THE FIRST AMENDMENT ON THE BATTLEFIELD

The First Amendment on the Battlefield: A Constitutional Analysis of Press Access to Military Operations in Grenada, Panama and the Persian Gulf

By David A. Frenznick (First appeared at 23 Pac.L.J. 315(1992))

Freedom of the press means freedom to gather news, write it, publish it, and circulate it. When any one of these integral operations is interdicted, freedom of the press becomes a river without water.1

This Article addresses the rights of the press and the public under the First Amendment of the United States Constitution to demand access to American military operations. Part I of this Article examines the history of the war correspondent beginning with the American Revolution, with primary emphasis on the Vietnam War, the invasion of Grenada, the invasion of Panama, and the Persian Gulf War.2 Part II discusses several First Amendment issues arising in the context of the battlefield, with primary focus on the doctrine of prior restraint, the right of the public to receive information, and the developing right of media access.3 Finally, Part III concludes that the press may claim a First Amendment right of access to the battlefield and that the military must affirmatively facilitate the exercise of this right.4

I. THE TRADITIONAL ROLE OF THE PRESS IN WARTIME:

A HISTORICAL PERSPECTIVE

A tradition of cooperation between the military and the press can be documented as far back as the Civil War.5 While some commentators dispute this claim of traditional cooperation and openness,6 it is undisputed that journalists have always played a pivotal role in providing the public with combat-related information. If such press involvement has rendered the battlefield "traditionally open," the press may have a First Amendment right of access to American military operations.7

A. From The American Revolution To The Vietnam War

During the American Revolution, newspapers were largely unorganized and were unable to cover the war in a systematic fashion.8 As a result, newspapers derived their information from letters and messages from soldiers stationed at the front.9 This lack of organization continued through the War of 1812.10 It was not until 1846, during the Mexican-American War, that newspapers became technologically capable of providing wide coverage of the battlefield.11 Thus, the modern war correspondent was born.

The reporters and artists who covered the Civil War enjoyed extraordinary journalistic freedom.12 Although these journalists incurred the wrath of military commanders and even President Lincoln,13 the government generally afforded them liberal privileges.14

Despite several instances of military suppression of newspapers15 and some attempts at censorship,16 the press was generally able to publish everything it learned about the war.

During the Spanish-American War in 1898, the press used the telegraph to transmit stories quickly to stateside editors.17 Journalists became proficient at gathering news, and the military cooperated by placing few restrictions on the press.18

During World War I, military officials assigned reporters to individual commanders, and these reporters were afforded limited freedom of movement.19 Prepublication censorship prevailed.20 In addition, military officials had the authority to revoke any journalist's accreditation if he or she released stories without prior military clearance.21 Although during the early part of World War I reporters were not permitted to cover the front, by 1918 American journalists enjoyed unrestricted access to these areas.22

World War II was the golden age for war correspondents.23 Reporters such as Ernie Pyle reached millions of American readers with stories from all over Europe and the Pacific.24 Prepublication censorship was the rule,25 yet it applied only to military matters and did not preclude military commanders from talking freely with reporters.26 Military officers were readily accessible on the various fronts, and reporters had complete freedom of movement.27 Correspondents even accompanied the troops on many dangerous missions, all with the approval and support of the government.28

The harmonious relationship between the military and the press29 deteriorated during the Korean and Vietnam wars.30 In the early years of the Korean War, military authorities simply expelled reporters if they were displeased with their stories.31 This led to the imposition of full military censorship by General Douglas MacArthur in 1951.32 All editorial copy had to be approved by military censors prior to transmission to the correspondent's newspaper or magazine.33 This broad military control nevertheless permitted reporters liberal access to the battlefronts.34

During the Vietnam War reporters were permitted to observe military activity throughout the combat theater.35 This freedom was coupled with a form of censorship imposed at the source: military authorities simply refused to give any information to distrusted journalists.36 Military officers were convinced that biased reporting caused the American public's opposition to the war, and this belief fostered the military's hostility toward the press.37 Thus, it is not surprising that by the end of the Vietnam War, deterioration of military-press relations reached its apogee.38

B. The Invasion Of Grenada

The hostility between the military and the press resurfaced in 1983 when American troops spearheaded an invasion of the small Caribbean island of Grenada on October 25.39 Over 700 Army Rangers, 1,200 Marines, and various contingents from seven Caribbean nations participated in the invasion.40 It was the first major American military action since the Vietnam War.41

The American public learned of the invasion of Grenada on the day it occurred when President Ronald Reagan declared in a televised news conference that the United States had "no choice but to act strongly and decisively" to oppose "a brutal gang of leftist thugs" who had violently taken over the island on March 12, 1983, killing Grenadian Prime Minister Maurice Bishop.42 Shortly after President Reagan's announcement, nearly 400 reporters converged upon Barbados.43 Faced with the refusal of the military to assist them in reaching the island, several reporters chartered their own boats in an effort to reach the fighting.44 It is reported that military ships and aircraft forcibly turned back at least two press boats and a plane carrying reporters en route to Grenada.45 Military commanders warned other journalists that military personnel had been directed to fire upon anyone attempting to obtain access to Grenada.46

With coverage efforts stymied, reporters relied upon reports from ham radio operators in Grenada, reports broadcast by Radio Havana, and Department of Defense press releases.47 Four of the seven reporters who were already on the island accepted an offer from the military to go aboard the U.S.S. Guam, which was anchored just off the Grenadian coast, to file their reports from the ship.48 When the reporters arrived on board, the ship's commander refused to allow them use of the communications equipment, and would not let them leave the ship for two days.49

On October 27, 1983, two days after the invasion, the U.S. military finally allowed a group of fifteen reporters to visit the island.50 However, these reporters were unable to file their reports that day because their return flight was delayed, ostensibly due to excess air traffic.51 Consequently, when President Reagan appeared on national television that evening to explain the invasion, the American public had seen only brief film clips produced and edited by the military.52 The public had not heard any reports from independent eye witnesses.53

On October 28, 1983, the United States military allowed another small contingent of reporters to visit Grenada.54 The very next day, the Senate voted to end the press restrictions.55 Finally, on October 30, 1983, five full days after the landing of U.S. troops on Grenada, military authorities granted almost unlimited media access to the island.56

Shortly after the Grenada operation and the resulting criticisms by the media,57 press representatives requested a formal Department of Defense review of military press access policies.58 The Department formed a panel to study media complaints and make necessary recommendations to the government.59 The panel was headed by a retired major general and was comprised of both military and press representatives.60 Based upon the panel's recommendations, the Pentagon created a press pool designed to accompany the troops on any surprise operation.61

C. The Invasion Of Panama

The press pool system underwent its first test in a combat situation in December 1989, when American troops invaded Panama to oust dictator Manuel Noriega.62 The pool, consisting of newspaper, television, radio, wire service, and magazine representatives,63

departed for Panama aboard a military aircraft at approximately 11:30 p.m. on December 19, 1989.64 By the time the pool arrived in Panama, around 5:30 a.m. on December 20, the invasion had been under way for about four hours.65

Upon arrival, the pool was stranded at the airport for three hours because the military did not have any available transportation.66 Meanwhile, military authorities prevented nonpool reporters from arriving in chartered aircraft because the airports were declared unsafe.67 As a result of these delays, the press was unable to cover the crucial initial hours of the invasion.68

Early television coverage of the invasion was limited to photographs provided by the Pentagon.69 Pool television materials did not begin arriving until 5:40 p.m. on December 20, about five hours later than anticipated by media executives.70 By the time the military allowed nonpool reporters to land their aircraft late in the evening on December 21,71 President Bush had already declared the operation "pretty well wrapped-up."72

News organizations were highly critical of the military's handling of the pool system in Panama.73 Pete Williams, the chief Pentagon spokesperson, citing "incompetence" as the reason for the limited access afforded to the press in the initial hours of the invasion,74 commissioned a study of the events.75 The resulting report blamed Secretary of Defense Dick Cheney for activating the pool too late and for rejecting a plan proposed by public affairs officials at the United States Southern Command in Panama to organize a pool from reporters already in Panama to cover the beginning of the invasion.76

D. The Persian Gulf War

Strained by the failure of the pool system in Panama, relations between the press and the military degenerated further with the advent of the Persian Gulf War. On January 3, 1991, with the United Nations deadline for Iraqi withdrawal from Kuwait approaching on January 15, the Pentagon distributed proposed regulations for press coverage in the event of war.77 Under the proposed regulations, reporters would be restricted to travelling in a limited number of pools accompanied by military escorts at all times.78 Moreover, under the proposed regulations all reports would be subject to military censorship in the form of a "security review" by information officers in the field.79 The proposed regulations imposed several additional limitations.80

In response to complaints from the press, the Pentagon eliminated some of the restrictions before officially adopting the regulations on January 9, 1991.81 Nevertheless, the two most criticized restrictions--the pool system and the security review--remained,82 making the Persian Gulf press restrictions the most strict in American journalistic history.83

The official press regulations went into effect on January 17, 1991, when the American bombardment of Iraq and Kuwait began. Pools were deployed to watch aircraft take off and return, and some reporters were allowed to speak with returning pilots.84 However, military officials released very few details about the progress of the air war,85 and some censorship occurred.86 Members of the press articulated complaints regarding the lack of

information made available to reporters and the delays in reporting caused by the security review system.87 By the end of the first week of the war, the press was demanding an end to the regulations.88

With the advent of ground fighting in late January 1991, the pool system began to collapse.89 No pool reporter witnessed the fighting in Khafji, but correspondents who skirted the pools provided several accounts of the battle.90 As ground fighting continued, more reporters and photographers circumvented the organized pools.91 By February 12, 1991, more than two dozen journalists had been detained by the military for violating the pool restrictions.92

On February 23, 1991, two hours after the U.S. ground offensive began, the Pentagon imposed a complete news blackout.93 Regular briefings in Washington and Riyadh were suspended and dispatches from the pools were delayed, ostensibly for security reasons.94 In response to the blackout, hundreds of reporters travelled into the desert on their own, in violation of the pool restrictions.95 Some of these journalists provided the first accounts of the ground war.96

The news blackout did not last long. On the morning of February 24, 1991, Defense Secretary Dick Cheney gave permission for General H. Norman Schwarzkopf to provide a briefing to reporters in Riyadh regarding the early success of the offensive.97 Soon thereafter, dispatches began to arrive from pool reporters in the field.98 One week later, with the informal cessation of the war on March 4, 1991, the Pentagon lifted all press restrictions in the Persian Gulf.99

E. Legal Challenges To Military Restrictions On Press Access

Members of the press have raised two significant legal challenges to press restrictions employed by the government in recent military conflicts. Shortly after the invasion of Grenada, Hustler Magazine publisher Larry Flynt filed suit in federal district court against Secretary of Defense Caspar Weinberger.100 Flynt alleged that the exclusion of Hustler Magazine reporters from the initial stages of the Grenada operation violated the First Amendment.101 The court dismissed the suit as moot, observing that the invasion of Grenada was a unique event and therefore not capable of repetition.102 The court of appeals unanimously affirmed the dismissal.103

The second challenge occurred recently when members of the media challenged the press restrictions employed during the Persian Gulf War. On January 10, 1991, a group of news organizations and writers, led by The Nation Magazine, filed suit against the Department of Defense (DOD) in federal district court.104 The plaintiffs claimed that the pooling regulations infringed upon news gathering privileges protected by the First Amendment.105 On a motion to dismiss by DOD, the court determined that the plaintiffs had surmounted the jurisdictional barriers of lack of standing,106 the political question doctrine,107 and mootness.108 The court held, however, that the right of access claims were not sufficiently focused to permit the court to exercise its discretion in granting declaratory relief.109

By refusing to address the merits in both of these press challenges, the courts left unanswered important constitutional questions raised by military restrictions imposed on the press. Specifically, the courts failed to determine precisely what rights the First Amendment guarantees to the press in relation to American military operations, and whether the press has a First Amendment right of access to the battlefield. The remainder of this Article examines these issues, with primary focus on the doctrine of prior restraint, the public's right to receive information, and the developing right of access.

II. RESTRICTIONS ON PRESS ACCESS TO THE BATTLEFIELD:

A VIOLATION OF THE FIRST AMENDMENT

Traditionally, the press has used the First Amendment as a "shield" against government intrusion into the editorial or publication process by arguing that the right to publish is protected by the doctrine of prior restraint. Recently, however, the press has begun to use the First Amendment as a "sword" to force access to previously restricted areas by relying on the developing right of access. In analyzing the constitutionality of the restrictions on press access to the battlefield in Grenada, Panama, and the Persian Gulf, both functions of the First Amendment are necessarily implicated.

A. Prior Restraint -- The Constitutional Shield

1. Historical Context

Under the constitutional doctrine of prior restraint, the government may not restrain publishers and broadcasters from disseminating information except under the most extraordinary circumstances.110 Since the landmark decision of Near v. Minnesota111 in 1931, courts have used the doctrine of prior restraint to shield publishers from prepublication governmental intrusion. Although some scholars contend that the doctrine of prior restraint is outdated,112 recent decisions of the Supreme Court of the United States demonstrate that the doctrine is still viable.113

In Near, the Court struck down a statute authorizing the state of Minnesota to stop publication of any newspaper judged "malicious, scandalous and defamatory."114 In upholding the newspaper's right to publish, the Court noted that to grant the government authority to prevent publication would create a serious public evil.115 The Court held that the government must defer any sanction for publication of libel until after the press has exercised its First Amendment right to publish.116

The First Amendment right to publish, however, is not unlimited. In dicta, the Near court indicated that the government could enjoin publications that threatened national security or were obscene.117 However, subsequent cases indicate that the Court has narrowly construed the national security exception.118

In New York Times Co. v. United States119, the so-called ``Pentagon Papers'' decision,120 the Court applied the doctrine of prior restraint and refused to enjoin publication of illegally obtained classified information.121 Although every member of the Court expressed his views separately, each of the six concurring justices and three dissenting justices "tacitly or explicitly, accepted the Near . . . condemnation of prior restraint as presumptively unconstitutional."122 Additionally, the plurality rejected the government's attempt to justify the restraint as a threat to national security.123 To justify even the issuance of an interim restraining order,124 wrote Justice Brennan, the government must allege and prove that publication must inevitably, directly, and immediately cause the occurrence of an event similar to imperilling the safety of a transport already at sea.125

Five years after the Pentagon Papers case, the Supreme Court of the United States, in Nebraska Press Association v. Stuart,126 unanimously rejected a trial court order restricting publication or broadcast of accounts of a criminal defendant's confessions or admissions in a murder case.127 In so holding, the Court balanced the accused's Sixth Amendment right to a fair trial and the press' First Amendment right to publish, reiterating the result reached in New York Times Co. v. United States.128 The Chief Justice stated that" [t]he thread running through all these cases is that prior restraints on speech and publication are the most serious and the least tolerable infringement of First Amendment rights."129 Thus, the Supreme Court decisions in the Pentagon Papers and Nebraska Press Association cases establish that the government must surmount formidable obstacles before any prior restraint of publication will be constitutionally justified.

2. Prior Restraint Applied to Prevention of Reports from the Battlefield

On the battlefield, a prior restraint would occur if the military prevents journalists, who are legitimately in the area prior to the outbreak of hostilities, from reporting news from the battlefield. While it appears that this did not occur during the invasion of Panama130 or the Persian Gulf War,131 it did occur during the invasion of Grenada. There, the military removed four of seven journalists who had reached the island before the invasion and held them incommunicado.132 Perhaps the initial removal was the result of a misunderstanding,133 yet the journalists were detained for more than 48 hours.134 The length of detention indicates that the military desired to, and indeed succeeded in preventing immediate publication of legally gathered information.135 This detention was a prior restraint under Near and its progeny.136

It is unlikely that the government can justify its detention of the journalists in Grenada under the national security exception recognized in the Near and New York Times cases.137 The invasion had already been publicly announced by the President when the military transported the four journalists to the ship.138 Therefore, the reporters' information could not have jeopardized the secrecy of the invasion. Moreover, a less restrictive alternative to detention was available.139 The military had ample opportunity to censor the correspondents' copy before allowing them to use the ship's communication equipment or transporting them to Barbados, where they could have filed their stories on

civilian equipment.140 The failure of the military to exercise this less restrictive alternative negates any argument supporting the national security exception.

Given the extreme judicial antipathy toward prior restraints, even in the national security context, it is likely that the detention of the four journalists during the early stages of the invasion of Grenada would be held a violation of the First Amendment. A more difficult issue arises, however, with regard to denial of press access to the battlefield once hostilities have commenced. Specifically, the issue is whether the press has a First Amendment right of access to cover American military operations? To answer this question, the relatively recent origins of the developing right of access must be explored.

B. The Public's Right To Receive Information and the Developing Right Of Access

1. The Public's Right to Receive Information

Courts and commentators have referred to the public's right to receive information as the core function of the First Amendment.141 Indeed, the authors of the First Amendment considered the role of the press in the interchange of information and ideas to be of pivotal importance.142 However, an informed public cannot exist without a free flow of information.143 The Court has consistently recognized this function of the press with approval.144

Our society has become so complex that it is now impossible for an individual acting alone to obtain information about governmental affairs.145 Thus, it is reasonable for the public to depend upon the press to gather information and to present that information to the public in an understandable form.146 These considerations have led the Court to recognize that the press functions as an agent of the public.147

Similar to the right of the press to publish information, the right of the public to receive information is not unlimited. For example, a United States citizen does not have an absolute right to travel to Cuba to inform himself of conditions there.148 Nor do American academics have an absolute First Amendment right to hear a speech by a marxist professor who was denied a visa to enter the United States.149

The Supreme Court evaluates restrictions on the flow of information by applying a balancing test. The public interest in acquiring the information is weighed against the government's interest in regulating the conduct.150 Courts have applied this balancing test when the government has restricted the free flow of information from grand jury proceedings,151 pretrial criminal proceedings,152 criminal trials,153 judicial investigations,154 removal hearings,155 and libel cases.156 The recognition of a public right to receive information has led the Supreme Court, by use of the balancing test, to recognize a First Amendment right of access in a few limited situations where the need for information is great, such as in a judicial proceeding. This balancing test also supports recognition of a First Amendment right of access to the battlefield.

2. Access to Judicial Proceedings

In analyzing the right of media access to the battlefield, it is necessary to consider other instances where the media has successfully asserted a First Amendment right to gather information. The decisions of the United States Supreme Court concerning access to judicial proceedings provide useful analogies to the battlefield inquiry.

Commentators generally link the beginning of the modern push toward recognition of a First Amendment right of media access to the Supreme Court decision in Branzburg v. Hayes.157 In Branzburg, the Court considered whether newspersons have the right to refuse to respond to a grand jury subpoena.158 The defendant newspaper claimed "that the burden on news gathering resulting from compelling reporters to disclose confidential information outweighs any public interest in obtaining information."159 Although the Court ruled against the newspaper, the majority opinion noted:

"We do not question the significance of free speech, press, or assembly to the country's welfare. Nor is it suggested that news gathering does not qualify for First Amendment protection; without some protection for seeking out the news, freedom of the press could be eviscerated."160

Although the Branzburg Court recognized the existence of at least some First Amendment protection of news gathering, the Court did not define the constitutional limits of this protection.

In 1979, the Supreme Court considered the issue of public and press access rights to pretrial proceedings in Gannett Co., Inc. v. DePasquale.161 In Gannett, the Court held that the Sixth Amendment does not guarantee the media a right to attend such proceedings when the trial judge, the prosecutor, and the criminal defendant agree that closure is necessary to ensure a fair trial.162 The Court, however, did not consider access rights under the First Amendment.163

Largely as a result of misapplication of Gannett by the lower courts,164 the Supreme Court quickly granted certiorari to decide whether the public and press had a First Amendment right of access to criminal trials. In Richmond Newspapers, Inc. v. Virginia,165 seven of the nine justices agreed that the press and public do have such a constitutional right.166 The Chief Justice, writing for the plurality, placed special emphasis on the historical openness of the courtroom.167 He concluded that a right of access to places traditionally open to the public, such as criminal trials, is guaranteed by the First Amendment.168

Two years after Richmond Newspapers, the Supreme Court solidified this First Amendment right of access in Globe Newspapers Co. v. Superior Court.169 In Globe Newspapers, a majority of the Court agreed for the first time on the existence of a constitutional right of media access to criminal trials.170 The Court reasoned that the First Amendment right of access is based upon two features of the criminal justice system: (1) The historical openness of the criminal trial; and (2) the significant role of the right of access in the functioning of the judicial process and the government as a

whole.171 The Court held that any attempt to deny this right of access in an effort to inhibit the disclosure of sensitive information must be necessitated by a compelling governmental interest and narrowly tailored to serve that interest.172

The presumption of openness to media access was extended to all parts of the criminal trial in Press Enterprise Co. v. Superior Court.173 Applying the standard announced in Globe Newspapers, a majority of the Court174 overturned a trial court's order denying press and public access to the voir dire process in a murder case.175

The Supreme Court has recognized that news gathering merits some First Amendment protection.176 Further, the First Amendment guarantees access to all parts of a criminal trial.177 This right of access is based upon the traditional openness of criminal trials and the need for free access to the judicial process and the government as a whole.178 The Court has permitted restrictions on this right only in the most compelling circumstances, and even then only when no less restrictive alternatives are available.179 These established principles are the basis for extending the right of media access to the battlefield.

3. Access to Prisons

In addition to the judicial process, the right of media access has been applied to prisons, a situation more analogous to the battlefield. Similar to the battlefield, prisons have no historical tradition of public openness, and the government interest in regulating access is high.180 Accordingly, when reviewing prison administrative decisions, the Court will generally accord judicial deference similar to that accorded to the military.181

In the companion cases of Pell v. Procunier182 and Saxbe v. Washington Post Co.,183 the Supreme Court, for the first time, considered whether the right of the media to gather news established a constitutional right of access to government-controlled information.184 These cases involved the right of the press to conduct face-to-face interviews with prison inmates.185 The press claimed a constitutional privilege of special access to government-controlled information in the absence of a substantial governmental justification for withholding it. Specifically, the press attacked prison rules which prohibited press contact with individual prisoners.186

The Court concluded that the prison regulations187 did not violate the First Amendment.188 The majority refused to apply the balancing test and weigh the interests of the government against those of the press, as it normally does when the press asserts a restriction on the free flow of information.189 Rather, the Court simply stated that interest balancing was unnecessary because no discrimination existed inasmuch as prison officials had barred both the press and the public.190 The majority concluded that its recognition of some limited First Amendment protection for news gathering did not create an affirmative duty on behalf of the government to furnish the press with information not available to the general public.191

Both the Pell and Saxbe majority opinions relied heavily upon the availability of alternative means of acquiring information about prison conditions.192 The Court observed that prison officials had accorded both the press and the public some opportunity to observe prison conditions. Further, the Court noted the lack of any evidence indicating that prison officials intended to conceal information from the media.193

Four years later, the Court faced a similar media access claim to a penal institution in Houchins v. KQED.194 Houchins is distinguishable from Pell and Saxbe, however, because in Houchins, prison officials denied both the press and the public access to information about prison conditions,195 creating a news blackout similar to that imposed by the military in Grenada196 and, to a lesser extent, in the Persian Gulf.197 Thus, alternative means of acquiring information, the Court's primary rationale for denying access in Pell and Saxbe, were unavailable to the press in Houchins.198

Houchins involved a media request to tour and photograph a California jail.199 The press specifically wanted to view the controversial Greystone building where one court had found that substandard living conditions existed.200 Prison officials denied the media's request and a television station subsequently brought suit.201

The Supreme Court, in a three-one-three decision, with Justice Stewart writing the crucial concurrence, reversed the district court's order requiring access.202 The Chief Justice, joined by Justices Rehnquist and White, noted the importance of information concerning prison conditions and recognized that the media generally acts as an agent of the public in acquiring the information.203 Nevertheless, the plurality found no constitutional basis for requiring access to the jail.204 Justice Stewart reasoned that there is no special right of media access to government-controlled information, but argued in favor of a more flexible access policy to accommodate the practical distinctions between the press and the public.205 Indeed, Justice Stewart would have upheld a more limited access order,206 but agreed with the Court's judgment because he believed the lower court's order was too broad.207

Justice Stevens, with Justices Brennan and Powell, dissented, arguing for the recognition of a media right of access. The dissent noted that a core objective of the First Amendment is the preservation of a free flow of information.208 Therefore, they reasoned, information gathering is entitled to constitutional protection.209

The prison cases add little solidity to the unsettled area of First Amendment jurisprudence regarding media access to the battlefield. In Pell, a bare majority of the Court found no special media right of access, but seemed to limit its holding to the particular facts of the case.210 Prison officials arguably provided sufficient access to the prison to allow the public to inform itself about conditions there.211 When one considers that all the press lost in the Pell decision was the right to face-to-face interviews with specific prisoners, the decision may be justified.

In Houchins, however, prison officials denied both the public and the press all reasonable means of informing itself of conditions at the prison.212 In that case, no particular opinion commanded a majority of the Justicies. Houchins is important because it indicates that most of the members of the Court at that time differentiated between reasonable access to important information and no access whatsoever. That difference is crucial when analyzing the denial of press access to the battlefield in Grenada, Panama, and the Persian Gulf.

C. Applying The Right Of Access To The Battlefield

Although the Supreme Court has never expressly articulated a definitive test for invoking the right of media access, the Court's decisions in Richmond Newspapers and Globe Newspapers suggest a three-part test:213 (1) the constitutional claimant must show that the area has historically been open to the press and general public;214 (2) the right of access must be significant in the functioning of the process in question and the government as a whole;215 and (3) assuming the first two tests have been satisfied, access may be denied only if the government establishes that the denial is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.216 Application of this test to the battlefield suggests that the press has a valid right of access under the First Amendment.

On the battlefield, the first prong of the test is the most difficult to satisfy. The press must show a tradition of public openness to the battlefield. History supports an assertion of press openness, based on the access war correspondents have historically enjoyed.217 Yet, the battlefield has never been open to members of the public.

The Supreme Court has recognized the key role of the press in contributing to "an uninhibited market-place of ideas in which truth will ultimately prevail."218 Further, a majority of the Court has recognized the quasi-public role of the press in disseminating information.219 Indeed, the Court has acknowledged that the press acts as an agent of the public.220

Since the press acted as the agent of the public when it accompanied military commanders and troops into battles throughout history, a tradition of public openness has been established. The use of agency principles to "create" a tradition of public openness merely recognizes the reality of the media's role in society.221 The government affirms this role, as well as the press' agent status, whenever it allows the press access to places inaccessible to the general public.222 Thus, the first prong of the right of access test is satisfied on the battlefield.

The second prong of the right of access test asks whether access to the process in question plays a significant role in the functioning of that process and the government as a whole.223 In regard to the battlefield, the question is whether public scrutiny is significantly necessary to military operations. The press can convincingly argue in the affirmative. The military depends on public financial support for its existence224 and

constantly utilizes the press to influence public opinion and create support for its policies. Thus, the military itself has recognized the functional significance of public scrutiny.

In Globe Newspapers, the Court found that public scrutiny of criminal trials fosters the appearance of fairness and safeguards the judicial process.225 A similar argument can be made about press access to military operations. Such access fosters trust in our government and helps to ensure that the government's military power is used justly.226 Thus, press access to military operations plays a significant role in the functioning of the military and the government as a whole. Consequently, the second prong of the right of access test is satisfied.

Since the first two prongs of the right of access test are satisfied in the case of military operations, the press should be able to claim a general First Amendment right of access to the battlefield. Under the third prong of the test, however, the military may still bar reporters from the battlefield in specific instances if it has a compelling interest in doing so, and if no less restrictive alternatives are available.227 A determination of these requirements mandates further analogy to the courtroom access cases.

A majority of the Court has never articulated definitive standards for closure of the courtroom under the third prong of the access test. However, Justices Powell and Blackmun provided closure tests in the Gannett decision.228 Further, the Court of Appeals for the Fifth Circuit adopted a test which is a combination of both the Powell and Blackmun tests in United States v. Chagra.229 This test may be easily adapted to the context of military operations to test the constitutionality of any denial of press access to the battlefield. Specifically, under the adapted Chagra test, the military may overcome the First Amendment right of access if: (1) National security will be prejudiced by allowing the press access to the battlefield; (2) alternatives to denying access cannot adequately protect national security; and (3) denial of access will be effective in protecting against the perceived danger to national security. By applying this test to the recent military operations in Grenada, Panama, and the Persian Gulf, the boundaries of the right of access to the battlefield may be identified.

1. The Right of Access in Grenada

The Grenada invasion was the first major American military action to follow the Vietnam War.230 More importantly, the exclusion of the press from Grenada constituted the most extensive denial of press access to the battlefield in American history. Not only did the military fail to inform the press before the invasion began, but the military excluded the press from accompanying the invasion force. Further, the military refused to assist, and in some cases, actively prevented reporters from visiting Grenada until two days after the invasion began.

In the wake of the invasion, the military attempted to justify its decision not to inform the press by claiming that the Grenada invasion was a commando-style rescue raid, similar to the American hostage rescue attempt in Iran.231 According to the Pentagon, the

possibility of security breaches prevented the military from alerting the press in advance of the invasion.232

Under the test adapted from Chagra, this claim amounts to an assertion that national security would have been prejudiced by informing the press.

In order for the military's decision to deny media access in Grenada to be constitutionally justified, based upon a purported threat to national security, there must have been no less restrictive alternates available at that time which would not have posed a security threat. Although some less restrictive alternatives may have been available in advance of the invasion, such as informing the press but instructing them to withhold the information until after the invasion began, the military could convincingly argue that such alternatives would not have adequately ensured the surprise of the operation.

However, the claim of a threat to national security does not justify the exclusion of the press from accompanying the invasion force. Even if the invasion of Grenada was comparable to the attempted hostage rescue in Iran,233 this similarity does not explain why the military did not allow a small group of correspondents to witness the invasion. Apparently, the military had enough time to assemble and brief military photographers, and enough room on the planes to transport them, along with their equipment, with the initial assault force.234 Certainly, members of the press could just as easily have accompanied the troops. Any interest in national security could have been protected by censoring the content of reports from the field or by controlling the timing of the reports. These less restrictive alternatives repudiate any claim that exclusion of the press from the Grenada invasion force was justified under the adapted Chagra test.

Finally, the military's refusal to allow journalists access to Grenada for two days was unjustified. The Pentagon claimed that after the invasion began, logistical problems prevented the military from transporting the press to the island.235 It is questionable whether concerns with logistics qualify as an interest in national security under the adapted Chagra test. Yet, even if the refusal to help the press reach the island was justified, actively preventing journalists from independently travelling to Grenada was not. After the President's public announcement of the invasion, the need for complete secrecy disappeared. After that time, the military had no valid security reason for the complete exclusion of journalists that continued until two days after the invasion.

In evaluating the governmental interest in denying access to Grenada, it is important to consider the deference the Court traditionally accords military decisions.236 The Court weighs this traditional deference to the military against the availability of alternative means of acquiring information.237 In Grenada, no alternative means were available to the press for gathering information. Further, evidence indicates that the military may have excluded the press in an attempt to conceal the conditions in Grenada or simply to frustrate media efforts.238 Judicial deference to the military under these conditions is unlikely. Therefore, the military's treatment of the press during the invasion of Grenada amounted to a violation of the constitutional right of media access.

Based upon the foregoing analysis of the Grenada invasion, the basic dimensions of the right of access to the battlefield are clear. In essence, the right of access prohibits the military from completely excluding the press from a military action, as occurred during the Grenada invasion. In virtually every operation, whether intended as a surprise or not, some less restrictive alternative will exist.239 Indeed, the press pool system created in response to media complaints in the wake of the Grenada invasion is one example of a valid, less restrictive alternative. By establishing the press pool, the military supposedly ensured that the constitutional right of press access would not be violated in future operations. However, an analysis of how the pool system performed in Panama reveals that the military continues to infringe upon the First Amendment right of access to the battlefield.

2. The Right of Access in Panama

In theory, by utilizing a press pool during the invasion of Panama, the military employed a less restrictive alternative to the unconstitutional denial of media access that occurred in Grenada. In practice, however, the pool proved to be just as restrictive, at least during the crucial initial hours of the invasion.240 Arguably, the failure of the pool system in Panama resulted from nothing more than "incompetence."241 Yet some evidence suggests that the failure resulted from willful mismanagement by the Pentagon.

Although the military did transport the pool reporters from Washington to Panama, the pool did not accompany the troops, as had occurred during prior military exercises.242 A delay in transportation occurred because of an "excessive concern with secrecy" on the part of Secretary of Defense Dick Cheney, who decided not to activate the pool until after the evening news on December 19, 1989.243 This decision may well have amounted to an unconstitutional violation of the right of access. By activating the pool too late, Cheney effectively denied the press access to the initial invasion. Moreover, he rejected a less restrictive alternative to this complete denial by rejecting a plan to form a pool from reporters already in Panama.

Additional mishandling of the situation occurred after the pool arrived in Panama, when the military failed to provide the pool with transportation. Combined with the exclusion of nonpool reporters from landing in the country and the late activation of the pool, this failure helped ensure that most of the hostilities in Panama occurred out of sight of the press. Thus, despite the use of the press pool in Panama, the military still denied the press access to the battlefield.

The events in Panama further define the boundaries of the right of media access. This right demands that the military do more than merely institute a press pool system. The military must also employ that system correctly, allowing the pool to cover all stages of a military operation. If the military cannot adequately accomplish these requirements, then nonpool reporters must be allowed access to the battlefield. Anything less constitutes a denial of access and a violation of the First Amendment.

3. The Right of Access in the Persian Gulf

In the Persian Gulf, the military once again mismanaged the press pool system. However, this mismanagement did not appear to rise to the level of a constitutional violation, as it did in Panama. Although the number of pool spots was limited, pool reporters were allowed access to most of the troops.244 While the security review system caused delays and resulted in some censorship, this system, like the censorship that occurred during the Korean War,245 permitted the military to allow the pool access to the troops. Although the military may have used the pool and security review systems to manipulate the news from the Persian Gulf, this manipulation did not constitute a First Amendment denial of press access to the battlefield.

More troubling than the inconveniences of the pool and security review systems, however, was the Pentagon's news blackout during the initial hours of the ground assault. This blackout probably rose to the level of a constitutional violation of the right of access. By suspending press briefings and delaying pool dispatches, the military effectively denied the press and the public access to any information whatsoever about the ground assault. This denial of access was comparable to the denial during the invasion of Grenada and to the initial hours of the invasion of Panama.

The news blackout during the Gulf War violated the constitutional right of access because, as in Grenada and Panama, less restrictive alternatives were available. The Pentagon admitted that its real concern was not about protecting any overall secrecy of the assault, but about concealing the location of U.S. Army troops in western Iraq.246 To ensure the security of this force, the military could have restricted or censored pool reports and pictures from pool members travelling with the troops. This less restrictive alternative to a total news blackout would have adequately protected the security interest involved, while allowing the press to report on the majority of Air Force, Navy, and Marine operations during the assault.247

The events in the Persian Gulf narrow the dimensions of the right of access to the battlefield. Although some members of the press would argue that the First Amendment contemplates unrestricted access to American military operations, restrictions on the press such as those applied in the Persian Gulf may actually survive a challenge of unconstitutionality. What will not survive such a constitutional challenge, however, is a blanket news blackout unjustified by national security interests. The military must narrowly tailor its news policies to allow the press access to as much of the battlefield as possible.

III. CONCLUSION

When American invasion forces landed in Grenada in October of 1983 unaccompanied by representatives of the independent press, a history of voluntary cooperation between the media and the military came to an abrupt end. The ensuing news blackout violated the First Amendment right of the media to access to the battlefield. In Panama, military mishandling of the press pool system established in the wake of the Grenada invasion effectively resulted in a denial of media access during the initial stages of the invasion. In

the Persian Gulf, the military once again created an unconstitutional news blackout during the early part of the ground assault.

The events in Grenada, Panama and the Persian Gulf demonstrate the need for clear judicial guidelines establishing the permissible scope of media access to the battlefield. This Article suggests that the press, as an agent of the public, may claim a First Amendment right of access to the battlefield. This right of access prohibits complete exclusion of the press from a military action. While the military may impose reasonable restrictions on the media, such as the institution of a press pool, these restrictions must be administered in a manner which allows all stages of a military operation to be covered by at least some members of the media. Although the First Amendment does not guarantee unlimited access to the battlefield, press restrictions must be narrowly tailored to accomplish a legitimate purpose and to provide as much media access as is reasonably possible.

FOOTNOTES FOR FIRST AMENDMENT ON THE BATTLEFIELD

Member, Law Firm of Wilke, Fleury, Hoffelt, Gould & Birney, Sacramento, California. J.D., University of California, Davis, 1986; B.A., Journalism, B.A., German, California State University, Northridge, 1983. I gratefully acknowledge the contribution of Matthew J. Smith (J.D. candidate, University of California, Davis, 1992), the patience and understanding of my wife, Susan, and the support of my law firm. I wish to dedicate this Article to my father, Bernhard Frenznick, a great lawyer who taught me by example that one can achieve anything with dedication, determination, and a lot of hard work.

1. In re Mack, 386 Pa. 251, 272, 126 A.2d 679, 687, (1956) (Musmanno, J., dissenting).
2. See infra notes 110-247.
3. See infra notes 5-109.
4. See infra pages 358-59.
5. 200-Year Tradition Broken, NEWS MEDIA & THE LAW at 4 (Jan. 1984) [hereinafter Tradition]. See Text of Journalists' Joint Statement, N.Y. Times, Jan. 11, 1984, at A10, col. 1 (arguing that American journalists have accompanied troops on military operations since the Revolutionary War). But see F. MOTT, AMERICAN JOURNALISM 99 (1962) (no organized press corp existed to cover the war).
6. Cassel, Restrictions on Press Coverage of Military Operations: The Right of Access, Grenada and Off-The Record Wars, 73 GEO. L.J. 931 (1985).
7. Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982). In Globe Newspaper, the United States Supreme Court found a First Amendment right of access to the criminal trial based upon the historical openness of that judicial process. Id. If the press' traditional involvement in reporting military operations has rendered the battlefield ``open,'' the press may be able to constitutionally demand that the military grant it access to the battlefield. See infra notes 169-175 and accompanying text (discussing Globe Newspaper and the right of access to judicial proceedings).

8. MOTT, supra note 5, at 99. Media organization is vital to any coverage effort because eyewitness accounts must be transmitted quickly from the fighting to the newspaper. Id. No such organization existed during the Revolutionary War. Id. Generally, newspapers filled their news columns with stories clipped from other newspapers, both foreign and domestic. Id. Each newspaper printed local news, which contributed to the total fund of stories, but reports sometimes took weeks, or even months, to reach the other newspapers. Id. For example, the battles of Lexington and Concord occurred on April 19, 1775, but were not reported in the Baltimore Gazette until April 27 and not until May 31 in the Savannah Gazette. Id. at 99-101.
9. Id.
10. Id. at 196. News reports generally came from Washington, but were slow in getting to the newspapers. Id. One young editor often met the night stage as it passed through and questioned the passengers while the driver changed horses. Id.
11. Id. During the Mexican-American War, the nine New Orleans papers, which were geographically closest to the fighting, had correspondents at the front. Id. All other American newspapers relied on their reports. Id. at 248-49. By 1846, newspapers had a large enough readership to permit expenditure of funds to collect and quickly transmit stories from the battlefield to the printer. Id. The Charleston Courier and the New York Sun, for example, set up horse expresses over the gap in the railroad system through Mississippi and Alabama, which greatly improved transmission speed. Id. Once the reports reached Richmond, Virginia, operators put the stories on the telegraph and transmitted them to newspapers in Northern States. Id.
12. J. RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN 484 (1958). ``Newspaper correspondents were everywhere. Many had official positions as government clerks, army nurses, or signal officers, and were thus advantageously placed for obtaining news." Id.
13. Randall, The Newspaper Problem in its Bearing upon Military Secrecy During the Civil War, 23 AM. HIST. REV. 303, 477-510 (1987). The press continually published military information, such as plans for campaigns, movement of troops, and locations of military units, which was used by the South to plan their strategy. Id. Some northern newspapers were openly hostile toward the Lincoln administration and the President himself. Id. The Baltimore Exchange, for example, publicly supported the Confederate cause:
The war of the South is the war of the people, supported by the people. The war of the North is a war of the party, attempted to be carried on by political schemes, independently of the people, on the credit of a divided country, and on the . . . faith of an old union -- which has in reality, ceased to exist. Id. at 488 (quoting from Baltimore Exchange, July 10, 1861).
14. RANDALL, supra note 12, at 303.
Usually the correspondents were accorded the most liberal privileges. Government passes were put into their hands; they had the use of government horses and wagons; they were given transportation with baggage privileges on government steamers and military trains. They enjoyed the confidence of admirals and army commanders, and were seldom at a loss to obtain the information they desired. Staying behind the lines as they usually did, they heard an immense deal of officers' talk, and could pick up not only the camp gossip but also many telling snatches of military information. Id. at 307.

15. RANDALL, supra note 12, at 492-93. Among those newspapers suppressed were the Chicago Times, New York World, New York Journal of Commerce, Dayton Empire, Louisville Courier, New Orleans Crescent, South of Baltimore, Maryland New Sheet of Baltimore, Baltimore Gazette, Daily Baltimore Bulletin, Philadelphia Evening Journal, and the New Orleans Advocate. Id.
16. Id. at 481-84. The government made feeble attempts to censor press dispatches sent over the national wire, but journalists simply used the mail instead. Id. President Lincoln exercised a great restraint when dealing with the press. Id. He expressed his concern in a letter to General Schofield in which he wrote:
You will only arrest individuals and suppress assemblers or newspapers when they may be working palpable injury to the military in your charge, and in no other case will you interfere with the expression of opinion in any form or allow it to be interfered with violently by others. In this you have discretion to exercise with great caution, calmness and forbearance. Id. at 508.
17. MOTT, supra note 5, at 537. Cable tolls were high. It is estimated that New York newspapers filed up to 5,000 words per day over the wire from the Key West cable office. At the current rate of five cents per word, these newspapers spent up to $250 per day in cable fees alone. Id.
18. Id. at 533. See J. MATHEWS, REPORTING THE WARS 141 (1957) (discussing military-press relations during the Spanish-American War). Historians estimate that as many as 500 writers, photographers, and artists covered the fighting for scores of newspapers and magazines. MOTT, supra note 5, at 534. President McKinley issued permits to the Associated Press that allowed its reporters to accompany each flagship. Id. at 536. When Dewey's fleet sailed into Manila Bay, for instance, three correspondents were on board and observed the fighting. Id.
19. Middleton, Barring Reporters from the Battlefield, N.Y. Times, Feb. 5, 1984, § 6, at 37. With the size of World War I, it soon became apparent that the front-line trenches were not the best places to gather news about larger movements of troops. Accordingly, military headquarters became the press centers. MOTT, supra note 5, at 619.
20. Middleton, supra note 9, at 37. ``The American Army entering World War I found itself wrapped in the censorship already established by Britain and France, the senior allies, who instituted it for the purpose of security." Id. Military officials screened all cables and mail bound for the United States, excising offensive material or returning the dispatch to the correspondent for a rewrite. MOTT, supra note 5, at 621-22. At one point, French and British authorities considered excluding all reporters from their armies. MATHEWS, supra note 18, at 161. The British and French were determined to exclude all reporters in 1914 when fighting on the Western front became trench warfare. Id. That type of warfare is virtually impossible to report without direct access to the fighting. Id.
21. M. STEIN, UNDER FIRE: THE STORY OF AMERICAN WAR CORRESPONDENTS, at 72 (1968).
22. Id. at 73. Reporters with foreign armies were afforded such freedom: ``Once accredited, correspondents might go and come as they pleased; writers with other armies were commonly compelled to go about with military escorts, but American correspondents could visit front-line trenches alone if they pleased, or even `go over the top.'" MOTT, supra note 5, at 621. It is interesting to note that during World War I women made their first appearance as war correspondents. Id. at 622.

23. During the entire war, the U.S. War Department accredited 1,186 American correspondents and other news personnel. MOTT, supra note 5, at 742. The Navy Department accredited an additional 60 reporters. Id. Thirty newspapers, the two wire services, and twelve magazines maintained correspondents at the war fronts. Id.
24. In 1944, Pyle won the Pulitzer Prize for reporting. Id. at 754. He was killed on April 18, 1945, the victim of a Japanese machine gun sniper. Id.
25. See Middleton, supra note 19, at 61 (stating that every written story, photograph, or broadcast was scrutinized by U.S. military censors).
26. Id. Middleton recalled that ``World War II correspondents were permitted, if not encouraged, to interview officers dealing with operations, intelligence or military government.'' Id.
27. Id.
28. MOTT, supra note 5, at 759. A total of 37 writers, photographers, and radio men were killed during the war, and 112 were wounded. Id. Journalists had a casualty rate four times higher than the fighting forces. Id. But see Middleton, supra note 19, at 61 (estimating that 140 correspondents died during World War II). Middleton's calculation may include combat correspondents; soldiers assigned to write for various military newspapers.
29. Tradition, supra note 5, at 5. Six correspondents accompanied the plane when U.S. forces bombed Rome and a reporter was present in the air when the second atomic bomb exploded over Japan. Id. See generally J. MAC VANE, ON THE AIR IN WORLD WAR II (1979) (accounting of war correspondent's adventures reporting battlefield news).
30. Middleton, supra note 19, at 61.
31. P. KNIGHTLY, THE FIRST CASUALTY -- FROM CRIMEA TO VIETNAM: THE WAR CORRESPONDENT AS HERO, PROPAGANDIST AND MYTH MAKER 337 (1975).
32. Id. at 245-46. Correspondents were under the complete jurisdiction of the army. Id. Any infraction of the imposed rules could be punished by suspension of privileges, deportation, or even court martial. Id. MacArthur made it clear that criticism of military policy or commanders would not be tolerated. Id.
33. Id.
34. STEIN, supra note 21, at 149; KNIGHTLY, supra note 31, at 340. Journalists even accompanied the troops on the Inchon landing.
35. In contrast to the total military censorship during World War II, during the Vietnam War overt censorship (i.e., actual inspection of correspondents' cables and mail) did not exist, yet the military still allowed reporters almost complete freedom of movement.
36. Middleton, supra note 19, at 61. See Administration Limits News of Grenada, N.Y. Times, Oct. 27, 1983, at A23, col. 4 (stating that no censorship occurred during the Vietnam War).
37. Middleton, supra note 19, at 61, 69; Military v. Press: A Troubled History, N.Y. Times, Oct. 29, 1983, at A7, col. 1; Marines Give Media Low Marks, L.A. Times, Nov. 27, 1983, § 11, at 1, col 5. But see Mueller, A Summary Of Public Opinion And The Vietnam War in VIETNAM AS HISTORY: TEN YEARS AFTER THE PARIS PEACE ACCORDS (P. Braestrup ed. 1984) (discussing the causes of American hostility to the War).

38. The Vietnam War was the first U.S. military engagement in which television played a significant role in reporting the events. For an interesting discussion of television and its influence on public opinion during the Vietnam War, see generally Lichty, Comments On The Influence Of Television On Public Opinion, in VIETNAM AS HISTORY: TEN YEARS AFTER THE PARIS PEACE ACCORDS 158 (P. Braestrup ed. 1984).
39. N.Y. Times, Oct. 26, 1983, at A1, col. 5.
40. Invasion Troops Trained to Make Surprise Raids, N.Y. Times, Oct. 26, 1983, at A16, col. 5.
41. Id.
42. N.Y. Times, Oct. 26, 1983, at A1, col. 1. See Text of Reagan's Announcement of Invasion, N.Y. Times, Oct. 26, 1983, at A16, col. 5 (setting forth contents of President Reagan's announcement of invasion).
43. See U.S. Allows 15 Reporters to Go to Grenada for Day, N.Y. Times, Oct. 28, 1983, at A13, col. 6 (stating that there were at least 300 reporters in Barbados). But see Coverage Efforts Thwarted, NEWS MEDIA & THE LAW, at 6 (Jan. 1984) (stating that within hours after Reagan announced the invasion, more than 400 journalists converged on Barbados).
44. Coverage Efforts Thwarted, supra note 43, at 6.
45. Id. Vice Admiral Joseph Metcalf, Grenada task force commander, was quoted as saying, ``Well, I know how to stop those press boats. We've been shooting at them. We haven't sunk any yet, but how are we to know who's on them." Admiral Says It Was His Decision to Tether the Press, N.Y. Times, Oct. 31, 1983, at A12, col. 3.
46. Coverage Efforts Thwarted, supra note 43, at 6; Admiral Says It Was His Decision to Tether the Press, supra note 45, at A12, col. 3.
47. U.S. Bars Coverage of Grenada Action: News Groups Protest, N.Y. Times, Oct. 27, 1983, at A1, col. 6. The flow of information from the Pentagon was slow. Fred Hoffman, an AP correspondent, reported that the Pentagon received information early in the morning of October 26 that six U.S. soldiers had been killed in Grenada, yet the Pentagon refused to confirm those reports until late that afternoon. Journalists Barred From Grenada Combat Area, L.A. Times, Oct. 27, 1983, §I, at 16, col. 1.
48. U.S. Allows 15 Reporters to Go to Grenada for Day, N.Y. Times, Oct. 28, 1983, at A13, col. 5; Coverage Efforts Thwarted, supra note 43, at 6.
49. Id.
50. Id. The fifteen reporters were part of a news pool. Id. They gathered information on the island and then shared it with all other reporters. Id.
51. Id.
52. Coverage Efforts Thwarted, supra note 43, at 6.
53. Id.
54. U.S. Press Curbs: The Unanswered Questions, N.Y. Times, Oct. 29, 1983, at A1, col. 1. During the military tour of the island, one Newsweek reporter broke from the group and failed to return. The military promptly dropped that magazine from the press pool. Newsweek Is Dropped from Grenada Visits, N.Y. Times, Oct. 30, 1983, at A22, col. 6.
55. Res. 208, 98th Cong., 1st Sess., reprinted in 129 Cong. Rec. S14957 (daily ed. Oct. 29, 1983). The resolution provided in pertinent part: ``Since a free press is an essential feature of our democratic system of government and since currently in Lebanon and traditionally in the past, the United States has allowed the press to cover conflicts

involving United States armed forces, restrictions imposed upon the press in Grenada shall cease." Id.
56. U.S. Eases Restrictions on Coverage, N.Y. Times, Oct. 31, 1983, at A18, col. 2. The Reagan administration attempted to justify the exclusion of the press from Grenada by citing the need for surprise and the inability to guarantee the safety of reporters. N.Y. Times, Oct. 27, 1983, at A18, col. 2. Secretary of Defense Caspar Weinberger stated that he had left access decisions up to the military and that he ``wouldn't ever dream of overriding a commander's decision." Id. White House Press Secretary Larry Speakes probably more accurately described the reason for the press exclusion when, in answering a reporter's question about the administration's reason for the denial, he stated, ``You're carrying your management's water on this thing." Administration Limits News of Grenada, N.Y. Times, Oct. 27, 1983, at A23, col. 6. For an excellent panel discussion of the reasons postulated by the Reagan administration for the denial of press access, see generally The Grenada Experience, CENTER MAG., Sept.-Oct. 1984, at 53.
57. The media reacted to the Reagan administration's denial of press access to Grenada with controlled fury. Several telegrams denouncing the restraint were sent to the Pentagon and the White House. Coverage Efforts Thwarted, supra note 43, at 6. National columnists protested immediately. Anthony Lewis of the New York Times asked: ``What feared knowledge was President Reagan trying to keep from the American public on Grenada? Why did he bar the press from the invasion of that small island as General Eisenhower did not feel it necessary to do when his forces challenged the might of the Nazis?" Lewis, What Was He Hiding, N.Y. Times, Oct. 30, 1983, at A19, col. 6. A New York Times editorial criticized the administration explanation: ``Safety? Let Mr. Weinberger consider the Iwo Jima memorial, not a mile from his office -- the Marines raising the flag on Mount Suribachi. How much safety does he think was guaranteed Joe Rosenthal of the Associated Press, who took the famous picture." Grenada -- and Mount Suribachi, N.Y. Times, Oct. 28, 1983, at A26, col. 1.

Other voices of dissent included Deputy Press Secretary Les Jenka, who resigned, saying the events in the Caribbean had damaged his credibility. L.A. Times, Nov. 1, 1983, § I, at 14, col. 3. CBS News President Edward Joyce and newsmen David Brinkley and John Chancellor appeared before Congress. They assailed the ban on firsthand news gathering in Grenada, calling the policy ``[t]he dawn of a new era of censorship." L.A. Times, Nov. 3, 1983, § 1, at 9, col. 1. Much of the controversy centered around charges that the Reagan administration and military officials had disseminated inaccurate information and unproven assertions. Taylor, In Wake of Invasion, Much Official Misinformation by U.S. Comes to Light, N.Y. Times, Nov. 6, 1983, at A20, col. 1. Further, the administration failed to disclose a U.S. Navy air attack on an unmarked Grenadian hospital in which at least twelve civilians were killed. U.S. Admits Air Attack on Hospital in Grenada, L.A. Times, Nov. 1, 1983, § I, at 1, col. 2. Official confirmation came six days after the attack and only after press accounts began to surface. Id.
58. A Second Look at the Off-the-Record War, TIME, Nov. 21, 1984, at 77.
59. The panel was composed of journalists, journalism professors, public information officers, and military representatives. Panel Supports Press Access to Combat, L.A. Times, Feb. 7, 1984, §I, at 7, col. 4. In August 1984, the Pentagon made public the panel's recommendations, announcing the general principle that news media coverage of

U.S. military operations was essential and access should be allowed to the maximum degree possible. Chairman Of The Joint Chiefs Of Staff Media - Military Relations Panel (Sidle Panel), Report 3 (1984) [hereinafter Sidle Panel Report].
60. Sidle Panel Report, supra note 59, at 3. The panel was headed by Major General (retired) Winant Sidle, a former military press officer in Vietnam. Id.
61. Pentagon Forms War Press Pool; Newspaper Reporters Excluded, N.Y. Times, Oct. 11, 1984, at A1, col. 2. The pool included eleven press representatives including one correspondent each from the Associated Press and United Press International; one from a news magazine; one each from CBS, NBC, ABC and Cable News Service; a radio news broadcaster, a cameraman, a sound technician, and a still photographer. Id. See Pact Reached on Media Pool to Cover Military Operations, Wash. Post, Oct. 11, 1984, at A1, col. 4 (discussing the creation of the press pool). Following protest from newspapers, the Pentagon quickly agreed to include a newspaper reporter in the pool. Pentagon Plans to Add Newspaper Reporter as Member of its Press Pool, N.Y. Times, Oct. 12, 1984, at A1, col. 1.

Initial media reaction to the Sidle Report and the formation of the press pool was generally favorable, however, some press representatives criticized the vagueness of the report and the nonbinding nature of the guidelines. Compare Commander, or Censor, in Chief?, N.Y. Times, Sept. 17, 1984, at A18, col. 1 (the Sidle Report provides reasonable guidelines) with Zuckerman, Outlook: Don't be Co-opted by the Folks Who Brought Us Vietnam, Grenada, and the Iranian Rescue Fiasco, 3 COMM. LAW. 15 (1985) (Pentagon's rules represent licensing and censorship).
62. Jones, Editors Say Journalists Were Kept From Action, N.Y. Times, Dec. 22, 1989, at A19, col. 3. The press pool had been deployed previously in a noncombat situation in the Persian Gulf, when United States warships began escorting tankers there. Id.
63. Id. At the time of the Panama invasion, the pool consisted of 16 members: one reporter and one photographer each from the Associated Press, Reuters, and Time Magazine; a reporter from United Press International; a radio reporter from ABC News; a five-person television crew from NBC News; and three newspaper reporters. Id.
64. Id.
65. Gordon, Cheney Blamed for Press Problems in Panama, N.Y. Times, Mar. 20, 1990, at A8, col. 4.
66. Jones, supra note 62, at A19, col. 3.
67. Id.
68. Gordon, supra note 65, at A8, col. 4. News executives complained that by the time the pool arrived in Panama, most of the fighting had ended. Jones, supra note 62, at A19, col. 3.
69. Goodman, The Television Has Become a Weapon in Panama and Rumania, N.Y. Times, Dec. 26, 1989, at A18, col. 1.
70. Jones, supra note 62, at A19, col. 3.
71. Id.
72. N.Y. Times, Dec. 22, 1989, at A1, col. 6.
73. Gordon, supra note 65, at A8, col. 4. See The Pentagon Pool, Bottled Up, N.Y. Times, Jan. 15, 1990, at A16, col. 1 (editorial criticizing pool system).
74. Jones, supra note 62, at A19, col. 3.

75. Gordon, supra note 65, at A8, col. 4.
76. Id.
77. Gordon, Pentagon Seeks Tight Limits On Reporters in a Gulf War, N.Y. Times, Jan. 4, 1991, at A10, col. 1.
78. Id.
79. Id.
80. The proposed regulations included a ban on impromptu interviews with soldiers, prohibitions on reporting religious observations, and a ban on photographing soldiers wounded or in shock. Id. See Rosenstiel, Pentagon Softens Its Guidelines on News Coverage of Gulf War, L.A. Times, Jan. 8, 1991, at A10, col. 1 (discussing proposed regulations for press coverage).
81. Rosenstiel, supra note 80, at A10, col 1; Lewis, Pentagon Issues Press Rules Authorizing Military Censors, N.Y. Times, Jan. 8, 1991, at A10, col. 5; Lewis, Pentagon Adopts Gulf News Rules, N.Y. Times, Jan. 10, 1991, at A16, col. 6. Revised versions of the regulations were issued on January 14 and January 30, 1991. Nation Magazine v. United States Dep't of Defense, 762 F. Supp. 1558, 1564 n.4 (S.D.N.Y. 1991).
82. Lewis, Pentagon Adopts News Rules, supra note 81, at A16, col. 5.
83. Rosenstiel & Lamb, Military, Media Face Off in Gulf, L.A. Times, Jan. 12, 1991, at A1, col. 1. Prior to the Persian Gulf war, correspondents had never been subject to both escorted movement and censorship.
84. Lewis, Government's Strict Orders Limit Reports, N.Y. Times, Jan. 18, 1991, at A11, col. 1.
85. Id. Most significantly, the lack of information prevented the press from reporting on the magnitude of the air war. Rosenbaum, Press and U.S. Officials at Odds on News Curbs, N.Y. Times, Jan. 20, 1991, § I, at 16, col. 3.
86. Lewis, Pentagon Adopts News Rules, supra note 81, at A16, col. 5. In some instances, journalists later learned that information withheld in the field was released by the Pentagon soon after. Browne, Conflicting Censorship Upsets Many Journalists, N.Y. Times, Jan. 21, 1991, at A10, col. 5.
87. Rosenbaum, supra note 85, at A16, col 3; Browne, supra note 86, at A10, col. 5; Balzar, Pool Reporting: There's Good News and Bad News, L.A. Times, Jan. 21, 1991, at A1, col. 5; Rosenthal, Bush's Tight Control, N.Y. Times, Jan. 23, 1991, at A8, col. 1.
88. Back Up the Bombing Boasts, N.Y. Times, Jan. 23, 1991, at A18, col. 1; Schiffer & Rinzler, No News Is No News, N.Y. Times, Jan. 23, 1991, at A19, col. 2; Rosenthal, War: The One-Week Jitters, N.Y. Times, Jan. 25, 1991, at A29, col. 1; Gergen, Military vs. Media: Both Can Win, L.A. Times, Jan. 28, 1991, at B5, col. 3.
89. See Apple, Press and the Military: Old Suspicions, N.Y. Times, Feb. 4, 1991, at A9, col. 4 [hereinafter Old Suspicions] (noting that the ``pool system may be on the verge of collapse''). One of the greatest drawbacks of the pool system was the limited number of positions available. Early estimates placed the number of pool reporters between 60 and 99, out of the more than 700 journalists with credentials in the Persian Gulf. Browne, supra note 86, at A10, col. 5 (speculating that there were ``about 60 pool reporters''); Balzar, supra note 87, at A1, col. 5 (estimating 99 combat pool reporters). As the conflict continued, the number of pool spots increased. See Apple, Correspondents Protest Pool System, N.Y. Times, Feb. 12, 1991, at A14, col. 1 [hereinafter Protest] (specifying that there were 126 in Pentagon pools); Berke, Pentagon Defends Coverage Rules, While

Admitting to Some Delays, N.Y. Times, Feb. 21, 1991, at A14, col. 1 (estimating 192 pool members by end of week). However, the number of journalists in the Gulf also increased. See Protest, supra, at A14, col. 1 (reporting that there were more than 1000 accredited journalists); Berke, supra, at A14, col. 1 (stating there were more than 1400 journalists in Gulf region).
90. Old Suspicions, supra note 89, at A9, col. 4. But see Kifner, Reporters Get Out of the Pool to Get Their Feet Wet, N.Y. Times, Feb. 9, 1991, § I, at 7, col. 2 (indicating that pool member Brad Willis, NBC television correspondent, was present at Khafji).
91. See Restrictions on War Photos, N.Y. Times, Feb. 1, 1991, at A9, col. 3 (stating that some photographers skirting pool arrangement); Old Suspicions, supra note 89, at § I, at 7, col. 2 (noting that violation of Pentagon ground rules ``commonplace''); Kifner, supra note 90, at § I, at 7. col. 2.
92. Protest, supra note 89, at A14, col. 1. Some journalists also had their credentials confiscated by military officers. Reporter is Detained, N.Y. Times, Feb. 11, 1991, at A13, col. 5.
93. Berke, News From Gulf is Good, and Cheney's Press Curbs Are Loosened, N.Y. Times, Feb. 25, 1991, at A17, col. 3.
94. Id. According to various news executives, the blackout was motivated by the Pentagon's desire to control the dissemination of any bad news, rather than by the need for security. Rosenstiel, Battle Success Helps Soften News Blackout, L.A. Times, Feb. 25, 1991, at A8, col. 3.
95. Rosenstiel, supra note 94, at A8, col 3.
96. Id.
97. Berke, supra note 93, at A17, col. 3; Rosenstiel, supra note 94, at A8, col. 3.
98. Berke, supra note 93, at A8, col. 3.
99. Nation Magazine v. United States Dep't of Defense, 762 F. Supp. 1558, 1565 (S.D.N.Y. 1991).
100. Flynt v. Weinberger, 588 F.Supp. 57, 58 (D.D.C. 1984).
101. Id.
102. Id. at 59. Flynt sought to avoid dismissal on mootness grounds by arguing that the case fell within the "capable of repetition, yet evading review" exception. See Southern Pac. Terminal Co. v. ICC, 219 U.S. 498, 515 (1911) (discussing the mootness exception for an action capable of repetition, yet evading review). The doctrine has been used in other press exclusion cases to overcome the mootness allegation. See, e.g., Globe Newspapers v. Superior Court, 457 U.S. 596, 603 (1982) (case was not moot because it could reasonably be assumed that Globe will someday be subjected to another trial close order); Gannett v. DePasquale, 443 U.S. 368, 377-78 (1979) (order closing pretrial hearing is too short in its duration to allow for review and it was possible publisher would again be subject to a similar closure order). See generally Note, The Mootness Doctrine in the Supreme Court, 88 HARV. L. REV. 373 (1974) (discussing the mootness doctrine and the recognized exceptions thereto).
103. Flynt v. Weinberger, 762 F.2d 134 (D.C. Cir. 1985). The case was remanded with instructions to dismiss on mootness grounds, but without prejudice. Id. Judge Edwards concurred, but wrote a separate opinion in which he stated that the court did not reach the mootness question with regard to the issue of whether the government can constitutionally deny access on the basis of danger to the press (where an allegation is

made that the government's actual motivation is to prevent unfavorable press coverage) because the issue was raised for the first time on appeal. Id. at 136.
104. Nation Magazine v. United States Dep't of Defense, 762 F. Supp. 1558, 1560 (S.D.N.Y. 1991). See Rosenstiel & Lamb, supra note 83, at A16, col. 1; Old Suspicions, supra note 89, at A9, col. 4 (discussing the lawsuit filed against the Department of Defense).
105. Nation Magazine, 762 F. Supp. at 1560-61.
106. Id. at 1565-66. Prior to the hearing on the motion to dismiss, the action by The Nation was consolidated with a similar action by Agence France-Presse (AFP), a French wire service. Id. Since AFP had undeniably been excluded from the pools, the court found that the plaintiffs had standing to challenge the pooling regulations. Id.
107. Id. at 1566-68. The court concluded that the question of restrictions on press access did not implicate the President's Article II powers as Commander-In-Chief, as contended by DOD. Id.
108. Id. at 1568-75. The court found that the claims for injunctive relief were moot because the regulations had been lifted on March 4, 1991, prior to the hearing on the motion to dismiss. Id. at 1562. With regard to the claims for declaratory relief, however, the court found that the action satisfied the ``capable of repetition, but evading review'' test because the claims had been broadly framed and DOD had lifted but not abrogated the regulations. Id. Thus, the plaintiffs in this case were able to surmount the barrier that precluded the plaintiff in Flynt v. Weinberger, 762 F.2d 134, 135 (D.C. Cir. 1985) from pursuing his case.
109. Nation Magazine, 762 F. Supp. at 1575. The court treated this question as a second part of the mootness inquiry. Id. at 1571-75. The court reasoned that because resolution of these claims would require the court to ``define the outer constitutional boundaries of access,'' the court would decline to exercise its power to grant declaratory relief. Id. at 1572.
110. Near v. Minnesota, 283 U.S. 697 1931). The only exceptions recognized by the Near court, in dicta, were for matters of national security and obscenity. Id. at 716. See infra notes 117-129 and accompanying text (discussing the national security exception).
111. 283 U.S. 697 (1931). The idea of an antagonistic and adversary press was a primary consideration in the adoption of the First Amendment. New York Times Co. v. United States, 403 U.S. 713, 717 (1971). However, it was not until Near that the Court affirmed that central meaning of the amendment. See Near, 283 U.S. at 719-21; see also Emerson, The Doctrine of Prior Restraint, 20 LAW & CONTEMP. PROBS. 648 (1955) (discussing the doctrine of prior restraint).
112. See Jeffries, Rethinking Prior Restraints, 92 YALE L.J. 409 (1983) (historic protection of doctrine superseded by expanded coverage of First Amendment); Barnett, The Puzzle of Prior Restraints, 29 STAN. L. REV. 539 (1977) (doctrine diminishes protection of speech not labeled prior restraint).
113. See New York Times Co. v. United States, 403 U.S. 713, 719 (1971) (six concurring justices reject application for restraining order barring publication of classified government information using doctrine as basis of opinion); Nebraska Press Ass'n v. Stewart, 427 U.S. 539, 570 (1976) (unanimous decision rejects gag order in pretrial context as unconstitutional prior restraint); Organization for a Better Austin v. Keefe, 402 U.S. 415, 419-20 (1971) (injunction halting distribution of pamphlets is prior restraint,

notwithstanding alleged invasion of privacy); Oklahoma Publishing Co. v. Oklahoma County, 430 U.S. 308, 311 (1977) (per curium) (reversal of trial court order restricting publication of name and photograph of juvenile charged with murder).
114. Near, 283 U.S. at 705.
115. Id. at 722. The court observed:

Charges of reprehensible conduct, and in particular of official malfeasance, unquestionably create a public scandal, but the theory of the constitutional guarantee is that even a more serious public evil would be caused by authority to prevent publication. Id.
116. Near, 283 U.S. at 716. See Goldblum v. NBC, 584 F.2d 904, 907 (9th Cir. 1978) (holding that a court order requiring production of film for viewing by court before public release is unconstitutional). The court in Goldblum observed: ``It is a fundamental principal of the First Amendment that the press may not be required to justify or defend what it prints or says until after the expression has taken place." Id. at 907.
117. Near, 283 U.S. at 716. Chief Justice Hughes stated that ``no one would question but that a government might prevent actual obstruction to its recruiting service or the publication of sailing date of transports or the number and location of troops." Id. Prior to New York Times Co. v. United States, 403 U.S. 713 (1971), discussed infra at notes 119-129 and accompanying text, the Hughes dicta was the sole constitutional authority directly relating to the problem of exceptions to the doctrine of prior restraint in cases involving conflict between the free press and national security. See generally Note, The National Security Exception to the Doctrine of Prior Restraint, 13 WM. & MARY L. REV. 214 (1971).
118. See New York Times Co. v. United States, 403 U.S. 713, 719 (1971) (discussing the national security exception to the doctrine of prior restraint).
119. 403 U.S. 713 (1971).
120. Id. The New York Times and the Washington Post obtained copies of a classified study entitled ``History of United States Decision-Making Process of Vietnam Policy." United States v. New York Times Co., 328 F. Supp. 324 (S.D.N.Y. 1971), rev'd., 444 F.2d 544 (2d Cir. 1971), rev'd., 403 U.S. 713 (1971); United States v. Washington Post Co., 446 F.2d 1322 (D.C. Cir. 1971). These materials become known as the ``Pentagon Papers." Id.
121. New York Times, 403 U.S. at 713. The government based its power to impose prior restraints on the press upon the constitutional power of the President over the conduct of foreign affairs and on the Espionage Act of 1917. Id. at 733-34.
122. Id. Nebraska Press Assn. v. Stuart, 427 U.S. 539, 558-59 (quoting Pillsbury Press Co. v. Human Relations Comm., 413 U.S. 376, 396 (1973) (Bunger, C.J. dissenting)).
123. Id. at 718-19.
124. The interim restraining order, if granted, would have temporarily halted publication.
125. New York Times Co., 403 U.S. at 726-27 (Brennan, J., concurring). Justice Stewart stated that he could not say "disclosure of any of [the documents] will surely result in direct, immediate, and irreparable damage to our nation or its people." Id. at 730 (Stewart, J., concurring).
126. 427 U.S. 539 (1976).

127. Id. at 542-44. The case involved the murder of a Nebraska family. Id. The order specifically prohibited the media from reporting on five subjects: (1) The existence or contents of a confession the accused had given to police and which the prosecution introduced at the arraignments; (2) any statements made by the accused to other persons; (3) contents of a note written by the accused; (4) aspects of the medical testimony at the preliminary hearing; and (5) the identity of the victims of the alleged sexual assault and the nature of the assault. Id. at 543-44. See W. FRANCOIS, MASS MEDIA LAW AND REGULATION 366 (3d ed. 1982) (discussing the Nebraska Press case).
128. Nebraska Press Ass'n., 427 U.S. at 542-44.
129. Id. at 559. The majority, however, did not rule out the possibility that the composition of the gag order might pass constitutional muster where the trial court has exhausted all other measures aimed at ensuring a fair trial. Id. at 563. Cf. Sheppard v. Maxwell, 384 U.S. 333, 357-62 (1966) (murder conviction overturned based on adverse pretrial publicity; court suggested options for trial judge to prevent impairment of sixth amendment right to fair trial).
130. In Panama, three reporters were detained briefly by American troops the day before the invasion, but apparently they were not prevented from reporting. See News Personnel Detained, N.Y. Times, Dec. 20, 1989, at A8, col. 6.
131. In the Persian Gulf, numerous reporters were detained for violating the pool restrictions once the war had begun. See supra notes 61-98 and accompanying text (discussing the press pool). Because of the long prelude to hostilities, however, no prebattle detention occurred.
132. See supra notes 39-61 and accompanying text (discussing the invasion of Grenada).
133.The correspondents said they thought the military would allow them to use the ship's communications equipment. U.S. Allows 15 Reporters to Go to Grenada for Day, N.Y. Times, Oct. 28, 1983, at A13, col. 5.
134. Id.
135.In the aftermath of the invasion, the military failed to offer any explanation for the detention of the correspondents. Absent an explanation, one can reasonably conclude that the removal and detention of the journalists was accomplished with the intent to prevent publication.
136. The Supreme Court has defined a ``prior restraint'' as any governmental prepublication interference with a person's right of expression. Near v. Minnesota, 283 U.S. 697, 716 (1931); Organization for a Better Austin v. Keefe, 402 U.S. 415, 418 (1971). Any prior restraint on expression comes to the court with a heavy presumption against its constitutional validity. Carrol v. President & Commrs. of Princess Anne, 393 U.S. 175, 181 (1968); Bantam Books Inc. v. Sullivan, 372 U.S. 58, 70 (1963). The government carries the burden of showing justification for the imposition of a prior restraint. Keefe, 402 U.S. at 417.
137.The New York Times Co. v. United States decision clearly implies that there is no change in the presumption of unconstitutionality and the heavy burden to justify a prior restraint when the government alleges national security. New York Times Co. v. United States, 403 U.S. 713, 721 (1970). See generally Note, Access to Official Information: A Neglected Constitutional Right, 27 IND. L.J. 209, 229 (1951).
138. Compare Text of Reagan's Announcement of Invasion, supra note 42, at A16, col. 1 (dateline October 25, 1983) with U.S. Allows Reporters to Go to Grenada for Day, N.Y.

Times, Oct. 28, 1983, at A13, col. 5 (dateline October 27, 1983) (journalists removed from island).
139. Although the Court has never had occasion to consider less restrictive alternatives in a prior restraint case involving national security, the Court has indicated that it is part of the test. In New York Times Co. v. United States, 403 U.S. at 713, the Court, in the per curiam section of the opinion, cites Keefe for the proposition that any prior restraint carries a heavy burden of justification. Id. Keefe cites Carrol, 393 U.S. 175 (1968), for the same proposition. Keefe, 402 U.S. at 416. The Court in Carrol clearly used the less restricted alternative test to reach its decision. Carrol, 393 U.S. at 181.
140. Few journalists would dispute the government's right in a military situation to review correspondents' stories before transmission. See Editorial, News Media & The Law, Jan. 1984, at 3.
141. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 785-89 (2d ed. 1988). See also Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 392 (1969). Justice White, speaking for a unanimous court observed:

It is the purpose of the First Amendment to preserve the uninhibited marketplace of ideas in which truth will ultimately prevail. . . . It is the right of the public to receive suitable access to social, political, ethnic, moral and other ideas and experiences which is crucial here. That right may not constitutionally be abridged by either Congress or the FCC. Id. at 390.
142. For instance, Thomas Jefferson believed the press had the right to criticize the conduct of public officials. L. LEVY, FREEDOM OF THE PRESS FROM ZENGER TO JEFFERSON 355 (1966). James Madison wrote that ``[t]he right of freely examining public characters and measures, and of free communication thereon, is the only effective guardian of every other right." 6 WRITINGS OF JAMES MADISON 398 (1906). The Supreme Court found that the Continental Congress assented to the proposition that a free, critical press would benefit the country. Thornbill v. Alabama, 310 U.S. 88, 102 (1940).
143. Red Lion, 395 U.S. at 390. See Buckley v. Valeo, 424 U.S. 1, 14 (1976) (discussion of public issues vital to function of government); Roth v. United States, 354 U.S. 476, 484 (1957) (First Amendment designed to encourage interchange of ideas); Associated Press v. United States, 326 U.S. 1, 20 (1945) (widest dissemination of information essential to public welfare).
144. See Mills v. Alabama, 384 U.S. 214, 219 (1966) (the Court stated: "Suppression of the right of the press to praise or criticize governmental agents . . . muzzles one of the very agencies the framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free"). The Court expressed a similar view in Estes v. Texas, 381 U.S. 532, 539 (1965) stating: "The free press has been a mighty catalyst in awakening public interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences . . . ." Estes, 381 U.S. at 539.
145. Saxbe v. Washington Post Co., 417 U.S. 843, 863 (1974) (Powell, J., dissenting) (stating: ``No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities.").
146. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 491-92 (1975). The Court observed:

[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media. . . . Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. Id.
147. Nixon v. Warner Communications, Inc., 435 U.S. 589, 609. The majority observed:

Our decision in [Cox Broadcasting] merely affirmed the right of the press to publish accurately information contained in court records open to the public. Since the press serves as the information-gathering agent of the public, it could not be prevented from reporting what it had learned and what the public was entitled to know. Id. See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 586 n.2 (1979) (Brennan, J., concurring) (stating: ``The institutional press is the likely, and fitting chief beneficiary of the right of access because it serves as the `agent' of interested citizens. . . ."); Herbert v. Lando, 441 U.S. 153, 189 (1979) (Brennan, J. dissenting) (arguing for recognition of editorial privilege because it would shield the press in its function as an agent of the public); Saxbe, 417 U.S. at 863 (Powell, J., dissenting) (stating that since it is unrealistic for most citizens to be personally familiar with all newsworthy events, the press acts as an agent of the public when it gathers news).
148. Zemel v. Rusk, 381 U.S. 1, 13 (1965) (right to speak and publish does not carry with it an unrestrained right to gather information).
149. Kleindienst v. Mandel, 408 U.S. 753, 764-65 (1972) (recognized First Amendment rights were implicated by denial of visa to marxist professor, who was to speak at American universities).
150. See, e.g., Branzburg v. Hayes, 408 U.S. 665, 682-88 (1972) (Court reached the decision that journalist have no privilege not to answer grand jury subpoena by balancing competing societal interests); Kleindienst v. Mandel, 408 U.S. 753, 770 (1972) (government interest in regulating entry of aliens outweighed citizens' right to hear marxist professor).
151. See, e.g., Bursey v. United States, 466 F.2d 1059, 1089 (9th Cir. 1972) (reh'g denied, 466 F.2d 1090 (1972) (court compelled answers to some grand jury questions); In re Grand Jury Subpoena, 5 Media L. Rep. (BNA) 1153 (D.C. Tex. 1979) (objection to production of unpublished grand jury tapes sustained).
152. See, e.g., United States v. Hubbard, 493 F. Supp. 202, 205 (D. D.C. 1976) (subpoena quashed in suppression hearing); United States v. Orsini, 424 F. Supp. 229, 235-36 (E.D.N.Y. 1976) aff'd, 559 F.2d 1206 (2d Cir. 1976), cert. denied, 434 U.S. 997 (1977) (subpoena quashed in motion to dismiss); State v. Saint Peter, 132 Vt. 266, 315 A.2d 254, 256 (1974) (directions regarding discovery issued to court below).
153. See, e.g., Brown v. Commonwealth, 214 Va. 755, 204 S.E.2d 429, 431 (1974), cert. denied, 419 U.S. 966 (1974); Zelenka v. State, 82 Wis.2d 601, 266 N.W.2d 279, 287 (1978) (affirming the trial court's decision not to compel disclosure).
154. See, e.g., Farr v. Pitchess, 522 F.2d 464, 469 (9th Cir. 1975) (denial of petition for writ of habeas corpus after incarceration for failure to disclose), cert. denied, 427 U.S. 912 (1976).

