

New York state judge issues prior restraint order against New York Times

Eric London
27 December 2021

On Friday, New York Republican trial judge Charles Wood issued an order preventing the *New York Times* from publishing legal memoranda its reporters had acquired pertaining to Project Veritas, a right-wing publication which is presently suing the *Times* for libel.

The order is an exercise in prior restraint and constitutes an extreme form of state censorship. The order requires the *Times* to remove references to the memos in question from its website, refrain from publishing any references to them in the future, and also orders the *Times* to “immediately delete/destroy” any copies of the documents. The documents “shall not be shown, transmitted, or disseminated in any manner to any persons absent written order of this Court,” the order states.

The memos in question were authored several years ago by outside counsel Benjamin Barr in response to inquiries from Project Veritas staff as to how the organization can conduct its operations without breaking the law. Project Veritas routinely publishes videos captured from hidden cameras which it heavily edits to promote right-wing conspiracy theories. The prior restraint order stems from a libel lawsuit brought by Project Veritas against the *Times* in 2020 after the *Times* called two Project Veritas videos “deceptive” and reported that Project Veritas has “a long history of releasing manipulated or selectively edited footage.” The videos in question dishonestly purported to show Democratic Congresswoman Ilhan Omar’s campaign engaging in election fraud.

Wood’s order drastically widens the state’s censorship powers by giving the government the authority to block publication of documents that could be used in ongoing or future lawsuits. Although there is no evidence that the *Times* acquired the legal memos in question through any illegal means, and although the

memos predate the pending libel suit, Wood ruled that the First Amendment does not protect the *Times* because the documents in question are protected by attorney-client privilege.

The fact that documents are subject to a privilege does not vitiate the First Amendment interests. In the most famous prior restraint case of the 20th century, *New York Times v. United States*, the Supreme Court ruled that the Nixon administration violated the First Amendment by attempting to prevent the *Times* and the *Washington Post* from publishing the Pentagon Papers. Nixon had claimed the documents, which related to the conduct of the war in Vietnam, were subject to state secrets privilege. But Justice Hugo Black, writing for the majority, ruled, “The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.”

Wood, however, referenced a legal test normally used in the context of public employee free speech cases, ruling that the First Amendment only applies if the memoranda pertained to a matter that falls “within the realm of public concern.” He ruled that the legal memos did not: “The memoranda themselves are not a matter of public concern.”

“Undoubtedly, every media outlet believes that anything it publishes is a matter of public concern,” Wood’s ruling reads. “The state of our nation is that roughly half the nation prioritizes interests that are vastly different than the other half. Our smart phones beep and buzz all day long with news flashes that supposedly reflect our browsing and clicking interests, and we can tune in or read the news outlet that gives us the stories and topics that we want to see. But some things are not fodder for public consideration and consumption.”

The argument that the internal machinations of a far-right organization are not “of public concern” is preposterous. Project Veritas works with figures within the Trump administration as well as spies recruited by far-right paramilitary executive Erik Prince. It has argued that coronavirus vaccinations are dangerous and falsely promotes videos alleging the government is engaged in a cover-up of the vaccine’s negative side effects. Such videos have been viewed millions of times. Wood’s own ruling acknowledges that the “public concern” test includes any matters that can “be fairly considered as relating to any matter of political, social or other concern to the community” or “is the subject of legitimate news interest.”

The *Times* responded to Friday’s order with a December 24 statement from the editorial board titled “A Dangerous Court Order Against the New York Times.” The statement called the order “a highly unusual and astonishingly broad injunction against a news organization.” The editorial board wrote:

The memos at issue have nothing to do with that suit and did not come to The Times through the discovery process. Still, Project Veritas is arguing that their publication must be prohibited because the memos contain confidential information that is relevant to the group’s litigation strategy.

It’s an absurd argument and a deeply threatening one to a free press. Consider the consequences: News organizations could be routinely blocked from reporting information about a person or company simply because the subject of that reporting decided the information might one day be used in litigation. More alarming is the prospect that reporters could be barred even from asking questions of sources, lest someone say something that turns out to be privileged.

The *World Socialist Web Site* opposes the New York state court order against the *Times*, which will have a chilling effect on free speech across the country. But this does not make the *New York Times* a defender of free speech.

~~Of~~ *times* the has contr~~pt~~played thea in facilitating state censorship. The *Times* has never opposed the censorship of the *World Socialist Web Site*, despite reporting on the censorship of the site in a September 27, 2017, article by *Times* reporter Daisuke Wakabayashi. The *Times* provided cover for the Obama-Trump-Biden prosecution of Julian Assange, helping the intelligence agencies slander him as a Russian agent, a sexual criminal and an unsavory character. In a May 2019 editorial board statement ostensibly opposing the criminal charges against Assange, the *Times* wrote, “There is much to be troubled by in Mr. Assange’s methods and motives, which remain murky.”

The *Times* published lies of Iraqi weapons of mass destruction and dutifully withheld publication of evidence that the Bush administration was spying on the world’s population. Former *Times* editor Bill Keller said, “Freedom of the press includes freedom not to publish, and that is a freedom we exercise with some regularity.”

The predecessor of the *World Socialist Web Site* was itself subject to a prior restraint order. In 1979, Alan Gelfand, a member of the Socialist Workers Party (SWP), sued the SWP on the grounds that the organization was so thoroughly penetrated with government agents that his expulsion at the hands of those agents violated his First Amendment right to belong to a party of his choosing. District Court Judge Marianna Pfaelzer issued a prior restraint order on the WSWS’s predecessor publication, the *Bulletin*, ordering it refrain from publishing certain details of the case. Ultimately, Pfaelzer recognized such an order was entirely without legal merit and she was forced to reverse herself.

The prior restraint order against the *New York Times* is an anti-democratic attack on free speech, but the *Times* itself is responsible for creating conditions for the state to expand its censorship powers. The *Times* has indicated it will appeal the decision through the state court system.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact