers* and the court cases between the government of the United States and the newspapers that have published *The Pentagon Papers*. These court cases focus on Freedom of the Press. Lastly, the chapter will dedicate research on the effects *The Pentagon Papers* had on Freedom of the Press in the years leading up to the 21<sup>st</sup> Century.

Chapter 3: Importance of *The Pentagon Papers* in the 21<sup>st</sup> Century. The third chapter of the thesis combines both results and discussions on *The Pentagon Papers'* influence in relation to Freedom of the Press in the 21<sup>st</sup> Century. Multiple cases of the 21<sup>st</sup> Century that mention *The Pentagon Papers* will be used to evaluate the effect the historical event has on current cases in regards to Freedom of the Press. In addition, the chapter will also briefly focus on the full declassification of *The Pentagon Papers* in 2011 and its relevance of its publication. Finally, the chapter will give insight into the representation of *The Pentagon Papers* in popular media, such as in the 2017 movie *The Post*.

Chapter 4: Conclusions. The thesis will end with a conclusion of the research and give a definite answer on the research question, which shows that *The Pentagon Papers* have been relevant in numerous forms, such as in media or as remembrance of victory, for Freedom of the Press during the 21<sup>st</sup> Century.

## Chapter 2 - The Pentagon Papers of 1971

On June 13, 1971, *The New York Times* published an article called “The Covert War,” the first in the series of *The Pentagon Papers* (Mazzeno, 416). This article, based on classified documents of the Vietnam War, was the start of a soon to be important historical event effecting the future of Freedom of the Press in the United States. But how was it possible for such an important document to be published? And what were the direct effects of the publication of these documents? This chapter will focus on the history of *The Pentagon Papers*, by describing the event and its effect on the press. Finally, the aftermath of the historical event leading up until the 21<sup>st</sup> Century will be shortly explained.

### 2.1 *The Pentagon Papers*

Before the papers were published, it is important to understand how the documents were given to the press in the first place. Daniel Ellsberg, analyst of RAND, worked on a top-secret document that had been commissioned in 1967 by Robert McNamara, the U.S. Secretary of Defense (Glendon, 1296). This document included historical records of U.S. involvement in the Vietnam War between 1950 and 1968. Reading the documents, Ellsberg noticed the deception and lies that were given to the citizens of the United States by the federal government over several Presidential Administrations, namely on the status of United States position in the war. Ellsberg wanted to find a way to make the documents public in a way to alter the war, as well as part of a responsibility he felt to inform the public (Weiskopf and Willmott, 480).

Between 1970 and 1971, Ellsberg began to photocopy the classified report, which was held in top-secret safes at the RAND Corporation (Mazzeno, 416). This refers to Freedom “of” Information, as Ellsberg actively collected the information to be able to distribute the information publicly, also known as Freedom “to” Information. It took about seven thousand pages to photocopy most of the forty-seven-volume report. Afterwards, Ellsberg tried to publicize the documents by contacting Congressional



opponents of the Vietnam War. However, the Congress members declined cooperation, as it would impact their position in the government. Therefore, Ellsberg moved to the press, first *The New York Times*. At *The New York Times*, Neil Sheehan agreed to run a series based on the classified document and thoughtfully prepared the articles before the Presidential Administration of Richard Nixon would know that the documents had been leaked (Glendon, 1296). Sheehan therefore used the Freedom “to” Information, as he wants to inform the public. On June 13, 1971, the first article was released to the public.

After publication of the first series, Nixon started an investigation into the whistleblower of the documents, as well as move aggressively against *The New York Times*, as he considered the leakage as a threat to national security (Mazzeno, 417; Abrams, 135). Even though the documents may seem more threatening to past Presidents’ actions of the Vietnam War, Nixon was afraid that the publication showed mistrust in the government of the United States and would therefore affect his reelection campaign as President (Junger, 9). For Nixon, the importance of attacking the problem of *The Pentagon Papers* seems to lie within personal reasoning instead of the national security. The real impact of *The Pentagon Papers* came after newspapers started publishing more parts of the classified documents, such as *The Washington Post*. While the government stated that the documents were a threat to national security if published, newspaper attorneys argued that the press was allowed to share this information based on the First Amendment (Junger, 9).

In the days between the publication in *The New York Times* and the other newspapers, the government and the Justice Department were able to gain certain injunctions to halt the distribution of further documents. The decision to publish by both newspapers took much courage, as publishing *The Pentagon Papers* could result in the downfall of both *The New York Times* and *The Post*, as both did not adhere to the FOIA by distributing classified documents gained by a source who was not protected by the FOIA or the Constitution. However, both newspapers thought that the most important part of publishing was to not only show the citizens of the United States that

their government was lying, but also as part of their Freedom of the Press in the First Amendment. This resulted in *The New York Times* being sued by the government, followed by *The Post* a couple days later.

With newspapers publishing the documents, the U.S. Supreme Court began a case on behalf of the Nixon Administration from June 26, 1971, called *New York Times Co. v. United States* (Mazzeno, 417; Junger, 8). A couple weeks later, the Nixon Administration lost the court battle against the press, as the court found the government to have unreasonable and insupportable claims against the press. This was a victory for the press, which not only won the case against the government, but also showed the citizens of the United States the importance of Freedom of the Press, as stated in the First Amendment. After the loss against the press, Nixon wanted to prosecute the whistleblower responsible for the leak: Daniel Ellsberg. The Whistleblower Protection Act could not protect Ellsberg, as it did not exist during this time. Ellsberg went into hiding after the first article was released on June 13, 1971, and reappeared in the public eye at the end of June. After being arrested and charged with “theft, conspiracy, and espionage” through the Espionage Act of 1917 (Mazzeno, 418), a case was built by the Nixon Administration against him. However the charges of Ellsberg were dropped in 1972, due to Nixon’s focus on the *Watergate* Scandal, in which the Nixon Administration was exposed of misconduct by breaking-in at the Democratic National Committee for information. Both Ellsberg and the press won their battle against the United States government. In the end, an increasing number of the public came to protest against the federal government and deemed the government as liars and manipulators. *The Pentagon Papers* would enter the history books as it exposed one of the largest scandals of U.S. government’s involvement in the Vietnam War.

## ***2.2 New York Times Co. v. United States***

When looking into Freedom of the Press in relation to *The Pentagon Papers*, we have to go back to the Supreme Court case between *The New York Times* and the Nixon Administration: *New York Times Co. v. United States*. Before the case came to the

Supreme Court, *The New York Times* has been given a restraining order to cease publishing any further classified information after its initial publishing on June 13, 1971 (Glendon, 1297). Eventually, *The Post* continued publication, which resulted in more newspapers disobeying the government's call. These newspapers' decision to publish was not an easy decision, as the top-secret documents and the source of the information could lead to legal conflicts, as the press would break the FOIA based on the obtainment of the documents. *The New York Times* lawyers even advised the newspaper to not publish any documents beforehand. Still, *The New York Times* published the articles, which at the time were mostly seen by the citizens of the United States as a threat towards national security (Glendon, 1298). This resulted in a backlash from some citizens and government towards both Ellsberg and the press. However, not much longer, the citizens changed their opinion and most citizens praised both Ellsberg and the press for publishing the documents, as the citizens realized the documents would not harm the national security and were angered by the government's lies and deception as well as their inhumane actions during the Vietnam War (Kobrick, 81).

A question that comes to mind when thinking of the court case is how did the government have the power to sue the press, who were protected by the First Amendment? As the press was already protected by the Constitution, it seemed unlikely for the government to win. Still, the government tried charging the press on multiple fronts, including the Espionage Act, and by using the President's Constitutional power (Glendon, 1300; Elsea, 5). However, during the almost two-week hearing, both *The Post* and *The New York Times* were prevented from any further publishing due to government intervention. This temporary solution could also be seen as a violation of the Constitution, but was understandable, as the Supreme Court found the case not easy in any matter, as on one hand it sought to protect the government, but on the other hand had to take into consideration the First Amendment, created by the founding fathers of the United States. The federal government did not have specific claims made towards the press, but rather used several claims that did not cohere. As the government tried to build a case against *The Times* and *The Post* based on the

danger of national security, the court decided that the claims were not reasonable and insupportable (Altschuler, 409). In summary, the court decided that the publishing of the documents did not cause any severe or immediate danger to the national security as the information distributed focused on domestic strategies from the past and were no longer currently relevant. Therefore the press was cleared of all charges. This resulted in a loss for the government and a win for the press by a 6-3 judges' decision (Mazzeno, 417). The First Amendment had prevailed and it became clear that Freedom of the Press should be applicable for press publications (Kobrick, 91).

When looking at declassification of documents, it is strange that while the Supreme Court mention that there is no danger of national security, the documents did stay classified until 2011. A reason for this could be due to the eleven words that were meant to be kept secret in part of the documents that were not yet published. What these eleven words were is still not clear as multiple options have been mentioned by different researchers and journalists (Grier).

### ***2.3 The Aftermath of The Pentagon Papers in the 20<sup>th</sup> Century***

It seemed that after the press obtained a victorious moment by winning the court case against the government of the United States, that *The Pentagon Papers* would become a closed chapter in history. While it is indeed partly a closed chapter, the relevance of *The Pentagon Papers* was far from over. First of all, only one year after *The Pentagon Papers* were released, the Nixon Administration was caught in the *Watergate* scandal of using illegal practices by breaking in the Democratic National Committee to gain another presidential win (Abrams, 143; Kobrick, 109). The scandal once again put *The Pentagon Papers* in the spotlight, mainly as both cases showed the lies and deception of the government to the citizens of the United States. Furthermore, the following years in the 1970s, numerous cases between states and local newspapers occurred regarding published articles that had the possibility to harm national security, such as *Branzburg v. Hayes* in Kentucky. During this case, reporters lost against the government, even when the reporters used *The Pentagon Papers* as example of the

importance of the First Amendment. The reporters eventually lost the case based on not disclosing the confidential sources that broke the FOIA to distribute the classified information to the reporters (Abrams, 144). While it seems that *The Pentagon Papers* may have been seen as a victory of Freedom of the Press, it also became clear that the increased court cases against newspapers questioned whether the results of *The Pentagon Papers* were actually an improvement to press freedom, such as through *Branzburg v Hayes*.

Following the 1980s *The Pentagon Papers* were hardly mentioned in relation to court cases or as relevance to Freedom of the Press (Abrams, 152). Like in the 1970s, there were still some cases with regards to national security and the publishing of certain articles, however none were so important to reach headline news (Abrams, 152). For a moment, it seemed as if *The Pentagon Papers* were slowly becoming a past chapter in the history of the United States instead of a tool that was being used to compare or teach future researchers on the danger of the government against the rights of the press and the First Amendment. Still, numerous research articles were written with regards to *The Pentagon Papers* (Forkosch; Glendon; Junger; Plessner). Eventually the rise of the Internet at the end of the 20<sup>th</sup> Century and the start of the 21<sup>st</sup> Century proved a game changer for both the press and its freedom to publish information. Information was now easier and quicker to obtain through Internet, but it also brought its dangers. Not only did the rise of the Internet and other media forms cause new discussions on Freedom of the Press as can be read in the next chapter, it also revived *The Pentagon Papers* as an important example of the rights of the press.

## Chapter 3 - Relevance of The Pentagon Papers in the 21st Century

After looking at *The Pentagon Papers* of 1971, this thesis will now look towards the relevance the historic event had on Freedom of the Press in future studies and cases. In the 21<sup>st</sup> Century, numerous events have occurred in which *The Pentagon Papers* were referenced. From WikiLeaks in 2006 up until the “fake news” debacle of President Trump, this chapter will focus on the relevance that *The Pentagon Papers* have in the this century. First, the full declassification of *The Pentagon Papers* in 2011 will be shortly analyzed. Second, three different cases in the 21<sup>st</sup> Century that relate to *The Pentagon Papers* in regards to how Freedom of the Press is used will be discussed. WikiLeaks, Edward Snowden, and *The Afghanistan Papers* of 2019 are important subjects for this part of the chapter. Finally, the research will focus on the representation of *The Pentagon Papers* and Freedom of the Press in film, most specifically in the 2017 movie *The Post*, and the relevance of the movie during Donald J. Trump’s presidency.

### 3.1 Full Declassification of The Pentagon Papers in 2011

In the year 2011, on June 13, 40 years since part of *The Pentagon Papers* were published, the classified 7000-page documents became declassified and were released publicly online in full by the National Archives and Records Administration, a U.S. government agency in charge of preserving documents and historical records (Cooper and Roberts). What makes it the declassification curious is the time of the full release of the papers. Questions arise specifically on why the government would declassify these documents during an anniversary of the press leak. Another question that arises is why these classified documents suddenly are being released in a period when WikiLeaks had become a forefront of news (Cooper and Roberts). When looking at the timing, there are no sources that mention why the government decided to declassify the documents on its 40<sup>th</sup> anniversary. According to Executive Order 13526, starting from December

2006, any classified information that has met the deadline of 25 years, can be declassified automatically when it is deemed no longer a threat to the national security (Elsea, 6). So another question that occurs is why the documents were not released in 2006 leading up to 2011, as the national threat of publishing *The Pentagon Papers* seemed to no longer exist (Cooper and Roberts). Unfortunately, the government has given no clear answer to these questions.

Whistleblower Daniel Ellsberg mentions the full release as: “absurd” and mentions *The Pentagon Papers* were probably declassified for domestic political reasons, instead of in relation to national security (Cooper and Roberts). In other words, Ellsberg mentions that *The Pentagon Papers* should never have been classified. Ellsberg also mentions that it will not seem likely that anyone will really read the full document, as hardly anyone has already made it through the whole document before (Cooper and Roberts). The release of the classified documents forty years later therefore seemed for Ellsberg too late, in the sense that if no one would already read through the whole document then, they would certainly not start to do so now (Latson). Ellsberg also adds the timeliness of the publication in 2011, as he mentions that: “we’re mired again in wars – especially in Afghanistan – remarkably similar to the 30-year conflict in Vietnam” (Ellsberg). While *The Pentagon Papers* full release has finally appeared, it shadows the necessity of gaining “*The Pentagon Papers*” of Iraq and Afghanistan, a topic much discussed in WikiLeaks.

Still, Ellsberg also mentions the importance of the declassification during this period. First of all, the full publication of *The Pentagon Papers* not only closes an important chapter of United States government secrecy, but also suddenly becomes a symbol of declassification in modern day politics (Grier). Daniel Ellsberg mentions that while the full publication may now seem no longer important in reliving the historical moment in 1971, it still has much relevance in today’s age (Latson). Ellsberg also mentions that he himself was also too late to share the classified documents, as the Vietnam War was in its final years when the press published the classified documents (Ellsberg). Additionally, Ellsberg hopes that the republication shows the importance of

why government information should be made publically as part of Freedom of the Press and that if anyone does have classified documents, he or she should publish them. Besides Ellsberg's article in *The Guardian*, other press publications, including *The New York Times* and *The Washington Post*, have mentioned that the declassification comes at a time where the public should remember the importance of the Freedom of the Press so that they can be informed (Latson; Cooper and Roberts; Ortenzi).



### 3.2 21<sup>st</sup> Century Cases v. *The Pentagon Papers*

The 21<sup>st</sup> Century has had numerous cases that involved Freedom of the Press against the government of the United States. Three cases in the 21<sup>st</sup> Century that will be discussed include WikiLeaks, Edward Snowden and *The Afghanistan Papers* of 2019. These cases have been chosen based on similarities found with *The Pentagon Papers* (such as publishing of classified documents in newspapers and using *The Pentagon Papers* as inspiration), the importance of Freedom of the Press versus Government in the United States, and the sudden differences in rankings of the PFI, as can be seen in figure 4. The main similarities between the cases and *The Pentagon Papers* include the publication of classified information through the press and the use of whistleblowers as sources. Please note, that there have been more cases in the United States on issues of Freedom of the Press, such as the leakage of a memo regarding US strategy within the Iraq war by whistleblower Katherine Gun. These will however not be discussed due to the lack of reference to *The Pentagon Papers*.

When looking at the ranking of the United States on press freedom in the world, it is clear that during the 21<sup>st</sup> Century there have been changes (see figure 4). Reporters Without Borders have evaluated the Freedom of the Press over the course of 180 countries and created a ranking, called the Press Freedom Index (PFI), from best to worst, based on multiple factors that ensure press freedom, such as media independence, working environment, transparency, infrastructure and self-censorship (“Reporters Without Borders”<sup>11</sup>). During the early years of the 21<sup>st</sup> Century, the United States was ranked relatively high on the scale of press freedom, until 2005. According to Reporters Without Borders, the decrease of the PFI comes from President Bush’s Administration mentioning that suspicions of journalists on the “war on terrorism” are a pretext to harming “national security” (“Reporters Without Borders”). Additionally, 2011 saw a huge decrease in press freedom. Since then, the United States seems to

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<sup>11</sup> “Reporters Without Borders”, *RFS*, 2020, <https://rsf.org/en>. Accessed April, 2020

struggle to gain a higher ranking. Reasoning for certain changes in the Press Freedom Index will be mentioned further on in this chapter.

### **Ranking United States PFI**

|                  |                        |
|------------------|------------------------|
| 2002             | 17 <sup>th</sup>       |
| <b>2003</b>      | <b>31<sup>st</sup></b> |
| 2004             | 22 <sup>nd</sup>       |
| <b>2005</b>      | <b>44<sup>th</sup></b> |
| 2006             | 53 <sup>rd</sup>       |
| <b>2007</b>      | <b>48<sup>th</sup></b> |
| 2008             | 36 <sup>th</sup>       |
| <b>2009</b>      | <b>20<sup>th</sup></b> |
| 2010             | 20 <sup>th</sup>       |
| <b>2011/2012</b> | <b>47<sup>th</sup></b> |
| 2013             | 32 <sup>nd</sup>       |
| <b>2014</b>      | <b>46<sup>th</sup></b> |
| 2015             | 49 <sup>th</sup>       |
| <b>2016</b>      | <b>41<sup>st</sup></b> |
| 2017             | 43 <sup>rd</sup>       |
| <b>2018</b>      | <b>45<sup>th</sup></b> |
| 2019             | 48 <sup>th</sup>       |
| <b>2020</b>      | <b>45<sup>th</sup></b> |

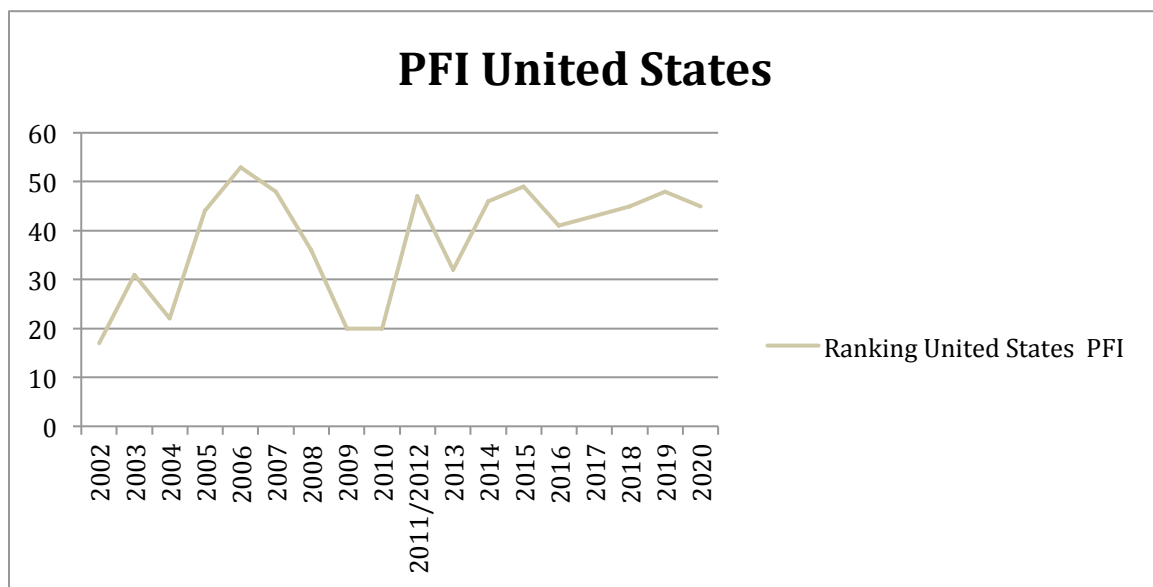


Figure 4 – Ranking United States Press Freedom Index (out of 180 countries) (source: Reporters Without Borders website ("Reporters Without Borders"))

### 3.2.1 WikiLeaks

WikiLeaks gained awareness through several individuals who were able to gain government secrets and leak this information to the press (Roberts, 116). While WikiLeaks may be seen as an organization, it is in fact a network. The main leader of this network is whistleblower Julian Assange. While already active in 2006, WikiLeaks became a media spectacle in 2010 after important classified information was released. Important leakages include 90,000 documents on the Afghan War between 2004 and 2010, and 400,000 documents informing the strategies of the United States in Iraq during the same period, both which were published by newspapers. Daniel Ellsberg, whistleblower of *The Pentagon Papers*, sees that: “the parallels are very strong” between the Wikileaks and the 1971 leak (Altschuler, 401).

Founder of WikiLeaks, Assange, also acknowledges the relevance of *The Pentagon Papers* with the leaks on the Iraq and Afghan War. While the amount of pages published differs immensely, the impact it had in provoking a government scandal was similar (Roberts, 118). Another important similarity is that both the documents of the Iraq and Afghan War as *The Pentagon Papers* were leaked by whistleblowers. Ellsberg, Assange, and Chelsea Manning (born as Bradley Manning), who worked with Assange and distributed much of the documents, have been threatened with prosecution by the federal government. Ellsberg himself mentions that Assange’s threats are in a way similar to when Ellsberg himself was harassed by the government. The main difference in the harassment was that Assange’s and Manning’s punishment by the government was more severe, as the classified information deemed to be more relevant to national security compared to *The Pentagon Papers*. Ellsberg and Assange were both seen as traitors to the United States by federal government; however, Assange was arrested (in 2019) in London, due to the United States indictment under the Espionage Act of 1917 (for stealing government classified documents) and an international arrest warrant (Roberts, 118). In addition, Manning served a seven-year imprisonment based on the Espionage Act of 1917. This makes it therefore more important that the press needs to protect outside sources, which was more difficult during the Obama Administration in

2010 and 2011 due to the increased court cases against journalists (see figure 4) (Roberts, 118). Unlike the unsuccessful attempt of Nixon prosecuting the newspapers and Daniel Ellsberg who were involved in *The Pentagon Papers*, President Obama wanted to take harsher measures of criminal prosecution against these leakers (Altschuler, 423). This resulted in many whistleblowers being called for trial based on the Espionage Act of 1917, such as Manning. Many outside sources, mainly whistleblowers, took the opportunity to gain sanctuary outside of the United States, while others, such as Assange, were still able to be prosecuted due to an extradition treaty. But it did not stop there. The Obama Administration took further steps and started taking actions against the press. This resulted in more threats than actual prosecutions, as the press was and still is protected by the Constitution. Still, many outside sources, such as WikiLeaks, and the press became more scared of any attack or harassment from the government, and therefore started self-censoring by editing certain important information out of the publishing, as is evidenced in the Edward Snowden case on violations of civil rights in the United States (Bar-Tal, 60). This suggests that the consequences for whistleblowers and the press in the 20<sup>th</sup> Century seemed less severe than in the 21<sup>st</sup> Century (Rall).

When looking at the press side, it is interesting to acknowledge the different harassment of the press by the federal government. *The Pentagon Papers* were published by newspapers, whereas the Iraq and Afghan Papers were published through newspapers and through Internet. While the press had to come to trial during *The Pentagon Papers* leak, the press was not prosecuted based on the publishing of the Iraq and Afghan documents, with no specific reason why not. What most likely contributed was that through WikiLeaks' use of Internet, the individual sources were more accessible compared to Ellsberg. Therefore, the federal government may not have needed to take the press to federal court to gain information on the sources. In addition, the aftermath of *The Pentagon Papers* and the WikiLeaks documents were opposite. After the court's decision of *The Pentagon Papers*, the press came out stronger and more confident in their Freedom of the Press, despite the increase of court

cases between press and government. In contrast, while the press who published the WikiLeaks documents was not prosecuted, they were harassed by the Obama Administration, by bad publicity as well as threats of prosecution, and eventually felt afraid of publishing certain information (Roberts, 116). This in turn can have contributed to a significant decrease of the Press Freedom Index (Rall) (Roberts, 116).

### **3.2.2 Edward Snowden**

WikiLeaks was not the only historic event that raised discussion on classified documents and Freedom of the Press. In 2013, Edward Snowden, former employee of Central Intelligence Agency (CIA) and National Security Agency (NSA), leaked classified documents of the NSA, informing the press about secret Internet and phone surveillance of U.S. citizens by the U.S. Intelligence Service (Cle and McClam). Similar to the case of *The Pentagon Papers*, Snowden contacted the press with information that he found important for citizens to know (Cohen). After the press published the documents, the United States Department of Justice charged Snowden based on several criminal indictments, including espionage and stealing government property, both under the Espionage Act of 1917. Soon after publication, Snowden fled the country to Russia to seek asylum. Snowden mentions that inspiration from his actions came from the almost half a century earlier *Pentagon Papers* (Cole and McClam).

It is important to get a closer look at Edward Snowden and his rights as whistleblower. First of all, as a former employee of the CIA and NSA, Snowden did not receive protection from the Whistleblower Protection Act of 1987, due to his previous employment in the CIA and NSA, which shows the restrictions of who can use the Act (Cohen). This is similar to Assange, who was not protected by the act, as he was neither a federal employee nor even a citizen. However, because Snowden sought asylum in Russia, he could not be held in custody or put to trial, as Russia did not want to extradite Snowden. In addition, Snowden was staying in Hong Kong when the documents were published. Snowden and Ellsberg share similarities in sharing the information to the newspapers and being seen as either hero or traitor to the United States. Ellsberg mentions that Snowden's work should also be inspiring for future whistleblowers, as it is

important to keep having leakages of classified information occur, so that the citizens of the United States can take control over their own country and exercise their democratic right, in the sense that citizens have the right to be informed (Toor). Ellsberg furthermore mentions that Snowden's bravery is needed in current times, as Ellsberg compares President Trump to former President Nixon: "We're back with Nixon, as we have been all along. All Presidents lie" (Sullivan).

There was also, just as with WikiLeaks, hardly any information found about the consequences of the newspapers that published Snowden's information. Still, a possible conclusion can be made based on the Reporters Without Borders list of the Press Freedom Index. When looking at figure 4, it is clear that there was a rather large decrease of Press Freedom Index in the United States between 2013 and 2014. As the Snowden papers were published halfway through 2013, Reporters Without Borders mention that the publishing has resulted in backlash and threats from the federal government to the press, as had happened during the WikiLeaks case ("Reporters Without Borders"; Greenwald). One possible reasoning on why both press of the WikiLeaks case as Edward Snowden were not prosecuted, could be due to *The Pentagon Papers* victory of the press against very similar cases. Still, there is no clear evidence whether the press was harassed based on Snowden's documents. What can be acknowledged, is that with both the WikiLeaks as the Snowden cases, the press chose to use the First Amendment based on Freedom of the Press and published the documents. Especially after receiving potential backlash and threats from the WikiLeaks case, the press still used their freedom to publish the Snowden information, knowing the possible consequences. This use of Freedom relates to the relevance *The Pentagon Papers* and the victory of the press against the government.

### **3.2.3 The Afghanistan Papers of 2019**

A more recent case that remembers citizens of *The Pentagon Papers* of 1971, are *The Afghanistan Papers* of 2019. In December 2019, a new case created a U.S. government scandal, based on new lies of the federal government (Beaumont). After a three-year legal battle against the government of the United States, *The Washington*

*Post (The Post)* received several interviews and documents based on the Afghanistan War from the Special Inspector General for Afghanistan Reconstruction (U.S. Government authority “to provide independent and objective oversight of Afghanistan reconstruction projects and activities” (“About SIGAR”<sup>12</sup>)), which were eventually published (Graham). The documents contained information of different views and opinions of several people who were insiders during the war, as well as many failures of the war. These opinions contradicted earlier statements by federal government and the Presidents of the United States (Wittes and Huggard).

*The Post* did not obtain *The Afghanistan Papers* of 2019 easily (Merrefield). Receiving a tip about Michael Flynn, shortly the national security advisor of President Trump, who mentioned an obscure government agency in Afghanistan during an interview with the Special Inspector General for Afghanistan Reconstruction, *The Post* journalist Craig Whitlock wanted to know more about the interview. Therefore, Whitlock issued a request for the interview based on the FOIA on August 24, 2016. The inspector of the SIGAR approved, however as there were numerous delays of distributing the interview, Whitlock’s request was denied based on Flynn’s promotion to national security advisor. During this time, there were rumors of more interviews. Whitlock once again requested interviews in March 2017, based on the FOIA, based on the possible public interest that can be found in these interviews. Seeing much delay in a response, Flynn and *The Post* started a FOIA lawsuit against SIGAR on only Flynn’s interview, which SIGAR responded by releasing it only three months later without a judge’s ruling. After reading the content of the interview, *The Post* decided to ask for the other interviews based on the FOIA. Eventually, SIGAR gave multiple interviews to *The Post* after much delay to vet sensitive information (Merrefield).

Before comparing the relevance of *The Pentagon Papers* to this case, it is important to explain one crucial difference of *The Afghanistan Papers* and the other

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<sup>12</sup> “About SIGAR”. *Special Inspector General for Afghanistan Reconstruction*, 2020, <https://www.sigar.mil/about/>, Accessed June, 2020.

cases (including *The Pentagon Papers*). There were no whistleblowers used as source for *The Afghanistan Papers*, as information was obtained through the FOIA, as the documents were unclassified, only off the record (Beaumont). This means that for this case, whistleblowers will not be mentioned. On the other hand, what is important to notice is that *The Washington Post* received the documents by using the Freedom of Information Act (Wittes and Huggard), which makes a large difference between *The Pentagon Papers* and *The Afghanistan Papers*, as the latter documents were eventually not released as classified documents. Still, this is a breakthrough for the press, as *The Post* was able to gain information legally and used the Constitution for their Freedom of the Press.

Still, *The Afghanistan Papers*, which received its name as a reference to *The Pentagon Papers*, have been inspired by *The Pentagon Papers*. First of all, as mentioned before, this breakthrough shows once again the importance of Freedom of the Press and why the press should not be silenced or self-censored by the government (Graham). Both *The Pentagon Papers* as *The Afghanistan Papers* have shown the United States why it is relevant for the press to have their freedom and be able to share information to the citizens of the United States. Second, both cases show a similar conclusion, which is that the government lied to its people during the Vietnam War and The Afghanistan War. This conclusion made through *The Afghanistan Papers* has been seen as an echo of *The Pentagon Papers* (Beaumont). Third, although *The Post* was not the first newspaper to publish *The Pentagon Papers* (as this was *The New York Times*), it is interesting to acknowledge that *The Post* played a large role in *The Pentagon Papers* as well as *The Afghanistan Papers* (Graham). Craig Whitlock even mentions his inspiration came from *The Pentagon Papers* and that *The Washington Post* were inspired by their previous win in 1971 which had led to their interest in obtaining *The Afghanistan Papers* (Beaumont). Whitlock hoped to achieve two factors by publishing in *The Washington Post*: to remember the importance of the First Amendment's Freedom of the Press and the newspaper's previous victory against the government during *The Pentagon Papers*, as well as that it is in the public's interest to show the citizens of the United States that



their government is lying and why it is important for them and the press to stand up against such a government.

### **3.2.4 Conclusions**

While this research only contains three different cases, the relevance of *The Pentagon Papers* to Freedom of the Press in the 21<sup>st</sup> Century becomes very clear. The cases have shown the relevance of *The Pentagon Papers* on both whistleblowers and Freedom of the Press. Especially in a time where the government creates more strict laws against the press during the Obama Administration, or when the press is considered as “fake news” by current President Donald J. Trump, it is important for cases such as WikiLeaks, Edward Snowden, and *The Afghanistan Papers* to be published. By publishing these cases and showing the importance of publishing (classified) documents by referring to historical events (in this case *The Pentagon Papers*), the press should be more confident in their freedom and their Constitutional right and not be afraid or intimidated by the government to use their rights. Perhaps *The Pentagon Papers* can be used as a reference point against recent Presidential Administrations signifying that no matter how much harassment the press receives, it is important for the press to share the information and avoid self-censorship as part of Freedom of the Press.

### 3.3 *The Pentagon Papers in Film*

*The Pentagon Papers* have not had a breakthrough in popular media until the 2017 film *The Post*. Before *The Post*, *The Pentagon Papers* were discussed in numerous documentaries, such as: *Daniel Ellsberg: Secrets- Vietnam and the Pentagon Papers* (from UCTV, 2008), the Oscar-nominated documentary *The Most Dangerous Man in America: Daniel Ellsberg and the Pentagon Papers* (PBS, 2009) and *The Pentagon Papers, Daniel Ellsberg and The Times* (from PBS, 2010). Just as these documentaries, the 2003 television film *The Pentagon Papers*, focused on Daniel Ellsberg as whistleblower and his role within *The Pentagon Papers*. This changed when the breakthrough Oscar-nominated film *The Post* came to the big screens in 2017.

#### 3.3.1 *The Post (2017)*

Directed by Steven Spielberg, *The Post* follows the story of *The Washington Post*'s role in publishing *The Pentagon Papers* ("*The Post*<sup>13</sup>"). The movie focuses on the decision and consequence of publishing *The Pentagon Papers*. The film received praise from critics in regards to the story highlighting the issue of Freedom of the Press, the historical accuracy, as well as the relevance the story has in the current time, during Donald J. Trump's Presidency (Wilkinson; Long; Banner). As director Steven Spielberg mentions on why he chose to make this film: "The urgency to make *The Post* was because of Trump's Administration" (Freedland). Besides comparing Trump to Nixon, Spielberg also mentions: "The level of urgency to make the movie was because of the current climate of this [Trump's] administration, bombarding the press and labeling the truth as fake if it suited them" (Freedland). While the film does downplay *The New York Times*' role in *The Pentagon Papers*, as well as dramatize certain events, many critics mention that the time of the release could not be better as regards to "fake news" and defending the Constitution (Deutsch, 780; Long). *The Post* has also started a discussion

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<sup>13</sup> *The Post*. Directed by Steven Spielberg. Twentieth Century Fox, 2017.

on current issues in regards with Freedom of the Press, such as with WikiLeaks and Edward Snowden.

Alissa Wilkinson mentions in her article on *Vox News*: “While *The Post* is technically a historical story – evoking relatively recent events and the repercussions that still have a bearing on journalism and politics today – it’s not just a story about the past” (Wilkinson). President Trump’s attack on the press, such as by referring to “fake news” when the news is not in his favor, bears similarities to Nixon’s ideas of oppressing the First Amendment and using the power of Presidency to hinder the press (Freeland; Long). Because the First Amendment prevents prosecution or banning of press publications, President Trump’s only resource to attack the press is by mentioning “fake news”, a concept used by Trump to warn citizens that the press is considered lying on information that is held against him, to undermine the press. Daniel Ellsberg, whistleblower of *The Pentagon Papers* calls President Trump a: “Domestic enemy of the Constitution” (Walker). Furthermore, Ellsberg finds the press more in danger in the Trump Administration compared to Nixon’s presidency: “Nixon did not make effort to destabilize the press. This is something new and it’s sinister” (Buncombe). Ellsberg’s input on the current situation of Freedom of the Press has also been implied in his character in the movie (Freeland). In addition, *The Post* not only seems timely in regard to press freedom during President Trump’s Administration, but *The Post* also actively asks viewers to think about important previous cases in regards to Freedom of the Press, such as the Iraq and Afghan Papers from WikiLeaks, and Edward Snowden (Banner).

