



TOP SECRET: THE BATTLE FOR THE PENTAGON PAPERS

*by Geoffrey Cowan
and Leroy Aarons*

Teacher's Study Guide



Alive & Aloud • Radio Plays for Learning in the Classroom

Dear Participating Teacher,

Fall 1999

We are pleased to provide you this Study Guide as part of our educational program **ALIVE & ALOUD: Radio Plays for Learning in the Classroom**. It is our hope that the enclosures will support your classroom lesson plans for all your students—wherever they are on the learning continuum. Using the educational materials to prepare the students to listen to the radio play will deepen the educational value of the theatre experience.

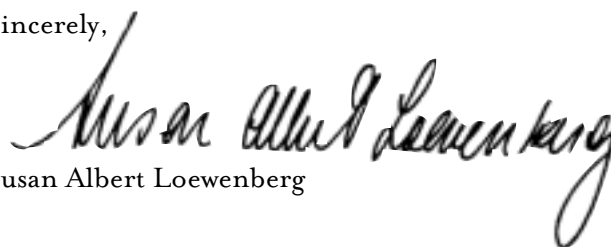
In 1966, Secretary of Defense Robert McNamara commissioned a study on the history of U.S. involvement in Vietnam. Five years later it was leaked to *The New York Times*. When they were prevented from printing more than a few days of excerpts *The Washington Post* stepped into the fray. TOP SECRET: THE BATTLE FOR THE PENTAGON PAPERS by Geoffrey Cowan and Leroy Aarons re-enacts the events surrounding *The Post's* decision to publish and their court battle with the U.S. government over that decision.

Please Note: The individuals involved in the story were often working under conditions of exhaustion and tension. We advise that all student and classroom listeners be prepared for some expletives in the dialogue.

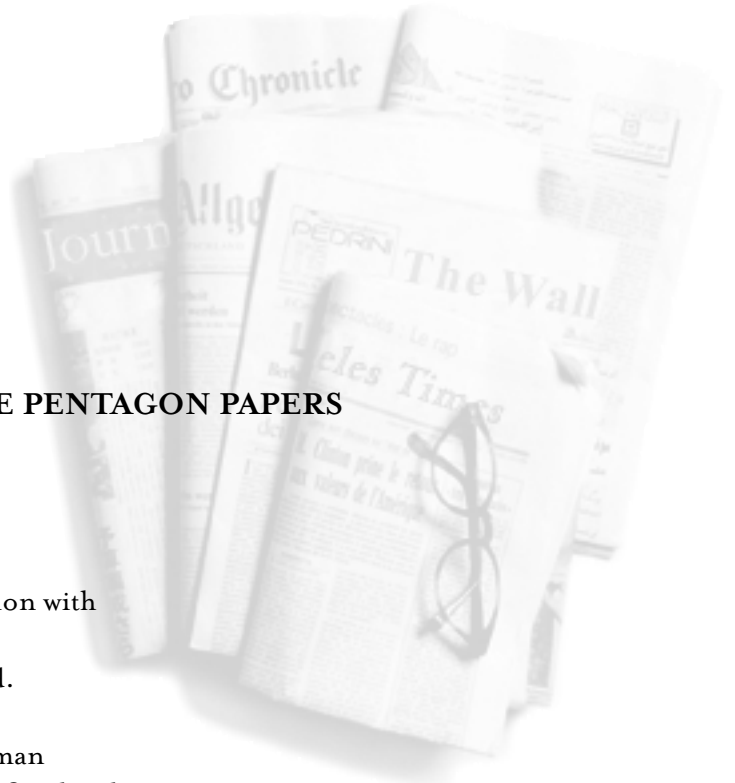
You may want to experiment with various approaches to integrating ALIVE & ALOUD into your lesson plans. Students can listen to the audio plays individually with their own headset, in a group setting or on their own time outside of class. You may find that certain Study Guides exercises and activities require group listening in teams of students or with the class as a whole. Dividing the play into sections to focus on one part at a time can enhance group listening to the plays.

The Study Guide emphasizes the curriculum core subjects of secondary schools. It is organized to pose important questions and to develop significant study units inspired by the content of the play. These curriculum ideas are our way of promoting academic achievement and enriching the learning process of young people in the classroom.

Sincerely,



Susan Albert Loewenberg



TOP SECRET: THE BATTLE FOR THE PENTAGON PAPERS

by Geoffrey Cowan and Leroy Aarons

Director, Tom Moore

Executive Producer, Susan Albert Loewenberg

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TOP SECRET:
The Battle for the Pentagon Papers
by Geoffrey Cowan and Leroy Aarons

·TEACHER'S STUDY GUIDE·

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THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION



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.



Prepared page of the Pentagon Papers series is wheeled from guarded storage area.

About Top Secret

TOP SECRET: THE BATTLE FOR THE PENTAGON PAPERS focuses on *The Washington Post's* role in publishing the Pentagon Papers and the subsequent litigation that resulted in a landmark Supreme Court victory for the press. The play is based on interviews with the participants and on actual trial transcripts, including some previously undisclosed portions of the proceedings that were released under the Freedom of Information Act.

In 1966, United States Secretary of Defense Robert McNamara commissioned a study on the history of United States involvement in Vietnam. Completed on January 15, 1969, the document—which came to be called the Pentagon Papers—contained more than two million words, including some that would prove politically embarrassing. These sections involved the Administration's efforts to manipulate military information...and the media.



Only fifteen copies of the Pentagon Papers were circulated and, in 1971, one was leaked to *The New York Times*. For three days the *Times* printed excerpts from these documents. They were then slapped with an injunction prohibiting further publication on grounds of violating national security. This marked the first time a federal court had acted to block a specific document from publication.



Ben Bradlee and Katharine Graham

The Washington Post quickly jumped into the fray. Eager to get a piece of this remarkable story, *The Post's* editors tracked down their own copy of the document. They then had to persuade their own lawyers and executives that the risks of publication were worth the price—including the possibility of a lawsuit and criminal indictment for, among other things, espionage. Once a copy was secured, *The Post* had twelve hours to sort through the disarrayed documents, write the lead story, and make the final decision to publish. This transpired over the course of one afternoon and evening in the Georgetown living room of *Post* executive editor Ben Bradlee.



The Pentagon Papers case is a landmark event in the ongoing struggle over government credibility, national security and the public's right to know. Is the government over-protective? Is press cynicism justified? Or is the media overreacting based on such experiences as Vietnam, Watergate, and the Iran-contra scandal?

TOP SECRET co-author Geoffrey Cowan says, "The First Amendment is never more important than during war time, when the government has a real need to keep genuine secrets. There are secrets that jeopardize lives and others that embarrass those in power. The public has the right to know the latter but should not know the former. The dilemma for the press is to know and understand which is which."

About the Playwrights



Geoffrey Cowan has been active in almost every facet of the communication world—as a public interest lawyer, academic administrator, best-selling author and award-winning teacher, playwright, television producer and government official. Since November 1996, he has been dean of the USC Annenberg School for Communication. He is Professor of Journalism and Law in the School of Journalism and jointly holds a professorial appointment in the USC Law School. He is the author of *See No Evil: The Backstage Battle Over Sex and Violence on Television* (Simon & Schuster, 1980), and *The People v. Clarence Darrow: The Bribery Trial of America's Greatest Lawyer* (Random House, 1993).

Prior to becoming dean, Cowan served as Director of the Voice of America. He was appointed to that position by President Clinton in 1994. In that capacity he served as the 22nd Director of the VOA, the international broadcasting service of the U.S. Information Agency, broadcasting nearly 900 hours of programming in 52 languages, to a weekly audience of about 100 million. He also served as Associate Director of the USIA and the director of the International Broadcasting Bureau, with responsibility for WORLDNET TV and Radio & TV Marti as well as VOA.



Leroy Aarons is a journalist, author and playwright whose assignments have taken him around the globe, and whose stewardship of *The Oakland (Calif.) Tribune* helped garner a Pulitzer Prize. He has also sat on the Pulitzer Prize jury. A lifelong journalist, Aarons served as a national correspondent and editor at *The Washington Post* for 14 years. He was bureau chief for *The Post* in both New York and Los Angeles. In 1999, he was named Visiting Professor at the University of Southern California's Annenberg School of Journalism, where he serves as director of a new program for the study of sexual orientation issues in the news media. Aarons was named Journalist of the Year for 1995 by the Northern California Society of Professional Journalists. In 1997, the city of Oakland declared a special day honoring his contributions.

Aarons is the author of *Prayers for Bobby* (Harper Collins, 1995). He also wrote the libretto for *Monticello*, an opera about the love affair between Thomas Jefferson and his slave mistress, Sally Hemings. It is being set to music by Glenn Paxton, a Los Angeles composer of many film and television scores. L.A. Theatre Works will be producing the opera in April of 2000. In addition Aarons was an accuracy consultant for—and appeared in—the film *All the President's Men*.

Free Press

BY JAMES C. GOODALE

Although the First Amendment generally prevents the government from restraining or punishing the press, the First Amendment usually does not require the government to furnish information to the press. However, the federal government and the state governments have passed freedom of information and open meetings laws which provide the press with a statutory right to obtain certain information and to observe many of the operations of government. In addition, the First Amendment does furnish the press with the right to attend most judicial proceedings.

The First Amendment also provides journalists with a limited privilege not to disclose their sources or information to litigants who seek to use that information in court. In *Branzburg v. Hayes*, 408 U.S. 665 (1972), the Supreme Court held that reporters did not have a privilege to refuse to answer a grand jury's questions that directly related to criminal conduct that the journalists observed and wrote about.



However, the court's opinion noted that news gathering does have First Amendment protections, and many lower courts have applied a qualified First Amendment privilege to situations in which the need for the journalists' information was less compelling than in *Branzburg*. These courts require litigants to prove that the material sought is relevant to their claim, necessary to the maintenance of the claim, and unavailable from other sources. In addition, more than half of the states have adopted statutes called "Shield Laws," which provide a similar privilege to journalists.

Although the press normally must obey generally applicable laws, the First Amendment prevents the government from enforcing laws which discriminate against the press. For example, the court has struck down a law which imposed a special tax on large newspapers, *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, 460 U.S. 575 (1983), and a law which imposed a tax on some magazines but not others based on their subject matter, *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987).



As the cases discussed above illustrate, over the course of the 20th century the Supreme Court has breathed life into the text of the First Amendment by upholding the right of the press to pursue its mission, no matter how odious that mission might seem to those in power. The courts have imposed some limits on this liberty, and questions remain as to how far this liberty will extend to new media, and to some of the more aggressive efforts employed by journalists to obtain the news. Still, I am confident that the Supreme Court will continue to recognize that, as Justice Stewart wrote in the *Pentagon Papers* case, "without an informed and free press there cannot be an enlightened people."

Excerpt from *A Free Press*—Goodale on First Amendment and Press Freedom—USIA
(<http://www.usia.gov/usa/infousa/media/usis/essay1.htm>), pgs 6-7.

About Daniel Ellsberg

Daniel Ellsberg was the high-level researcher who leaked the Pentagon Papers, the top-secret history of the U.S. involvement in Vietnam. The act, which shortened U.S. military involvement in Vietnam and contributed to President Richard Nixon's resignation also slapped Ellsberg with a twelve-count indictment for espionage, theft and conspiracy. The charges were eventually dropped and Ellsberg went on to become a leading figure in the U.S. peace movement. Today he continues to speak about the role of the Pentagon Papers, governmental secrecy and conspiracy, and abolishing nuclear threats and weapons.

INTERVIEW WITH DANIEL ELLSBERG

Q: *You remained for many years part of the government, part of the team, willing to live with the elements of this decision making process. After much frustration with Vietnam, after reading the Pentagon Papers, you reached a different conclusion about what is acceptable and what is moral. Explain how that change in your thinking came about.*

A: I learned in Vietnam nothing very new about the lack of good prospects for success. I went to Vietnam pretty much with that perspective, or certainly I had it in 1964, and I had it in 1961. I did learn the faces of the Vietnamese. I learned to be concerned for what happened to Vietnamese people in a way that my colleagues back in Washington probably didn't feel. They had a reality for me. They weren't just numbers and they weren't just abstract ciphers of some kind, as they were for other people. And as I would have to say probably for myself, people in other parts of the world that didn't have that same friendly awareness in my mind. And I wasn't aware of them as friends and associates and so forth. That was a consideration.



What I particularly learned, though, in 1969, and from the Pentagon Papers, was that Nixon, the fifth president in a row now, was choosing to prolong the war in vain hopes that he might get a better outcome than he could achieve if he'd just negotiated his way out and took what he could get and accepted, essentially, a defeat. He hoped to do much better than that. In fact, he hoped to hold on to control of Saigon and the major populated areas indefinitely for the United States, that these would be subject to our will and our policy and not be run by communists. And he hoped to do that, actually, in ways similar to the way Johnson had hoped—by threatening escalation of the war, threatening bombing of North Vietnam. He was making such threats and then he was prepared to carry them out.

I did not believe the threats would succeed, so I foresaw a larger war. He was fooling the public about what he was doing at this time for the same reason Johnson had in 1964. The public would not, at that time, have supported a continuation of the war, let alone an expansion of the war. But he was successfully fooling the public, who didn't want to believe that



Daniel Ellsberg

any president could be so foolish and so narrow minded in his own interests as to keep that war going after the Tet offensive of 1968. So I saw a replay of 1964 and 1965 coming again. I saw once again a president making secret threats, almost sure to carry them out, and deceiving the public as to what he was doing.



By reading the Pentagon Papers, which I finished doing in the fall of 1969, in September 1969, I now had a historical sweep sufficient to reach a conclusion that I would have been very unlikely to reach without reading them, and that was that there was very little hope of changing his [the President's] mind from inside the executive branch, for example, by giving him good advice or by giving him realistic estimates of what was happening in Vietnam. Because what I saw by reading the earliest days of the Pentagon Papers, going back to 1945 and 1946, was that every president had had such advice, as early as Truman.

Truman had seen predictions of an indefinitely prolonged guerrilla war facing him and yet had gone ahead in supporting the French in this effort. And this had happened year after year. It happened year after year for Eisenhower and Kennedy and Johnson. The fact now that Nixon was embarked on a new course held out very little hope that he would be more responsive just to good advice about getting out than any of his predecessors had been.

That meant that if his decision was going to be changed—and because I cared about Vietnam and this country, I felt quite urgently that I wanted the United States to stop bombing them and stop killing Vietnamese—the pressure would have to come from outside the executive branch. It would involve a variety of things, but it probably required better information outside the executive branch, in Congress and in the public, about the past and about the present, than they had. If I had had documents on what Nixon was planning, on what I'd been told he was planning by colleagues who were working for Nixon, I would have put those out at that time to Congress to warn them of what was coming. I probably would not have bothered with the thousands of pages of history that involved the earlier presidents; I would have shown what Nixon was doing. But I didn't have those documents. And at that time, it was very hard to get the public to believe or to act on the possibility that a president was lying to them or deceiving them. That was not in the American consciousness, and it was a very unpopular notion even to put forward.



I once said in a courtroom, in defense of people who were on trial for resisting the draft, that the President had lied. This was in early 1971, before the Pentagon Papers had come out. The judge stopped the proceedings, called the lawyers up to the bench. I could hear what he was saying because I was in the witness box next to him. "If you elicit testimony like that again," he said to the defense lawyer, "I will hold you in contempt. I will not have statements about the President lying in my courtroom." This was in a trial of people who were resisting the war nonviolently. And they weren't allowed, in effect, to have witnesses who said anything like that, that the President was lying. The Pentagon Papers changed that. Seven thousand pages of documents of presidential lying did establish forever, and they were confirmed of course by Watergate a couple of years later, that presidents all lie.

¹ Daniel Ellsberg Interview with Harry Kreisler: Conversations with History Institute of International Studies, UC Berkeley conducted July 29, 1998 Reflections on the Vietnam War. (<http://globetrotter.berkeley.edu/people/Ellsberg/ellsberg98-O.html>), p. 6.

Cast of Characters

CHARACTERS

ACTORS IN THE L.A. THEATRE WORKS
RADIO THEATRE PRODUCTION (*in alphabetical order*)

Chal Roberts	PHILIP ABBOTT
Bailiff/Clerk	IRENE ARRANGA
Ben Bradlee	EDWARD ASNER
George Wilson	ED BEGLEY, JR.
Eugene Patterson/Carl Coogan	JACK COLEMAN
Narrator	RICHARD DYSART
Fritz Beebe	HECTOR ELIZONDO
Soldier	BO FOXWORTH
Ben Bagdikian	ROBERT FOXWORTH
Murray Marder	ROBIN GAMMELL
Robert Mardian	GERRIT GRAHAM
Brian Sullivan	HOWARD HESSEMAN
John Mitchell	STACY KEACH
Darryl Cox	DARRELL LARSON
Meg Greenfield	NAN MARTIN
Katherine Graham	MARSHA MASON
Lamont Vanderhall	RICHARD RIEHLE
Richard Nixon	HARRY SHEARER
Ron Ziegler	JOE SPANO
Judge Martin Peel	JAMES WHITMORE
Henry Kissinger	HARRIS YULIN

Suggested Vocabulary

Rr

affidavit

affirm

badgering

catastrophic

chronological

credibility

divulge

escalation

espionage

fiscal

flouting

innocuous

indictment

liberation

litigator

manipulation

naive

paranoid

precedent

restraint

revelation

sanction

suppress

veneer

vermin

S

y

Aa



THINKING, WRITING & READING EXERCISES

1. When the Bill of Rights was written, freedom of the press was placed first. Why is that right so essential to a democracy?
2. The reporters in the story threatened to quit if *The Post* did not publish the story. Why do you think they felt that strongly about the material? What impact might their resignations have had on the prestige of the paper?
3. Ben Bradlee talks about his goals when he first came to *The Washington Post*. How would publishing the Pentagon Papers further those goals?
4. Early in the play, the reporters discuss the tradition of leaking information to journalists. What would be the advantages and disadvantages of leaked information?
5. Both playwrights have a background in journalism. How might the story have been different if it was written by Richard Nixon or by a member of his cabinet? What points would they have stressed? What dialogue might they have omitted from the Oval Office conversations? Try writing a journal entry as if you are a member of the Nixon administration during this period.
6. *The Post's* lawyer says that “newspapers are like tapeworms—the more you feed them, the hungrier they get.” Consider various news stories that you have watched on television or read about in papers. In what ways does that description apply?
7. What qualities do you believe are necessary to be a good journalist? Use examples from the play to show whether the staff of *The Washington Post* meets those standards.
8. Create a talk show in which you role-play various people involved in the debate about the Pentagon Papers. Allow each side to present its arguments about the case.
9. The story takes place in 1971. While this story dominated Washington political news, what was going on in typical daily life? What music was popular? What fashions and fads swept the country? What television shows and movies claimed the largest audiences? Check out your high school newspapers and yearbook to see what topics were the top interests of the time period.
10. Locate adults who were teenagers during the Vietnam War era. Ask them to describe what they remember from the time period. What did they think about the war effort then? Has their opinion changed over time?



TEAM RESEARCH PROJECTS



Setting the Scene

As the play begins, the audience hears the voice of Walter Cronkite and the “Star Spangled Banner” played by Jimi Hendrix. These are just two of the many components that establish the time and place of the play. To fully appreciate the historic setting, select one of the topics below and research it using reference and Internet resources. Focus questions follow each topic. Share findings with the class.

FREEDOM OF INFORMATION ACT

What rights does this act provide?
What types of documents are included and excluded?

KENT STATE

What is the tragedy that took place at Kent State University?
Why was it a turning point of the Vietnam era?

JIMI HENDRIX’S “STAR SPANGLED BANNER”

Who was Jimi Hendrix?
This version of the national anthem was played at Woodstock. What was Woodstock?
Why do you believe this song is a suitable choice for the background music that starts the play?



Kent State



Jimi Hendrix

SPIRO AGNEW

Nixon speaks of getting Agnew to cause problems for the newspapers involved in publishing the Pentagon Papers. Who was he?
How did the Administration use him to harass enemies?

WALTER CRONKITE

What are the qualities that led Walter Cronkite to be called “the most trusted newsman in America?”
What are some of the biggest stories he covered?



Walter Cronkite

FCC LICENSES

Nixon suggests going after the FCC licenses owned by *The Washington Post*.
What is an FCC license?
In what ways is having an FCC license valuable?
What could cause one to be refused?

HANOI

Where is this city located?
Who controlled it in 1971?

TALKING POINTS



HIGHLIGHTS IN THE RECORDING FOR CLASS DISCUSSION.

TAPE SIDE 1

Scene 1: June 15, 1971—President Richard Nixon and Attorney General John Mitchell are meeting in the oval office of the White House to discuss the case against *The New York Times*.

NIXON: I don't give a damn about the stuff in the Vietnam papers; that all happened under the Democrats. It might even be a plus. But it makes my blood boil to have those goddamn newspapers printing stolen government documents. (Press Secretary Ron Ziegler enters.) And, Ron, *The New York Times* is finished in the White House. No one but you and me even talks to any of those bastards. Do I make myself clear?

ZIEGLER: Absolutely, Mr. President. If those guys are aching for a fight, we'll take our gloves off too.

MITCHELL: We're going to go after the whole crowd.

NIXON: Wonderful. Wonderful.

DISCUSSION



Richard Nixon

- What adjectives would you use to describe the personalities of the people involved in this scene?
- What is the Administration's motivation for the case against *The New York Times*?

Scene 5: Home of *The Washington Post's* executive editor Ben Bradlee. As the deadline nears, Ben Bradlee defers the decision to publish or withhold the information to publisher Katharine Graham.

BEEBE: But ultimately it's up to you. (long pause) Alright, Kay. Thanks. Good-bye. (He slowly cradles the phone. Then, quietly, to those assembled.) We publish.

DISCUSSION

- What were the risks that *The Washington Post* and the staff faced?
- What information and beliefs probably influenced Graham's decision?
- Would you have agreed to publish?



Fritz Beebe

Scene 13: June 21, 1971—The courtroom. The Administration lawyers have just gone through an elaborate process of clearing the courtroom, bringing in a locked briefcase and a sealed envelope to present a document. Wilson frantically tries to recall where he has seen the supposedly secret document before.

WILSON: (Excitedly interrupting in a loud whisper.) Brian, here it is! I found it in the open literature. (He shoves an open book at Sullivan.)

SULLIVAN: Your honor, could you excuse us for a moment? (Quickly passing from incredulous, to stunned, to thrilled as he scans the page.) Incredible. (Then, barely able to contain his excitement.) Your honor, this may be a sensitive document. Maybe it should even be a secret document. But it's not a secret, despite the Academy Award-winning performances we have witnessed here this afternoon. The government gave this precise document to the Senate Foreign Relations Committee. Congress published it in a Hearing Report. (He hands the report up to the judge.) This is the Report of the Senate Foreign Relations Committee for February 20, 1968. I call your attention to page 34. This so-called secret document has been available to the public—and, need I add, to our enemies—for more than three years.

DISCUSSION

- If you were the judge, how would you have reacted to this type of news?
- Do you think the elaborate security demonstration with the briefcase would cause the judge to be skeptical of further claims?
- In what ways is a good lawyer like a good actor?

Scene 14: The victory party after the judge declares that the Pentagon Papers may be published. The lawyer, Brian Sullivan, offers a toast—and a note of caution.

SULLIVAN: *The Post* has a great future ahead of it. The Pentagon Papers victory made it a world class competitor, just as Ben hoped. And the courts have said: "Well, except in certain cases, we ain't going to be the gatekeepers." So, the courts aren't allowed to do it, and the government can't be trusted to do it. That leaves you guys. Can you be the gate-keepers? We know you have the guts to say yes. Have you got the guts to say no? At what point do you draw the line on stolen documents? Do you sanction stealing? How far will you go with anonymous sources? To what ends do you go to feed the tape worm? Do you ask? Do you want to know?

DISCUSSION

- What fears does Brian Sullivan have about the press?
- Do you believe that the press should be the "gatekeeper" of information?
- What is the responsibility that the press has to the public?

Bibliography

TOP SECRET: THE BATTLE FOR THE PENAGON PAPERS by Geoffrey Cowan and Leroy Aarons is available in manuscript from L.A. Theatre Works.

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Resources on the Internet

The American Experience: Vietnam Online

(<http://www.pbs.org/wgbh/pages/amex/vietnam/>)

- transcripts of PBS 13-part documentary, reflections on the war, etc.

Battlefield Vietnam

(<http://www.pbs.org/battlefieldvietnam/>)

- brief history, timeline, supports PBS series which premiered April 1999

Chronology of Events involving Nixon and the Press during Vietnam Era

(<http://www.mtholyoke.edu/acad/intrel/pentagon/pentI.html>)

- Links to Pentagon Papers and to Watergate information

Incomplete Chronology of the Pentagon Papers

(www.imsa.edu/edu/socsci/jvictory/unit7_coldwar_vn/antiwar/pentagon_papers/pent_papers_base.html)

- interview with Daniel Ellsberg

The New York Times v. The United States

(<http://www.lectlaw.com/files/case25.htm>)

- information about the Supreme Court case

The Nixon Project

(<http://metalab.unc.edu/lia/president/nixon.html>)

- archived by the National Archives and Records Administration's Office of the Presidential Libraries, biography, quotes, educational material

The Pentagon Papers and U.S. Imperialism in South East Asia

(<http://www.homeusers.prestel.co.uk/littleton/br7212nc.htm>)

- detailed essay by Noam Chomsky

Student Press Law Center

(<http://www.splc.org>)

- site dedicated to supporting press rights for student journalists at elementary, secondary, and college level, FAQ section, links, etc.

The Vietnam War: A Popular Music Approach

(<http://www.rockhall.com/educate/lssnplan/lesson8.html>)

- online lesson plan using music related to Vietnam War; specifically cites Jimmy Hendrix's version of the Star Spangled Banner, bibliography of music and literature.

