

# The War on Free Expression

By [Stephen Lendman](#)

Global Research, May 10, 2007

10 May 2007

Region: [USA](#)

Theme: [Media Disinformation](#), [Police State](#)  
& [Civil Rights](#)

In a post-9/11 climate, the right of free expression is under attack and endangered in the age of George Bush when dissent may be called a threat to national security, terrorism, or treason. But losing that most precious of all rights means losing our freedom that 18th century French philosopher Voltaire spoke in defense of saying "I may disapprove of what you say, but I will defend to the death your right to say it." Using it to express dissent is what noted historian Howard Zinn calls "the highest form of patriotism" exercising our constitutional right to freedom of speech, the press, to assemble, to protest publicly, and associate as we choose for any reason within the law.

Even then, there are times more forceful action is needed, and Thomas Jefferson explained under what circumstances in the Declaration of Independence he authored. When bad government destroys our freedoms, we the people have the right and duty to disobey civilly and resist. Henry David Thoreau called it "Civil Obedience" in 1849, and men like Gandhi and Martin Luther King practiced it successfully 100 years later. That's our challenge today at a time our constitutional rights are more compromised and threatened than at any previous time in our history. Resistance is the antidote to restoring them, and freedom-loving people have a duty and obligation to do it.

That's what democracy is all about and what our Founders had in mind when they crafted what they called "the great (democratic) experiment" that became our Constitution and Bill of Rights, imperfect as they are with omissions and ambiguities. In words first written by Thomas Jefferson, they "declared their independence" in 1776 from the British king who ruled the colonies with "repeated injuries and usurpations (by his) absolute Tyranny" using language considered audacious then or now:

"We hold these truths to be self-evident, that all men are created equal (and) endowed....with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. - That to secure these rights, Governments are instituted among Men, deriving their powers from the consent of the governed, - That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government....to effect their Safety and Happiness." Try doing that today, and it's called treason, a capital offense. Jefferson, Madison, Franklin and others thought otherwise saying we must act in our own defense when government won't do it for us.

Their "experiment" was glorious, even flawed, and never before tried in the West in any form since its few decades of existence in ancient Athens under its system of "demokratia" or rule by the entire body of Athenian citizens - or at least the non-slave adult white male portion of it meaning a selective democracy for an elite minority excluding all others the way it's always been here. It began in 1776 with our Declaration of Independence followed

by our Constitution ratified in 1789 and Bill of Rights in 1791. This extraordinary document's Preamble said what our country's liberties are in 52 historic words even though the language belied the reality:

"WE, THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." And so it was with all its flaws in a nation beholden to privileged white male property owners, doing little for others including women, nothing for black slaves who were property, and even less for "original Americans" exterminated to make way for "newer ones." We called it democracy Winston Churchill once said was the "worst form of government except for all those others that have been tried." Today it's also called "Western civilization" Gandhi thought "would be a good idea" when asked what he thought about it.

At best, our form of it is a flawed, unfinished project. At worst, it's heading in reverse at a time of our single-minded pursuit of empire in an age of:

- Predatory capitalism and corporate dominance, incompatible with democracy;
- Sparta-like iron-fisted militarism and all its fallout: mass killing and destruction, occupation, torture and overall inhuman barbarism;
- The most secretive, intrusive, repressive and lawless government in our history;
- An unprecedented wealth disparity former US Supreme Court Justice Louis Brandeis once warned about saying: "We can either have democracy in this country or we can have great wealth concentrated in the hands of a few, but we can't have both;"
- The rollback of civil liberties and essential human rights and needs;
- A contempt for the rule of law;
- A deepening social decay;
- The absence of checks and balances and separation of powers and a president usurping "unitary executive" powers to claim the law is what he says it is; and
- The loss of our constitutional freedoms heading the nation toward tyranny and ruin unless reversed.

More than ever, the right to freely express dissent is crucial to surviving. Lose it, as is happening, and lose everything.

The Constitution's First Amendment explicitly bestows that right no government can lawfully remove, but this one's doing it anyway. It states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." No other nation in history ever granted more of these freedoms, and few, if any, matched them in law or practice.

Nonetheless, there were numerous examples of abusive earlier laws violating various

constitutionally guaranteed rights including that of free expression. The Sedition Act of 1798 (with the ink barely dry on the Bill of Rights) did it making it a crime to publish “false, scandalous, and malicious writing” against the president (John Adams) or Congress but allowed it against the vice-president and Adams rival (Thomas Jefferson). It thus illegally banned dissent the Constitution allows.

During WW I, the Espionage Act was passed (under Democrat Woodrow Wilson) in 1917 imposing a maximum 20 year sentence for anyone causing “insubordination, disloyalty, mutiny, or (encouraging) refusal of duty in the military or naval forces of the United States.” It was aimed at First Amendment speech protesting the war and US participation in it everyone lawfully has the right to do. The Sedition Act in 1918 went further criminalizing “disloyal, scurrilous (or) abusive” anti-government speech. Shamefully, the Supreme Court upheld the Espionage Act, most notably in (Eugene) Debs (five time socialist presidential candidate) v. United States resulting in his serving prison time for speaking out against militarism and the US entry into WW I.

### **Other High Court Rulings Affirming or Infringing on First Amendment Rights**

— On war protests when the Warren Court in 1968 disallowed draft card burning claiming it would disrupt the “smooth and efficient functioning” of the draft system. But in 1969 the Court said students had free speech rights and could wear black arm bands protesting the Vietnam war. And it ruled for KKK leader Brandenburg against Ohio in 1969 holding that government cannot punish inflammatory speech unless it directly incites lawless action. Then in 1971, the Court upheld Cohen against California ruling four-letter word anti-war profanity was permissible on a jacket in Los Angeles county courthouse corridors. Don’t try it in the halls of Congress.

— On flag burning in 1989 in Texas v. Johnson when Justice William Brennan, writing for the majority, said “if there is a bedrock principle underlying the First Amendment, it is that government may not prohibit the expression of an idea simply because society finds the idea offensive or disagreeable,” and that includes the right to protest by burning the flag in public.

— On obscenity where Courts ruled against pornographic speech especially to protect children from it but held no government can prohibit its possession in the home.

— On slander and libel impermissible in cases of intentional instances of “actual malice” or speech provably false, but acceptable for opinions which cannot be held legally defamatory.

— On political speech in the famous Buckley v. Valeo 1976 ruling when the High Court held that limits on campaign contributions “serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.” However, the Court found expenditure limits imposed “substantial restraints on the quantity of political speech.” The Court also ruled in 2003 upholding provisions barring the raising of “soft money” contributions to a political party, not a candidate.

Now the High Court is considering arguments on that restriction in the five year old McCain-Feingold campaign finance law and may soon rule to weaken it. At issue is a provision barring corporations and unions from funding campaign ads 60 days before an election and 30 days before a primary naming a candidate for federal office. In their 5 - 4 December,

2003 decision, the court upheld the provision, but its new majority may rule otherwise inviting a tsunami of paid political speech as the 2008 federal elections heat up.

— On press freedom with High Courts ruling for and against the media on matters of taxes and content issues involving political speech, religious speech, “criminal syndicalism,” defamation, obscenity, personal injury, hate or other offensive speech, and other constitutional issues affecting press freedom. Various High Courts have had differing notions of free speech and press rights with some like the current hard right sitting one unlikely to be shy ruling they’re not what the Constitution says they are.

### **The Post 9/11 Climate of Fear and Attack on Dissent**

Thomas Jefferson said “What country can preserve its liberties if their rulers are not warned from time to time that their people preserve the spirit of resistance.” He also said free speech “cannot be limited without being lost.” Former US Supreme Court Justice Thurgood Marshall added “Above all else, the First Amendment means that government has no power to restrict expression (regardless of its) ideas...subject matter (or) content....Our people are guaranteed the right to express any thought, free from government censorship.” Former Bush White House spokesperson Ari Fleicher’s response was: “There are reminders to all Americans that they need to watch what they say (and) watch what they do....” implying those who don’t at best are unpatriotic and at worst are terrorists or sympathetic to them meaning you’ll be targeted for prosecution.

Indeed they will and have been, with a vengeance, with lots of help from the dominant media, the courts and even academia, one of the latest examples being Catholic liberal arts Emmanuel College adjunct professor Nicholas Winset April 23. He lost his academic freedom and job when the Massachusetts-based college fired him by letter ordering him to stay off campus for holding a five minute classroom demonstration on the Virginia Tech mid-April shootings school officials deemed inappropriate even though students hearing it felt otherwise and seemed supportive.

Though now unemployed, Professor Winset is a free man. Other academics like former South Florida University (USF) Professor Sami Al-Arian are not. He was arrested, indicted, exonerated in court but remains imprisoned under harsh conditions in isolation reserved for dangerous hardened criminals because of his courageous and effective public advocacy for human and civil rights and liberation for his Palestinian people long oppressed for six decades

(<http://sjlendman.blogspot.com/2007/04/long-ordeal-of-sami-al-arian-civil-and.html>).

Dr. Rafil Dhafir’s fate was the same for his “Crime of Compassion” (see dhafirtrial.net, Katherine Hughes). He, too, was arrested, indicted, tried, convicted and is now imprisoned for violating the Iraqi Sanctions Regulations (IEEPA) and 58 other trumped up charges including his public stance against gross injustice and for using his own funds and what he could raise through his Help the Needy charity to bring desperately needed essential to life humanitarian aid to Iraqi people the Clinton and Bush administrations disgracefully wished to deny them.

The (Professor) Ward Churchill Solidarity Network web site defends the academic freedom and right of free expression for one of the nation’s most courageous advocates of those rights and much more for his own Native Indian peoples and all others. Churchill was viciously and unjustifiably attacked for his essay analyzing the 9/11 attacks he later included

in his important 2003 book *On the Justice of Roosting Chickens*. It detailed the stunning history of US military interventions since 1776 at home and abroad, the fact that this nation has been at war every year since inception (without exception) to the present day with one or more adversaries as well as our post-WW II obstruction, subversion and violation of constitutional and international law proving this country is and always was arrogant and lawless.

For his public stance on this and other injustices, Churchill receives a steady stream of death threats, and his home has been vandalized. He's also been viciously vilified in the corporate media and by University of Colorado (CU) officials (taking orders from the state's governor) who announced June 26, 2006 Churchill would be fired even though he's a distinguished award-winning tenured professor of ethnic studies guilty of no misconduct. His case continues so far unresolved while he remains suspended on pay from academic duties but backed in his struggle by CU students, noted academic members of "teachers for a democratic society," and many other supporters speaking out publicly in his behalf.

Another noted academic is also under attack and may be denied his well-deserved tenure because of his courageous writing and outspokenness. He's political science Professor and Israeli-Palestinian history and conflict expert Norman Finkelstein of DePaul University in Chicago. As a prominent public figure, he became a target of the hard right in the age of George Bush, but it was that way earlier for him as well. Finkelstein completed his doctoral dissertation at Princeton in 1988 on the theory of Zionism also exposing Joan Peters' "colossal hoax" in her 1984 best seller *From Time Immemorial* in which she falsely claimed Palestine was uninhabited when the Jews arrived. Ever since, Finkelstein's been practically radioactive for supporting the Palestinians' struggle for freedom and justice after decades of Israeli oppression and occupation.

Finkelstein is a major scholar known worldwide and a highly regarded DePaul academic evaluated by his students as "truly outstanding, and among the most impressive" of all university political science professors. That's why his Department of Political Science recommended he be granted tenure when it said of him his academic record "exceeds our department's stated standards for scholarly production (and) department and outside experts we consulted recognize the intellectual merits of his work." Nonetheless, Finkelstein is being attacked and vilified by DePaul officials making his tenure struggle a much greater issue. It's for his academic freedom right to dissent publicly and in his writings and for his constitutional right of free expression no one should be denied use of even when exercised on the most sensitive of all political issues most public figures won't touch - criticizing Israeli policies openly, harshly and deservedly. For that he should be praised.

Instead, Finkelstein is assailed and denounced. He's called a self-hating Jew, an anti-semite, a Holocaust- denier and more. Unmentioned is that his now departed parents survived the Warsaw ghetto and years in concentration camps including time at Auschwitz, and that he lost all other family members on both sides at the hands of the Nazis who exterminated them.

Nonetheless, university officials want to deny him tenure even though two campus committees voted he be granted it. For now, the issue is very much in play with his Department of Political Science and College Personnel Committee supporting him and administration officials opposed including College of Liberal Arts and Sciences Dean Chuck Suchar who incredibly wants Finkelstein judged according to Vincentian," or religious, values, not on his merits as a teacher and scholar. What he's saying, of course, is that

faculty members expressing views other than ones DePaul considers acceptable will be punished for them.

Like his CU counterpart, Ward Churchill, Finkelstein's struggle continues unresolved thus far with DePaul students, academics around the world and others expressing their support through the Norman G. Finkelstein Solidarity Campaign gathering signatures on his behalf and on a letter sent to the school's administration. It says "Dean Suchar's letter sets a dangerous precedent, and also sends the signal that arts and sciences are now endangered at DePaul University and in the American academy in general" where free expression and dissent no longer will be tolerated.

### **The Corporate-Controlled Media's Assault on Free Expression**

The dominant major media have always functioned to achieve what noted Australian academic, author and psychologist Alex Carey called "taking the risk out of democracy" to "protect corporate power against democracy" by acting as national thought-control police gatekeepers controlling what information reaches the public and what's suppressed. It's worse than ever now resulting from virtually uninterrupted media consolidation with friendly Democrat and Republican administrations allowing five giant global media cartels today to control most newspapers, magazines, radio, television, book publishing, and films. Other than the internet, they hold a stranglehold over the kinds of news, information, entertainment and other programming and material most people get from which they form their views of the nation's state, its government, and the world.

The media giants supplying it are master manipulators. They make sure the public gets their one-sided corporate/state-friendly views in their role as government/business partners instead of their watchdogs. It's called censorship, the willful suppression of free expression, ideas and thought in an age of sophisticated mind control "manufactur(ing) of consent" (see Manufacturing Consent - Edward S. Herman and Noam Chomsky) in a democracy where it can't be done by force. It's an effort to program the public mind to go along with whatever agenda best serves wealth and power by effectively suppressing dissent against it.

The work of three noted print journalists are prominent cases in point, but shamefully what's true for them applies across all the entire dominant media landscape that ranges from pathetic to appalling. One example is Washington Post columnist and so-called dean of the Washington press corps and political "pundits" at age 77, David Broder. In many ways he's the worst of a bad lot because of his ill-deserved image as a man of integrity, decency, honor and perceived wisdom. It hides his dark side unprincipled support for the rogue administration in power and his willingness to cover for it and suppress its indisputable record of lawlessness and contempt for ordinary people everywhere.

Since George Bush took office in 2001, Broder has been out in front characterizing him as a strong, decisive, effective, and principled leader protecting the nation against threats to our national security including waging just wars for it. His harshest comments are reserved for Bush critics he attacks maliciously like calling Senate Majority Leader Harry Reid a "loose cannon" and "an embarrassment" for daring to say Iraq is a lost war even though anyone with common sense knows it is including high present and former Washington officials unwilling to deny what Broder does.

Broder is an "award-winning" journalist. It's long past time he took his ill-deserved trophies

and ended his morally corrupt and intellectually dishonest lifetime career of misreporting at the Washington Post where he's done it for the past 40 years.

The New York Times never met a Republican president or US-instigated war of aggression it didn't love, fully support and be willing to give plenty of front page space to journalists like Judith Miller assigned to wave the flag and lead the journalistic charge. Miller had the dubious honor leading up to the Iraq war in 2003 and held it until she was forced to resign in disgrace in late 2005 ending her controversial 28 year career at the Times but not her presence in the corporate media where she's welcomed on the editorial pages of the Wall Street Journal never shy to publish material extremist enough at times to make a Nazi blush.

Miller is picking up there where she left off in shame across town with her latest near-full page "When Activists Are Terrorists" piece defending New York police Gestapo thuggery against anti-war protesters. Removed from leading the charge to wars of aggression, Miller's now out in front supporting police brutality and illegal political spying against people exercising their First Amendment right to protest publicly she can't tolerate so she's taking aim against them in a venue always friendly to her kind of extremist views.

With Miller gone, the New York Times continues its pro-war stance with military correspondent Michael Gordon, and former Miller co-conspirator, now putting out regular propaganda like they both once did together and Gordon always was comfortable doing alone. Michael Munk in an online February 11, 2007 After Downing Street.org article calls him "The Ghost of Judith Miller" citing one example of his reported "evidence" that Iran is supplying Iraq resistance fighters with "more effective IEDs" without a shred of evidence to prove it because there is none. The New York Times shamelessly ran Gordon's preposterous piece February 10 (and all his others prominently) titled "Deadliest Bomb in Iraq is Made by Iran (and) Used Against US Troops" citing anonymous sources only to back up his unsupportable claim.

Like Miller, Gordon excels in state and corporate supportive Times-speak suppressing the free and open kind his readers want but never get from him. Most often he cites as sources unnamed "American intelligence (or) Western officials (or those old faithfuls) high administration (or) Pentagon officials" while almost never quoting others with contrary views debunking his and theirs. Gordon, like Miller, is important because he writes lead stories on what media critic Norman Solomon calls the most valuable print real estate in the country - the front pages of the New York Times that are read by government and business leaders and opinion-makers everywhere. He's also the same Michael Gordon who wrote the false and discredited story on Saddam's aluminum tubes. He now continues putting out regular falsified reports on the Times front pages as an agent of the state he and his employer serve.

One of his latest efforts is titled "General Says Iraq Pullback Would Increase Violence." In it he parrots Iraq military commander General David Petraeus' administration-friendly line that reducing US forces would increase "sectarian violence" and increase internal instability caused, in fact, by the military occupation the general's in charge of running. Without a US presence, the generalissimo says, "It can get much, much worse (and) right now (with the troop surge) it's a good bit better" claiming "sectarian" killings declined two-thirds since January while ignoring how out-of-control things really are and the reverse of how he and Gordon portray them.

Gordon also goes along with Petraeus' assessment that "The new hydrocarbon law is of

enormous importance,” ignoring how it’s structured to suck out Iraq’s enormous oil wealth transferring most of it to Big (US) Oil from Iraqis who own it. Finally, comes the key part of the article with Gordon trumpeting the general’s unsubstantiated claim of continued (unrevealed) evidence showing Iran is providing Shiite “militants” military and other support. Citing computer documents supposedly seized in a March Karbala raid, Petraeus claims “There are numerous documents which detailed a number of different attacks on coalition forces, and our sense is these records were kept so they could be handed in to whoever it is who is financing them” – pointing his finger directly at Iran from his previous comments with Gordon obligingly implying the same view on the Times front page.

Along with falsifying news, the Times also excels in suppressing it as willing Pentagon partners going along with Department of Defense (DOD) rules on reporting on Iraq. An absurd one on its face states: “Names, video, identifiable written/oral descriptions or identifiable photographs of wounded service members will not be released without service member’s ‘prior’ written consent.” Of course, the Times and rest of the dominant media rarely ever do what this DOD regulation forbids so, rule or no rule, the Bush administration’s happy-face-of-war is preserved to suppress its true ugly hidden one.

One other recent example of intimidation and censorship also deserves mention. It’s a story reported April 27 by AP, the Chicago Tribune and elsewhere that a straight ‘A’ Chicago area Cary-Grove High School senior of Chinese ethnicity, with no history of disciplinary problems or trouble with the law, was arrested on charges of disorderly conduct for comments he made in an assigned creative-writing classroom essay. Students were told to “write whatever comes to your mind. Do not judge or censor what you are writing” and apparently were also told to exaggerate. Lee followed instructions, made comments his teacher thought were violent, and she reported it resulting in his arrest and removal to an off-campus learning program.

This is a small incident, likely to be easily resolved, about one student in one school. Yet it signifies a state-induced climate of fear and intimidation heightened by TV transmitted color-coded terror alerts, daily reports of permanent war, imagined enemies stalking us everywhere, and events like the over-reported and hyped Virginia Tech shootings making it worse. Now even freely expressed creative classroom speech is threatened with suppression and punishment unless it conforms to acceptable school content norms, whatever they are. In the age of George Bush, it’s another reminder of former press secretary Ari Fleischer’s warning that Americans (even teenage straight ‘A’ high school students) “need to watch what they say,” or else.

### **Organizations in the Lead for Free Expression**

The National Coalition Against Censorship (NCAC) was founded in 1974 to support our constitutional right of free expression and defend against the dangers of censorship. It’s an “alliance of 50 national non-profit organizations, including literary, artistic, religious, educational, professional, labor and civil liberties groups” united for that common purpose and to promote an open marketplace of ideas and thought.

It does it through local and national grassroots organizing and activism on:

- free speech issues;
- educational activities;



- conferences and public meetings;
- publications like its quarterly *Censorship News* reaching 25,000 readers;
- providing help, advice, and information to individuals, organizations and community groups around the country;
- monitoring and interpreting litigation and legislation on First Amendment issues;
- and aiding “thousands of artists, authors, teachers, students, librarians, readers, museum-goers and others around the country opposing censorship” on issues ranging from:
  - politics and political correctness
  - the media and internet
  - academic freedom
  - race and ethnicity
  - religion
  - culture
  - the arts and entertainment
  - sex education and orientation
  - class
  - science
  - obscenity, and more.

NCAC rejects all barriers in a pluralistic society on any material no matter how controversial or abhorrent to some. That’s what the free interchange of speech, ideas and thought are all about in a democratic society that can’t be one without upholding that freedom. Today, supporting and telling the truth is what Orwell called “a revolutionary act” in times of “universal deceit” now plaguing us. It’s why organizations like NCAC are important defenders of our constitutionally protected free speech rights as well as being bulwarks against the forces effectively denying them to us.

The Thomas Jefferson Center for the Protection of Free Expression is in this fight as well to defend “free expression in all its forms (as) concerned with the musician as with the mass media, with the painter as with the publisher, and as much with the sculptor as the editor.” The Center was established in 1990 and is based near Jefferson’s home in Charlottesville, VA, also near the University of Virginia he founded in 1819 is and with which it has close ties. Its mission ranges over a wide range of programs in education, the arts, and in judicial and legislative matters involving all forms of free expression. Each year around Jefferson’s April 13 birthday, “Jefferson Muzzles” are awarded to individuals or organizations committing especially outrageous affronts to free expression. Annual William J. Brennan, Jr. Awards (honoring the former High Court Justice) are also given to individuals or groups showing special commitment to free expression issues and values in the spirit of the former

Justice.

The Free Expression Network (FEN) is another organization, among many others, in the struggle for free and open expression. It's an NCAC financially sponsored "alliance of organizations dedicated to protecting the First Amendment right of free expression and the values it represents, and to opposing governmental efforts to suppress constitutionally protected speech." It does it through its Free Expression Network Clearinghouse web site as well as maintaining a listserv for private communications among its members who also meet quarterly with invited guests to share information and strategies. Its many member organizations include the Thomas Jefferson Center, People for the American Way, ACLU, American Society of Newspaper Editors, Brennan Center for Justice at NYU School of Law, The Center for Media Education, Feminists for Free Expression, and First Amendment Center.

### **Post-9/11 Constitutional Violations to Our First Amendment Rights**

Organizations like NCAC, the Jefferson Center, FEN and others courageously defend our First Amendment rights especially under attack post-September 11, 2001. Six weeks later, the USA Patriot Act began assaulting those rights (and Fourth, Fifth, Sixth and Eighth Amendment ones too) all of which were well eroded already.

Most disturbing in the law is Section 215 under which federal investigators may seek a search warrant relating to an ongoing terrorism or intelligence investigation without meeting probable cause standards for it. It can then be used for intrusive unconstitutional searches without our knowledge for "any tangible things" about our speech-related activities in libraries, bookstores, banks and other repositories of our financial records, places of worship, medical provider records, internet use records, floppy disks, computer hard drives and other documents or places with records or information on our speech-related activities.

Section 505 of the Patriot Act is about as intrusive as Section 215 as it authorizes administrative subpoena targeting of bank and other financial records, credit reports, telephone and e-mail logs and more by use of a National Security Letter (NSL). Again, no probable cause standard is needed, and those receiving NSLs are gagged from disclosing its issuance so those targeted never know. Unlike Section 215, however, NSLs require no judicial oversight, only that they relate, without corroborating evidence, to an ongoing terrorism investigation on federal investigators' say alone.

A scant two decades longer than Orwell imagined, high tech surveillance makes it possible for modern-day thought control police to watch and know our activities, control our lives, and, if they wish, make us believe and accept as true "War is Peace, Freedom is Slavery, (and) Ignorance is Strength" under an omnipotent state using its will to subvert ours. Where there's a "signing statement," there's a way to do it on top of complicit congressional pre and post-9/11 legislation passed to make it simple enough already.

George Bush is a serial abuser of the presidential practice of attaching "signing statements" to laws passed although nothing in the Constitution allows it. He's done it around 800 times, more than all past presidents combined, using his usurped "Unitary Executive" power to claim the law is what he says it is. He issued one "statement" shortly after 9/11 authorizing the National Security Agency (NSA) to eavesdrop, for the first time ever, without legally required Foreign Intelligence Surveillance Act (FISA) court warrants on international phone and e-mail communications originating from or received within the US.

Then following the passage of the Postal Accountability Enhancement Act of 2006, he issued another “signing statement” giving himself broad authority to order opening US citizens’ mail without a warrant. In so doing, he violated US law and regulations including FISA permitting warrantless surveillance only for foreign intelligence collection between “foreign powers” for up to one year. With a warrant, FISA courts nearly always approve requests allowing surveillance and physical searches of US citizens’ “premises, information, material, or property used exclusively by” a foreign power or by an individual thought to be an “agent of a foreign power.”

Never satisfied, the Bush administration now wants expanded warrantless spying authority within and outside the country requesting Congress amend the FISA law legalizing what it’s already doing anyway, law or no law. On May 2, director of national intelligence, Mike McConnell, testified before the Senate Intelligence Committee claiming the president may legally authorize warrantless surveillance (under the Constitution’s Article II making him commander-in-chief) but wants FISA amended so it can do it without challenge it’ll ignore anyway. It also wants to fix and modernize what McConnell calls “communication gaps” in intelligence gathering including “monitoring” the internet, cell phones and other new technology as well as “transit traffic” international phone calls and emails.

Amendments requested would further erode laws protecting against illegal searches and seizures and our First Amendment rights connected to them. They would also allow surveillance of any non-citizens in the country “reasonably expected to possess, control, transmit, or receive foreign intelligence information while such a person is in the United States,” even if they’re not a target of an investigation. In addition the administration wants legal cover to spy on anyone it claims engages in activities related to buying or developing WMDs, even with no evidence to prove it. Bottom line: the Bush administration wants Congress to give it near limitless authority to spy on anyone in any way in the name of national security, and sadly, rhetoric aside, this complicit Congress will likely give in, further eroding what little freedom we still have.

Post-9-11, other unconstitutional speech-related monitoring began as well including John Ashcroft’s short-lived Terrorism Information and Prevention System (Operation TIPS). The idea was to use civilian informers like postal employees to report “unusual” neighborhood activities, police-state style. The scheme flopped when the postal service refused to be spies. Then there was the Pentagon’s Total Information Awareness (TIA) renamed Terrorism Information Awareness to monitor anything about anyone under the spurious cover of it relating to “terrorism.” TIA came under considerable congressional flack but some or all its activities continue under new names relating to other Pentagon projects and initiatives so illegal military spying continues unabated.

One program is called the Threat and Local Observation Notice (TALON) to conduct domestic intelligence by amassing a huge data base, again spuriously related to “terrorism.” It focuses on war protesters targeted by police state monitoring of their constitutional right to freely oppose the nation’s illegal wars of aggression, meaning in Pentagon-think they’re threats to national security in the age of George Bush. Now the Pentagon has second thoughts after drawing flack for its illegal intrusions against peace activists. Under secretary of defense, James Clapper, announced through his spokesperson in late April TALON’s results have been disappointing and doesn’t “merit (being) continued (as) the program (is) currently constituted...in the light of its image in Congress and the media.”

What he’s likely saying is TALON’s activities will be rebranded and continued, the same way

all improperly intrusive domestic spying activities drawing flack are carried out in impressive Orwellian style. What he's not saying is all Pentagon domestic spying/surveillance programs violate the Posse Comitatus Act's prohibitions against them. However, last year's Public Law 109-364 (HR 5122 - Defense Authorization Act) revised the 1807 Insurrection Act and 1878 Posse Comitatus allowing the president illegal authority to give the military free reign on claims of a public emergency or that old standby "national security" in the "war on terror." That includes monitoring freely expressed speech and cracking down on it if so ordered.

Scott Horton reports on another Bush administration assault on free expression in his April Harper's magazine article titled "The Plot Against the First Amendment." In it he notes an important case going to trial in June in Northern Virginia "that will mark a first step in a plan to silence press coverage of (whatever the administration calls) essential national security issues." It would ban exposing policies like secret renditioning captives to torture-prisons to be held without charge, brutalized, denied due process, tried in military tribunals, and disposed of as the administration wishes. The scheme to pull this off is the work of disgraced Attorney General Alberto Gonzales and his deputy Paul J. McNulty, the central figures in a "growing scandal over the politicization of the prosecution process."

Inspiring Gonzales' scheme is Britain's Official Secrets Act, the latest 1989 version of which is quite detailed but is intended overall to protect against revealing information the UK government claims relates to "national security." The act makes it crime for designated British subjects (in some cases all of them) under its 16 sections to do whatever that provision prohibits including disclosing what the state wants kept secret. Gonzales' interest is to devise a scheme based on the UK model to keep print publications and broadcasters from reporting information Washington claims is secret and thus criminal to disclose. In other words, the idea is to silence the media when government wants it silenced, as if it wasn't already secretive enough, except when it's dutifully trumpeting state and corporate-friendly propaganda, lies and distortion not good enough for Gonzales wanting more restrictions.

Horton reports Gonzales sees this scheme "as a panacea for his problems....Then you can torture and abuse prisoners....without fear of political repercussions." So they won't have to "close down Guantanamo (just) Close down the press." Horton explains further Gonzales wanted to propose the idea in end-run fashion with no official secrets language headlined he'd never even get Republican allies to adopt out of fear alone. So his idea was to "spin it out of whole cloth (by) reconstru(ing) the (repressive) Espionage Act of 1917" including in new legislation "the essence of the UK Official Secrets Act and try getting this version "ratified in the Bush administration's 'vest pocket' judicial districts (of) the Eastern District of Virginia and the Fourth Circuit."

The sordid tale continues, but it's coming to a head in a June Northern Virginia trial the outcome of which will indicate whether the administration can criminalize legal acts of journalism on matters it wants kept secret. If it can, Horton says what all free press advocates would agree on. It would be a "dream world for Karl Rove and Alberto Gonzales (and) a nightmare for the rest of us."

In addition, this scheme and all other Bush administration assaults on First Amendment freedoms make a sham out of the president's galling hypocrisy May 3 on World Press Freedom Day. Agence France-Presse (AFP) reported he denounced (with effrontery) a host of other countries for their lack of press freedom including China, Cuba, Iran, Syria, Russia, Belarus and Venezuela (all US targets for daring to place their own sovereignty above ours)

saying “The United States values freedom of the press as one of the most fundamental political rights and as a necessary component of free societies” except whenever the press anywhere dares criticize his wars of aggression and other repressive, unjust and illegal policies.

That’s the way things are by the rules of George Bush’s Global War on Terror (GWOT) rebranded The Long War about to undergo another rebranding because the current name denotes the wrong message of endless wars and occupation the public is tiring of. The name may change, but the mission won’t so long as George Bush remains president. According to him, opposition to his wars gives aid and comfort to the nation’s enemies that’s tantamount to treason. So is dissent and any criticism of his agenda by his reasoning but not according to the law of the land.

Article 3, Section 3 of the Constitution defines the strict limits of what George Bush makes light of. It states: “Treason against the United States, shall consist only in levying War against them, or in adhering to their enemies, giving them Aid and Comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.” Crimes of treason include:

- armed insurrection or rebellion;
- mutiny or unlawfully taking over command of the US government or military;
- sabotage including damaging or tampering with national defense material;
- sedition intended to incite rebellion;
- subversion defined as free speech gone too far by blatantly transmitting false information;
- Syndicalism that’s an act of organizing a political party or group advocating the violent overthrow of the government;
- Terrorism defined as the systematic use of violence or threats of violence to intimidate or coerce the government or whole societies by targeting innocent noncombatants.

Speaking for the president, an unnamed White House spokesman said in January, 2003 George Bush “considers this nation to be at war, and, as such, considers any opposition to his policies to be no less than an act of treason” although he had no legal basis to say it, and publicly expressed opposition to government policies is not an act of treason as the Constitution defines it above. Nonetheless, according to Bush-think: “Either you are with us, or you are with the terrorists,” and by implication are guilty of treason. According to Bush, if a US citizen or foreign state “continues to harbor or support terrorism (it) will be regarded by the United States as a hostile power,” meaning, justified or not, line up behind George Bush, or else.

It’s a dangerous and frightening time in America today as the nation hurtles toward tyranny, and our right to speak out and protest continues being challenged and undermined. That makes the battle for the last frontier of press freedom crucial to preserving our fragile democracy now somewhere between life support and the crematorium.

**The Last Frontier of Press Freedom and Crucial Battle to Save It**

If the telecom and cable giants prevail, lawmakers will remove the few remaining regulatory barriers remaining giving them full control over what they already have most of plus one remaining free and open public media space - the online world of internet communication still able to produce material like this article free from the censoring power of media giants or government to prevent.

Jeff Chester, executive director of the Center for Digital Democracy, says in his book, *Digital Destiny*, the telecom and cable companies are lobbying ferociously for "new national policies....to connect everyone to what they call a 'superbroadband' Internet highway. (If they get their way), the companies vow that the nation will benefit from advances in healthcare, improvements in the quality of life for senior citizens, and major boosts for jobs and the economy." But to achieve this, government must get out of the way and give the media giants free reign as "Competition....will address any problem once handled by law or regulation and also bring us the promised digital cornucopia." It's hard believing any sane person would buy this argument, but who said lawmakers invoke reason or the public interest when huge campaign contributions are the mother's milk of politics, and no need guessing where they come from.

Today, the internet is last frontier of press freedom Net Neutrality supporters, like this writer, are fighting back to save. We're up against giant corporate predators aiming to take from us what's ours, and going against them is no easy task. There's even an astonishing and threatening report by Steve Watson ([infowars.net](http://infowars.net)) that federal government funded researchers "want to shut down the internet and start over, citing the fact that at the moment there are loopholes in the systems whereby users cannot be tracked and traced all the time." They call their proposed substitute Internet 2 claiming it would be faster and more streamlined for those willing to pay more for it.

Supporters of this idea won't say telecom and cable giants will control it, and they and government regulation would allow only "appropriate content" in the fast lane with whatever else is allowed "relegated to the slow lane internet." What's even more at stake is a free and open public internet space, as we know it, that will almost certainly disappear if this new scheme is developed with powerful gatekeepers in charge deciding what's published, what's not, and how much users will be charged.

Also at stake is bipartisan support for "all out mandatory ISP snooping on all US citizens" plus the Pentagon's recently announced "effort to infiltrate the Internet and propagandize for the war on terror," its foreign wars, and all others to come. Further, there are government efforts to force bloggers and activists (like this writer) "to register and regularly report their activities to Congress." Non-compliance could result in a prison term up to one year.

These are just some of the threats to the one remaining public space available to anyone to publish material free from corporate or government control or interference so long as the material doesn't advocate an armed insurrection to unseat the government the law says is treasonous.

Congress this year will resume debate from where the 109th Congress left off last year and likely will decide Net Neutrality's fate. The battle lines are drawn with public advocates facing down powerful cable and telecom giants going all out to gain what we the people can't afford to lose - keeping the internet free and open that's become a symbol and best hope to revive our flagging democratic society, structure and culture close to the tipping

edge of tyranny.

If the media giants prevail, they'll establish internet toll roads or premium lanes so users wanting speed and access will have to pay more for it. Those who can't or won't will get slower service or none at all. Content as well be controlled with whatever is judged unfriendly to state or corporate interests kept out in a new age of online thought control.

Organizations like SavetheInternet.com are in the forefront supporting internet freedom, and it just marked its first anniversary. It's a coalition of more than a million "everyday people....banded together with thousands of non-profit organizations, businesses and bloggers to protect Internet freedom." Its coordinator is FreePress.net, "a national nonpartisan organization (this writer belongs to and supports) working to increase informed public participation in crucial media policy debates, and to generate policies that will produce a more competitive and public interest-oriented media system with a strong nonprofit and noncommercial sector (aiming for) a more democratic US media system (leading) to better public policies."

SavetheInternet's diverse members include Common Cause, Consumers Union, American Library Association, Consumer Federation of America, Prometheus Radio Project, ACLU, and hundreds of other groups and organizations from unions, women's groups, religious organizations, the arts, media, business and more.

SavetheInternet.com members and the public can't afford to lose this battle, and already over 1.6 million signatures have been collected on a congressional petition drive to save the internet as we know it. However, the outcome of this struggle is very much up for grabs with media giants outspending public citizen advocates 500 to 1. Winning in spite of their effort isn't everything, it's the only acceptable thing, and potential media reform depends on how it turns out and whether this nation can regain its democratic moorings now in tatters.

For now, one victory has been won but at a great cost, and it might end up less than it appears. In late December, media giant AT & T agreed to observe Net Neutrality principles for at least 24 months as part of an FCC deal allowing its \$85 billion merger with BellSouth to be approved. The agreement does not preclude other media giants from continuing to lobby for ending Net Neutrality that's now up to Congress to prevent by making it permanent by law.

Legislation has been drafted to prevent internet companies from charging content providers extra for priority access. In addition, the Internet Freedom Preservation Act (S.215) was introduced in the Senate in January with House Subcommittee on Telecommunications and the Internet chairman Edward Markey strongly in support saying "Saving the Internet is vital for civic involvement....and free speech." It aims to ensure broadband service providers aren't gatekeepers and won't discriminate against internet content, applications or services by offering preferential treatment to select customers and not others. Nonetheless, a final resolution remains an unfulfilled goal with powerful divergent interests on either side of this issue vying for which way it will turn out. It's crucial the outcome guarantees permanent Net Neutrality and that our representatives in Congress make it the law of the land.

### **New Postal Rate Increases Will Undermine Small Publications**

Free expression in the nation is coming under assault in numerous ways that must be strongly and effectively countered if we're to save it

(<http://sjlendman.blogspot.com/2007/04/new-us-postal-rates-undermine-small.html>). Another First Amendment enemy emerged when the US Postal Service (USPS) for the first time ever in its 215 year history implemented what Free Press founder and noted professor of media studies at the University of Illinois' main Champaign-Urbana campus called "a radical reformulation of its rates for magazines" placing a much greater cost burden on smaller publications than on larger ones standing to benefit from the policy change.

The new rates are scheduled to take effect July 15 that will force small publications to pay postal rates as much as 20% higher than the largest ones in a willful effort to undermine them, weaken competition further, and make it almost impossible for new independent magazines or other publications to be launched. The scheme was secretly crafted without public involvement or congressional oversight by media giant Time Warner, the largest magazine publisher in the country, and postal officials agreed to it announcing the change protests against which have been mounted. This is another effort toward media consolidation that will further erode the most precious of our constitutional rights - our free and independent speech without which no democracy can survive.

McChesney explained how corrupt and sleazy the whole scheme is that his Free Press organization is taking the lead to undo. The deadline for USPS comments has passed, but it's never too late standing against what no one constitutionally has the right to take from us. A good place to start is [freepress.net](http://freepress.net).

### **Congressional Efforts to Criminalize Speech**

Legislation is being introduced in Congress in the form of an Orwellian "hate crimes" bill that's being supported by organizations like People for the American Way (PFAW), Human Rights Campaign (HRC), and other action groups for civil and human rights everyone should support. PFAW makes a credible case on its web site "urging Congress to expand the current federal (hate crimes) law to protect victims of hate crimes based on disability, sexual orientation, gender, or gender identity. In addition, we have advocated extending the protections of present law to 'all' hate crimes victims."

These stated aims are noble, but the problem is Congress will likely pass a hate crimes bill other than what PFAW wants though it may appear otherwise, although it won't likely override a George Bush veto. Hate and all other crimes are abhorrent, and laws are needed protecting us from them, but not ones that harm more than they help. That's what's likely to emerge from the 110th Congress with legislation on a hate crimes bill called The Hate Crimes Prevention Act (H.R. 1592) already passed in the House with the Senate soon to take it up. In an effort to criminalize preaching hate against gays, minorities and all other targeted groups, Congress is likely to produce a "Thought Crimes Act" that may make dissent a crime and/or ban any exercise of free expression government wishes to deny making it punishable by heavy fines, imprisonment or both.

The 110th Congress will pass a hate crimes bill because all Democrats will vote for it, and no Democrat-led body ever failed not to. But what's likely to emerge, if it becomes law, may turn out to be another blow to our First Amendment rights eroding them further that's not what PFAW, HRC, other civil and human rights groups and ones supporting free and open expression want or should tolerate. In the age of George Bush, anyone may be prosecuted for terrorist-related activities without corroborating evidence because repressive laws were passed making it possible. If hate crimes legislation gives government similar latitude against unacceptable speech it calls "hate," another serious blow will have been struck



against our First Amendment freedoms already reeling under so many others.

### **John McCain's Assault On the First Amendment**

Republican presidential candidate John McCain proposed his "Stop the Online Exploitation of Our Children's Act" on December 6, 2006 as another example of what this hawkish, anti-democratic figure would do if elected in 2008. If this act becomes law, it will fine bloggers up to \$300,000 for posting offensive statements, photos and videos online as a thinly veiled hardball effort exploiting the issue of child abuse to suppress anti-war voices. This is another intrusive effort to regulate speech allowing the federal government the right to decide when our First Amendment rights apply and when not to stifle criticism by imposing heavy fines on dissenters. In John McCain's world, only government-supportive voices will be allowed online while critics Homeland Security Director Michael Chertoff calls "disaffected people living in the United States (with) radical ideologies and potentially violent skills" will be heavily fined and effectively banned.

### **The War On Free Expression We Can't Afford to Lose**

A play on Thomas Jefferson's words might be that "All tyranny needs to gain a foothold is for people of good conscience" to be denied their First Amendment rights to speak, write and otherwise communicate freely and openly without fear of recrimination in a state they want to remain democratic but won't without that right. Today our freedoms are jeopardized in an atmosphere of heightened fear with too few people aware how threatened their most important one of all is at a time there's risk they all may be lost without a concerted effort to save them.

It starts by propping up our First Amendment one without which none of the others are guaranteed or safe. Freedom of expression is the foundation of a free society, or as Jefferson put it: "Information is the currency of democracy (and) If a nation expects to be ignorant (uninformed or misinformed) and free...it expects what never was and never will be."

Potentially, it's never been easier if we can hold what we have and act to restore what's eroding. There's never been more ways to do it including an expanding and amazing online world of web sites, databases, portals, subject gateways, desktops, laptops, palmtops, "begged and borrowed new and used-tops," remote access, authentication protocols, logins, iPods, eservices, ebooks, eresources, eworld-at-our-fingertips, and a wondrous almost limitless future online world connecting potentially everyone to almost anything with a click provided we're the gatekeepers, not the corporate predators out to get what belongs to us.

They'll do it unless we're mobilized and energized enough to stop them in a mega-struggle where they have the resources and friends in high places, and we're the people potentially empowered as famed Chicago community organizer Sol Alinsky noted saying: "The only way to beat organized money is with organized people," and with enough of them committed they'll win. It's our choice, and the stakes are too great not to go all out for what we can't afford to lose.

It starts at the grass roots with a well-coordinated massive outreach effort to bring together educators; human and civil rights groups; labor; the clergy; alternative media journalists; writers; artists; women's groups; small business; your friends, family and neighbors; and other organizations and activists of all stripes concerned enough to build a collective mass-action movement in numbers too large to be stopped. History's lessons are clear. Whenever

enough determined people are set on achieving something and go about it effectively, no power of government anywhere can deter them. Is saving our Republic not incentive enough to go for it? It starts with saving and preserving our most precious of all First Amendment rights to speak freely and openly and be able to spread our ideas, thoughts and beliefs widely for the things we hold most dear – our rights as free people.

*Stephen Lendman lives in Chicago and can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net).*

*Also visit his blog site at [www.sjlendman.blogspot.com](http://www.sjlendman.blogspot.com) and listen to The Steve Lendman News and Information Hour on The Micro Effect.com each Saturday at noon US central time.*

The original source of this article is Global Research  
Copyright © [Stephen Lendman](#), Global Research, 2007

---

[Comment on Global Research Articles on our Facebook page](#)

[Become a Member of Global Research](#)

Articles by: [Stephen Lendman](#)

### About the author:

Stephen Lendman lives in Chicago. He can be reached at [lendmanstephen@sbcglobal.net](mailto:lendmanstephen@sbcglobal.net). His new book as editor and contributor is titled "Flashpoint in Ukraine: US Drive for Hegemony Risks WW III." <http://www.claritypress.com/LendmanIII.html> Visit his blog site at [sjlendman.blogspot.com](http://www.sjlendman.blogspot.com). Listen to cutting-edge discussions with distinguished guests on the Progressive Radio News Hour on the Progressive Radio Network. It airs three times weekly: live on Sundays at 1PM Central time plus two prerecorded archived programs.

**Disclaimer:** The contents of this article are of sole responsibility of the author(s). The Centre for Research on Globalization will not be responsible for any inaccurate or incorrect statement in this article. The Centre of Research on Globalization grants permission to cross-post Global Research articles on community internet sites as long the source and copyright are acknowledged together with a hyperlink to the original Global Research article. For publication of Global Research articles in print or other forms including commercial internet sites, contact: [publications@globalresearch.ca](mailto:publications@globalresearch.ca)  
[www.globalresearch.ca](http://www.globalresearch.ca) contains copyrighted material the use of which has not always been specifically authorized by the copyright owner. We are making such material available to our readers under the provisions of "fair use" in an effort to advance a better understanding of political, economic and social issues. The material on this site is distributed without profit to those who have expressed a prior interest in receiving it for research and educational purposes. If you wish to use copyrighted material for purposes other than "fair use" you must request permission from the copyright owner.

For media inquiries: [publications@globalresearch.ca](mailto:publications@globalresearch.ca)