155. See, e.g., Opinion of Justices, 117 N.J. 386, 373 A.2d 644, 646 (1977) (disclosure denied).
156. See, e.g., Bruno & Stillman, Inc. v. Globe Newspaper Co., 633 F.2d 583, 599 (1st Cir. 1980) (remand with directions); Carey v. Hume, 492 F.2d 631, 639 (D.C. Cir. 1974), cert. dismissed, 417 U.S. 938 (1974) (disclosure ordered); Mize v. McGraw-Hill, 82 F.R.D. 475, 478 (S.D. Tex. 1979) (1979), aff'd. on reh'g, 86 F.R.D. 1 (S.D. Tex. 1980) (disclosure denied); Senear v. Daily Journal-American, 97 Wash.2d 148, 641 P.2d 1180, 1184 (1982) (remand with directions).
157. 408 U.S. 665 (1972). In the earlier case of Zemel v. Rusk, 381 U.S. 1 (1965) the court had implied that news gathering merited some First Amendment protection. Zemel, 381 U.S. at 16.
158. Branzburg, 408 U.S. at 667. The case involved a Louisville-Courier reporter who had written an article concerning the manufacture of hashish. Id. at 667. He promised anonymity to the two persons he had interviewed and observed working with the substances. Id. at 667-68. After the story appeared, a grand jury subpoenaed Branzburg to testify. Id. at 668. He appeared, but refused to name his sources. Id. at 668, 670.
159. Id. at 681.
160. Id. Justice Stewart, although dissenting from the majority's conclusion that the press must respond to a grand jury subpoena, agreed with the majority's statement regarding news gathering:

In keeping with this tradition [of press independence], we have held that the right to publish is central to the First Amendment and basic to the existence of constitutional democracy. A corollary of the right to publish must be the right to gather news. The full flow of information to the public protected by the free-press guarantee would be severely curtailed if no protection whatever were afforded to the process by which news is assembled and disseminated.
Id. at 727 (Stewart, J., dissenting) (citations omitted).
161. 443 U.S. 368 (1979).
162. Id. at 379-84.
163. Id. at 392. The Court stated: ``We need not decide in the abstract however, whether there is any such constitutional right." Id.
164. Bolbach, Access to Information: Affirming the Press' Right, Christian Century, Sept. 24, 1980, Vol. 97, at 881 (stating that in response to the Gannett ruling, more than 260 attempted trial closings were documented between July of 1979 and July of 1980).
165. 448 U.S. 555 (1980) (plurality decision).
166. Id. at 558 (Burger, C.J., with White, J. and Stevens, J., announcing the judgment of the court). The court stated: ``We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment." Id. ``Because I believe that the First Amendment . . . secures such a public right of access, I agree with . . . my Brethren . . . ." Id. at 585. (Brennan, J., with Marshall, J., concurring). Justice Stewart, concurring, stated: ``[T]he First and Fourteenth Amendments clearly give the press and the public the right to access to trials themselves, civil as well as criminal." Id. at 599 (Stewart, J., concurring). Also, in concurrence, Justice Blackmun stated: ``I am driven to conclude . . . that the First Amendment must provide some measure of protection for public access to the trial." Id. at 604 (Blackmun, J., concurring).

167. The Chief Justice traced the history of the trial back to the Norman conquest. Id. at 564-73. For an interesting discussion of the question left open by Richmond Newspapers, see generally Comment, After Richmond Newspapers: A Public Right to Attend Civil Trials?, 4 COMMENT 241 (1982).
168. 448 U.S. at 577. See generally Note, The Richmond Newspapers Case: Creation of a First Amendment Right of Access, 14 U.C. DAVIS L. REV. 1081 (1981-1982).
169. 457 U.S. 596 (1982).
170. Id. at 606. Justice Brennan, writing for a five-justice majority, declared unconstitutional a Massachusetts statute which closed trials during the testimony of minor victims of specific sex offenses. Id.
171. Id. at 605-06.
172. Id. at 606-07. Justice O'Connor concurred only in the judgment of the court, noting that she did not interpret Globe Newspapers or Richmond Newspapers to be applicable outside the context of criminal trials. Id. at 611 (O'Connor, J., concurring in the judgment).
173. 464 U.S. 501 (1984).
174. Id. at 513. Justice Marshall concurred in the judgment of the court only and filed a separate opinion in which he argued that greater government interest must be shown before the presumption of openness can be overcome. Id. (Marshall, J., concurring in the judgment).
175. Id. at 512. The court held that the presumption of openness could only be overcome ``by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest.'' Id. at 514. The court found the trial court's closure order unconstitutional, noting that the lower court had not made any specific findings or considered alternatives to closure. Id.
176. Branzburg v. Hayes, 408 U.S. 665, 681 (1972).
177. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 577 (1980); Globe Newspapers Co. v. Superior Court, 457 U.S. 596, 606 (1982); Press Enterprise, 464 U.S. at 512.
178. Richmond Newspapers, 448 U.S. at 577; Globe Newspapers, 457 U.S. at 606; Press Enterprise, 464 U.S. at 512.
179. Richmond Newspapers, 448 U.S. at 577; Globe Newspapers, 457 U.S. at 606; Press Enterprise, 464 U.S. at 512.
180. Pell v. Procunier, 417 U.S. 817, 830 (1974). The district court noted that prison officials linked a liberal press access policy to an escape attempt in which three staff members and two inmates were killed. Id. at 832.
181. See Bell v. Wolfish, 441 U.S. 520, 547 (1979) (stating that prison administrators ``should be accorded wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security''). See also Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 128 (1977) (discussing the judicial deference afforded when reviewing prison administrative decisions).
182. 417 U.S. 817 (1974).
183. 417 U.S. 843 (1974).
184. Pell, 417 U.S. at 834. See Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) (stating that government-controlled information is information not otherwise

available to the public generally). In Nixon, the Court held that the press had no right of physical access to the Watergate tapes because the public did not have a right of access to such evidence. Id. at 783.
185. The facts involved in both cases were virtually identical and Justice Stewart authored both majority opinions. Compare Pell, 417 U.S. at 821-23 with Saxbe, 417 U.S. at 846-48.
186. Pell, 417 U.S. at 831-32. Prison officials initiated the interview prohibition following prison violence that they claimed was linked, in part, to media attention concentrated on a few chosen inmates. These prisoners acquired notoriety and influence over other inmates. Id.
187. In Pell, section 415.071 of the California Department of Corrections Manual provided: ``[P]ress and other media interviews with specific individual inmates will not be permitted." Pell, 417 U.S. at 819. In Saxbe, the relevant Federal Bureau of Prisons Policy Statement provided: ``Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public if it is limited to the discussion of an institutional facilities programs and activities." Saxbe, 417 U.S. at 844.
188. Pell, 417 U.S. at 835; Saxbe, 417 U.S. at 850.
189. See supra notes 150-156 and accompanying text (discussing application of the balancing test).
190. Saxbe, 417 U.S. at 849. This analysis implies that the government could constitutionally restrict the free flow of information guaranteed by the First Amendment by simply denying access equally to both the press and the public. Such a drastic result could not have been intended by the majority. See supra and infra notes 183-193 and accompanying text (discussing the reasoning of the Saxbe decision).
191. Pell, 417 U.S. at 834.
192. Id. at 830. The Court seemed anxious to stress the fact that other means of acquiring information about prison conditions were readily available to the media. Prison policy restricted only face-to-face interviews. The Court observed:

We note at the outset that this regulation is not part of an attempt by the State to conceal the conditions in its prisons or to frustrate the press' investigation and reporting of those conditions. Indeed, the record demonstrates that, under current corrections policy, both the press and the general public are accorded full opportunities to observe prison conditions. Id. In Saxbe, the Court expressed similar reliance: ``Except for the limitation in Policy Statement 1220.1A on face-to-face press-inmate interviews, members of the press are accorded substantial access to federal prisons in order to observe and report the conditions they find there." Saxbe, 417 U.S. at 847. The court also noted that press representatives could arrange to tour the prison and photograph any prison facility. Id. Additionally, inmates could correspond with members of the press. Id.
193. Saxbe, 417 U.S. at 847-49.
194. 438 U.S. 1 (1978) (plurality opinion of Burger, C.J.).
195. Id. at 6. The Chief Justice attempted to show that there were other means available to obtain information about the prison, such as correspondence. Id. The dissent correctly demonstrated, however, that correspondence and telephone privileges did not offer the

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230. Invasion Troops Trained to Make Surprise Raids, N.Y. Times, Oct. 26, 1983, at A16, col. 5.
231. After the invasion, military officials and others argued that the Grenada raid was a lightning-quick commando-style rescue mission. Compare Curbs on Grenada News Reporter Hit, L.A. Times, Nov. 3, 1983, § I, at 9, col. 1 (California Rep. Carlos Moorhead (R. Glendale) described Grenada invasion as ``a rescue mission using commando-tactics" much like the Iran hostage rescue attempt) with ABC News Program Viewpoint, 1984: Secrecy, Security And The Media 6 (Jan. 19, 1984) (Statement of Jack Nelson, Los Angeles Times Washington Bureau Chief) (``I don't think anybody accepts

that it was strictly a commando-style operation. It was an invasion of almost traditional kind of planning.") and id. at 5 (statement of Michael Burch, Ass't Sec'y of Defense for Public Affairs) (``It was not a set battle plan such as journalists are used to covering with our forces. It was basically a commando-style operation where the first forces were to get the students that were to be rescued, secure them and, basically, wait for rescue themselves.").
232. Flynt v. Weinberger, 588 F. Supp. 57, 58 (D.D.C. 1984) (declaration of Ass't Sec'y of Defense Michael Burch). Burch said there was no way to inform the press in advance with the assurance that the information and the operation would not be compromised. Declaration of Michael Burch at 12.
233. The sheer size of the invasion force undercuts the Pentagon's claim that this was a commando-style rescue raid similar to the American hostage rescue attempt in Iran. More than 1900 soldiers were involved in the invasion of Grenada, whereas only 180 soldiers were involved in Iran. B. Ryan, The Iranian Rescue Mission: Why it Failed, 1985 U.S. NAVAL INSTITUTE, at 1.
234. See U. S. Bars Coverage of Grenada Action: News Groups Protest, N.Y. Times, Oct. 27, 1983, at A1, col. 6 (commenting that Department of Defense photographers accompanied invasion force).
235. Flynt v. Weinberger, 588 F. Supp. 57, 58 (D. D.C. 1984); Declaration of Michael Burch at 13. The military did not want media aircraft using the runway and no military aircraft were available to transport reporters. Id. See Reporting the News in a Communique War, N.Y. Times, Oct. 26, 1983, at A1, col. 3 (officials claimed media presence would complicate logistical problems).
236. The Supreme Court has exhibited a willingness to undertake full review of military affairs. See, e.g., Frontiero v. Richardson, 411 U.S. 677, 679-82 (1973) (review of statutes requiring women but not men to prove spousal dependency to receive benefits); Brown v. Glines, 444 U.S. 348, 349 (1980) (First Amendment challenge of regulation prohibiting solicitation of signatures without official approval); Greer v. Spock, 424 U.S. 828, 830-34 (1976) (review of base commander's decision to exclude political speakers from base). However, the court has recognized the need to allow the military flexibility in the operation of the armed forces. See, e.g., Chappell v. Wallace, 462 U.S. 296, 304 (1983) (judges should not run the military); Rostker v. Goldberg, 453 U.S. 57, 66 (1981) (need for "healthy deference to legislative and executive judgments in the area of military affairs"); Orloff v. Willoughby, 345 U.S. 83, 92 (1953) ("a large area of discretion as to particular duties must be left to commanding officers").
237. For instance, the Pell court considered the amount of deference it should pay to prison administration decisions in light of alternate channels of communications available to prisoners. Pell v. Procunier, 417 U.S. 817, 827-28 (1974).
238. U.S. Bars Coverage of Grenada Action; News Groups Protest, N.Y. Times, Oct. 27, 1984, at A23, col. 6. "Confusing and fragmentary information was offered and [White House Press Secretary Larry] Speaks, complaining about the accuracy of some news reports, ultimately refused to take additional questions from one reporter he considered annoying. `I'm tired of dealing with you,' he said. `You're carrying your management's water on this thing,' he said to another reporter, who had asked why reporters could not go to the island." Id. See U.S. Admits Air attack on Hospital in Grenada, L.A. Times,

Nov. 1, 1983, § I, at 1, col. 2 (confirmation of attack of civilian hospital came only after reports surfaced in the press).
239. In some few situations, however, such as lightning-quick, small-scale rescue raids, there may be no less restrictive alternatives to total exclusion. Even the most ardent access proponents concede that some military operations are not conducive to press participation or necessarily must remain secret even from trusted war correspondents. See Landau, Excluding the Press from the Grenada Invasion: A Violation of the Public's Constitutional Rights, Editor and Publisher, Dec. 10, 1983, at 10 (quick, in-and-out rescue missions, such as the Iranian hostage rescue attempt, cannot be constitutionally accessible to the press).
240. See supra notes 62-70 and accompanying text (discussing the restrictions placed upon the press pool in Panama).
241. See supra note 75 and accompanying text (discussing the effectiveness of the press pool in Panama).
242. Jones, Editors Say Journalists Were Kept From Action, N.Y. Times, Dec. 22, 1989, at A19, col. 3.
243. Gordon, Cheney Blamed for Press Problems in Panama, N.Y. Times, Mar. 20, 1990, at A8, col. 4 (quoting a report by Fred S. Hoffman).
244. Balzar, supra note 87, at A23, col. 1. Pool reporters had "mostly open access to the fighting and support troops." Id. There were some complaints, however, that the pool had limited access to ground forces. See Old Suspicions, supra note 89, at A9, col. 4.
245. See supra notes 27-34 and accompanying text (discussing the security review system employed during the Korean War).
246. See Rosenstiel, supra note 94, at A20, col. 2.
247. Id. 161-end 161. 443 U.S. 368 (1979).
162. Id. at 379-84.
163. Id. at 392. The Court stated: ``We need not decide in the abstract however, whether there is any such constitutional right.'' Id.
164. Bolbach, Access to Information: Affirming the Press' Right, Christian Century, Sept. 24, 1980, Vol. 97, at 881 (stating that in response to the Gannett ruling, more than 260 attempted trial closings were documented between July of 1979 and July of 1980).
165. 448 U.S. 555 (1980) (plurality decision).
166. Id. at 558 (Burger, C.J., with White, J. and Stevens, J., announcing the judgment of the court). The court stated: ``We hold that the right to attend criminal trials is implicit in the guarantees of the First Amendment.'' Id. ``Because I believe that the First Amendment . . . secures such a public right of access, I agree with . . . my Brethren . . . .'' Id. at 585. (Brennan, J., with Marshall, J., concurring). Justice Stewart, concurring, stated: ``[T]he First and Fourteenth Amendments clearly give the press and the public the right to access to trials themselves, civil as well as criminal.'' Id. at 599 (Stewart, J., concurring). Also, in concurrence, Justice Blackmun stated: ``I am driven to conclude . . . that the First Amendment must provide some measure of protection for public access to the trial.'' Id. at 604 (Blackmun, J., concurring).
167. The Chief Justice traced the history of the trial back to the Norman conquest. Id. at 564-73. For an interesting discussion of the question left open by Richmond Newspapers, see generally Comment, After Richmond Newspapers: A Public Right to Attend Civil Trials?, 4 COMMENT 241 (1982).

168. 448 U.S. at 577. See generally Note, The Richmond Newspapers Case: Creation of a First Amendment Right of Access, 14 U.C. DAVIS L. REV. 1081 (1981-1982).
169. 457 U.S. 596 (1982).
170. Id. at 606. Justice Brennan, writing for a five-justice majority, declared unconstitutional a Massachusetts statute which closed trials during the testimony of minor victims of specific sex offenses. Id.
171. Id. at 605-06.
172. Id. at 606-07. Justice O'Connor concurred only in the judgment of the court, noting that she did not interpret Globe Newspapers or Richmond Newspapers to be applicable outside the context of criminal trials. Id. at 611 (O'Connor, J., concurring in the judgment).
173. 464 U.S. 501 (1984).
174. Id. at 513. Justice Marshall concurred in the judgment of the court only and filed a separate opinion in which he argued that greater government interest must be shown before the presumption of openness can be overcome. Id. (Marshall, J., concurring in the judgment).
175. Id. at 512. The court held that the presumption of openness could only be overcome ``by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." Id. at 514. The court found the trial court's closure order unconstitutional, noting that the lower court had not made any specific findings or considered alternatives to closure. Id.
176. Branzburg v. Hayes, 408 U.S. 665, 681 (1972).
177. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 577 (1980); Globe Newspapers Co. v. Superior Court, 457 U.S. 596, 606 (1982); Press Enterprise, 464 U.S. at 512.
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180. Pell v. Procunier, 417 U.S. 817, 830 (1974). The district court noted that prison officials linked a liberal press access policy to an escape attempt in which three staff members and two inmates were killed. Id. at 832.
181. See Bell v. Wolfish, 441 U.S. 520, 547 (1979) (stating that prison administrators ``should be accorded wide ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security"). See also Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 128 (1977) (discussing the judicial deference afforded when reviewing prison administrative decisions).
182. 417 U.S. 817 (1974).
183. 417 U.S. 843 (1974).
184. Pell, 417 U.S. at 834. See Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978) (stating that government-controlled information is information not otherwise available to the public generally). In Nixon, the Court held that the press had no right of physical access to the Watergate tapes because the public did not have a right of access to such evidence. Id. at 783.

185. The facts involved in both cases were virtually identical and Justice Stewart authored both majority opinions. Compare Pell, 417 U.S. at 821-23 with Saxbe, 417 U.S. at 846-48.
186. Pell, 417 U.S. at 831-32. Prison officials initiated the interview prohibition following prison violence that they claimed was linked, in part, to media attention concentrated on a few chosen inmates. These prisoners acquired notoriety and influence over other inmates. Id.
187. In Pell, section 415.071 of the California Department of Corrections Manual provided: ``[P]ress and other media interviews with specific individual inmates will not be permitted." Pell, 417 U.S. at 819. In Saxbe, the relevant Federal Bureau of Prisons Policy Statement provided: ``Press representatives will not be permitted to interview individual inmates. This rule shall apply even where the inmate requests or seeks an interview. However, conversation may be permitted with inmates whose identity is not to be made public if it is limited to the discussion of an institutional facilities programs and activities." Saxbe, 417 U.S. at 844.
188. Pell, 417 U.S. at 835; Saxbe, 417 U.S. at 850.
189. See supra notes 150-156 and accompanying text (discussing application of the balancing test).
190. Saxbe, 417 U.S. at 849. This analysis implies that the government could constitutionally restrict the free flow of information guaranteed by the First Amendment by simply denying access equally to both the press and the public. Such a drastic result could not have been intended by the majority. See supra and infra notes 183-193 and accompanying text (discussing the reasoning of the Saxbe decision).
191. Pell, 417 U.S. at 834.
192. Id. at 830. The Court seemed anxious to stress the fact that other means of acquiring information about prison conditions were readily available to the media. Prison policy restricted only face-to-face interviews. The Court observed:

We note at the outset that this regulation is not part of an attempt by the State to conceal the conditions in its prisons or to frustrate the press' investigation and reporting of those conditions. Indeed, the record demonstrates that, under current corrections policy, both the press and the general public are accorded full opportunities to observe prison conditions. Id. In Saxbe, the Court expressed similar reliance: ``Except for the limitation in Policy Statement 1220.1A on face-to-face press-inmate interviews, members of the press are accorded substantial access to federal prisons in order to observe and report the conditions they find there." Saxbe, 417 U.S. at 847. The court also noted that press representatives could arrange to tour the prison and photograph any prison facility. Id. Additionally, inmates could correspond with members of the press. Id.
193. Saxbe, 417 U.S. at 847-49.
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(3) closure will probably be effective in protecting against the perceived danger. Id.
230. Invasion Troops Trained to Make Surprise Raids, N.Y. Times, Oct. 26, 1983, at A16, col. 5.
231. After the invasion, military officials and others argued that the Grenada raid was a lightning-quick commando-style rescue mission. Compare Curbs on Grenada News Reporter Hit, L.A. Times, Nov. 3, 1983, § I, at 9, col. 1 (California Rep. Carlos Moorhead (R. Glendale) described Grenada invasion as ``a rescue mission using commando-tactics'' much like the Iran hostage rescue attempt) with ABC News Program Viewpoint, 1984: Secrecy, Security And The Media 6 (Jan. 19, 1984) (Statement of Jack Nelson, Los Angeles Times Washington Bureau Chief) (``I don't think anybody accepts that it was strictly a commando-style operation. It was an invasion of almost traditional kind of planning.'') and id. at 5 (statement of Michael Burch, Ass't Sec'y of Defense for Public Affairs) (``It was not a set battle plan such as journalists are used to covering with

our forces. It was basically a commando-style operation where the first forces were to get the students that were to be rescued, secure them and, basically, wait for rescue themselves.").
232. Flynt v. Weinberger, 588 F. Supp. 57, 58 (D.D.C. 1984) (declaration of Ass't Sec'y of Defense Michael Burch). Burch said there was no way to inform the press in advance with the assurance that the information and the operation would not be compromised. Declaration of Michael Burch at 12.
233. The sheer size of the invasion force undercuts the Pentagon's claim that this was a commando-style rescue raid similar to the American hostage rescue attempt in Iran. More than 1900 soldiers were involved in the invasion of Grenada, whereas only 180 soldiers were involved in Iran. B. Ryan, The Iranian Rescue Mission: Why it Failed, 1985 U.S. NAVAL INSTITUTE, at 1.
234. See U. S. Bars Coverage of Grenada Action: News Groups Protest, N.Y. Times, Oct. 27, 1983, at A1, col. 6 (commenting that Department of Defense photographers accompanied invasion force).
235. Flynt v. Weinberger, 588 F. Supp. 57, 58 (D. D.C. 1984); Declaration of Michael Burch at 13. The military did not want media aircraft using the runway and no military aircraft were available to transport reporters. Id. See Reporting the News in a Communique War, N.Y. Times, Oct. 26, 1983, at A1, col. 3 (officials claimed media presence would complicate logistical problems).
236. The Supreme Court has exhibited a willingness to undertake full review of military affairs. See, e.g., Frontiero v. Richardson, 411 U.S. 677, 679-82 (1973) (review of statutes requiring women but not men to prove spousal dependency to receive benefits); Brown v. Glines, 444 U.S. 348, 349 (1980) (First Amendment challenge of regulation prohibiting solicitation of signatures without official approval); Greer v. Spock, 424 U.S. 828, 830-34 (1976) (review of base commander's decision to exclude political speakers from base). However, the court has recognized the need to allow the military flexibility in the operation of the armed forces. See, e.g., Chappell v. Wallace, 462 U.S. 296, 304 (1983) (judges should not run the military); Rostker v. Goldberg, 453 U.S. 57, 66 (1981) (need for "healthy deference to legislative and executive judgments in the area of military affairs"); Orloff v. Willoughby, 345 U.S. 83, 92 (1953) ("a large area of discretion as to particular duties must be left to commanding officers").
237. For instance, the Pell court considered the amount of deference it should pay to prison administration decisions in light of alternate channels of communications available to prisoners. Pell v. Procunier, 417 U.S. 817, 827-28 (1974).
238. U.S. Bars Coverage of Grenada Action; News Groups Protest, N.Y. Times, Oct. 27, 1984, at A23, col. 6. "Confusing and fragmentary information was offered and [White House Press Secretary Larry] Speaks, complaining about the accuracy of some news reports, ultimately refused to take additional questions from one reporter he considered annoying. `I'm tired of dealing with you,' he said. `You're carrying your management's water on this thing,' he said to another reporter, who had asked why reporters could not go to the island." Id. See U.S. Admits Air attack on Hospital in Grenada, L.A. Times, Nov. 1, 1983, § I, at 1, col. 2 (confirmation of attack of civilian hospital came only after reports surfaced in the press).
239. In some few situations, however, such as lightning-quick, small-scale rescue raids, there may be no less restrictive alternatives to total exclusion. Even the most ardent

access proponents concede that some military operations are not conducive to press participation or necessarily must remain secret even from trusted war correspondents. See Landau, Excluding the Press from the Grenada Invasion: A Violation of the Public's Constitutional Rights, Editor and Publisher, Dec. 10, 1983, at 10 (quick, in-and-out rescue missions, such as the Iranian hostage rescue attempt, cannot be constitutionally accessible to the press).
240. See supra notes 62-70 and accompanying text (discussing the restrictions placed upon the press pool in Panama).
241. See supra note 75 and accompanying text (discussing the effectiveness of the press pool in Panama).
242. Jones, Editors Say Journalists Were Kept From Action, N.Y. Times, Dec. 22, 1989, at A19, col. 3.
243. Gordon, Cheney Blamed for Press Problems in Panama, N.Y. Times, Mar. 20, 1990, at A8, col. 4 (quoting a report by Fred S. Hoffman).
244. Balzar, supra note 87, at A23, col. 1. Pool reporters had "mostly open access to the fighting and support troops." Id. There were some complaints, however, that the pool had limited access to ground forces. See Old Suspicions, supra note 89, at A9, col. 4.
245. See supra notes 27-34 and accompanying text (discussing the security review system employed during the Korean War).
246. See Rosenstiel, supra note 94, at A20, col. 2.
247. Id.