*The Post* not only highlights the relevance of Freedom of the Press in the current era, but also reminds viewers that Freedom of the Press is part of the First Amendment. A scene in the movie shows a real phone call from President Nixon in which he states that the press is the enemy of the government and both the press and the source need to be prosecuted (“*The Post*”). While the President may indeed prosecute the source, as protection of the source does not fall in the First Amendment, prosecuting the press is a way of the president subverting the Constitution itself (Wilkinson; Long). The right of the

Press to publish information as part of the Constitution is highlighted during a scene in which the Supreme Court mentions their ruling on the case: “The press was to serve the governed, not the governors” (*The Post*, 1:46:45). The movie is therefore also a remembrance that since 1971 the government has not yet attempted to take any press to trial before the Supreme Court (Greste; Banner).

While the film has been made for entertainment purposes, the rushed nine-months period from finalizing the script until the publication of the film shows that this movie was meant to be released at a period that deemed crucial (Wilkinson). The movie was not only made as a history lesson, but also as a remembrance for the press’ rights as mentioned in the First Amendment. Especially in a period where the government is shaming the press, it is important that the press upholds its standards and shares news as part of their commitment to the Freedom of the Press. Additionally, the audience of the film can be remembered why Freedom of the Press is important to inform the public of government lies and deception, especially in a time which is deemed relevant. Furthermore, the movie also shows that the historic *Pentagon Papers* still have relevance in today’s day and age when discussing Freedom of the Press. As Meryl Streep’s character, Kay Graham (president of *The Washington Post*), mentions in the film: “Do you know what my husband said about the news? He called it the first rough draft of history” (*The Post*, 1:47:29).

## Chapter 4 – Conclusion

So, how have *The Pentagon Papers* of 1971 been relevant to the United States of America in regards to Freedom of the Press in the 21<sup>st</sup> Century? As the research conducted in this thesis shows, *The Pentagon Papers* on Freedom of the Press has been used numerous times as reference point on Freedom of the Press in the 21<sup>st</sup> Century, which shows both the relevance and impact of *The Pentagon Papers*. After it seemed that *The Pentagon Papers* would only be mentioned in historic books or written about in research articles at the end of the 20<sup>th</sup> Century, the event received new life through media and Internet. By giving attention to *The Pentagon Papers* in the media, through films such as *The Post*, *The Pentagon Papers* reminds the public and the press of the importance of the Constitution with regards to Freedom of the Press, especially in a time when current President Trump can be compared to Nixon in trying to oppress the First Amendment. Through Internet, information was easier to obtain and distribute (no more photocopying), including classified documents. This resulted in multiple leaks from whistleblowers in the 21<sup>st</sup> Century that caused news headlines all over the world. Classified information was being published through the press, who obtained the information from different whistleblowers. These cases, such as WikiLeaks and Edward Snowden, showed similarity to the works of *The Pentagon Papers*, both in its inspiration from both Assange and Snowden, as by revealing government secrets and lies to the public by using the press. These similarities became an important factor, as during the Obama and Trump Administration, the press was harassed (such as Trump's "fake news") and used self-censorship to protect themselves and their sources. Both Administrations wanted more control of what the press was allowed to publish and therefore created stricter laws and questioned the authenticity of information distributed by the press. Whistleblowers were also brought to trial or fled the country. *The Pentagon Papers* could therefore be a reminder of the power of the Freedom of the Press, and that even then the government was not able to stop the press. By comparing

these current cases to *The Pentagon Papers*, the press should use the latter as an achievement that no matter how much difficulty or harassment they endure, the press is protected by the Constitution and should be able to use their freedom to publish. Luckily, there have also been cases that showed the success of the press against the government in the 21<sup>st</sup> Century. A recent important victory for the press was *The Afghanistan Papers*, which like *The Pentagon Papers* released documents that show deception by the government. The press was able to obtain these Afghanistan documents legally through the Freedom of Information Act. This success once again showed how important it is to remember past victories, such as *The Pentagon Papers*. Additionally, new organizations such as FPF (Freedom of the Press Foundation), which was partly created by whistleblower Daniel Ellsberg, show the importance of the First Amendment and the endangerment of Freedom of the Press.

So, there is no short answer on how *The Pentagon Papers* have been relevant to Freedom of the Press in the 21<sup>st</sup> Century. Different factors, views, and media sources show just how relevant a historic event from half a century ago still has to the current day of Freedom of the Press. *The Pentagon Papers* also show why the Constitution, mainly the First Amendment, is important for press freedom. *The Pentagon Papers* have not just vanished in history books, and it seems likely that *The Pentagon Papers* will still be used and referenced for future studies, cases or media sources in regards to Freedom of the Press. After all, news is the first rough draft of history.

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