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Andrew P. Napolitano

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Free Speech & the Department of Political Justice

The feds apparently believe that the First Amendment has some holes in it for the speech that the government hates and fears, writes Andrew P. Napolitano.



President Joe Biden looks on as Attorney General Merrick Garland delivers remarks at the White House in 2022. (White House/ Adam Schultz)

In 1966, two famous Russian literary dissidents, Yuli Daniel and Andrei Sinyavsky, were tried and convicted on charges of disseminating propaganda against the Soviet state.

The two were authors and humorists who published satire abroad that mocked Soviet leaders for failure to comply with the Soviet Constitution of 1936, which guaranteed the freedom of speech.

Their convictions sparked international outrage. Former U.S. Supreme Court associate justice, and then America's U.N. ambassador, Arthur Goldberg called the charges and the trial "an outrageous attempt to give the form of legality to the suppression of a basic human right."

When a secret transcript of the trial was circulated in the West, it became clear that Daniel and Sinyavsky were convicted of using words and expressing ideas contrary to what Soviet leaders wanted. They were sentenced to five and seven years, respectively, of hard labor in Soviet prison camps.

Last week, the U.S. Department of Political Justice took a page from the Soviets and charged Americans and Russians with disseminating anti-Biden administration propaganda in Russia and here in the U.S. What ever happened to the freedom of speech?

Here is the backstory.

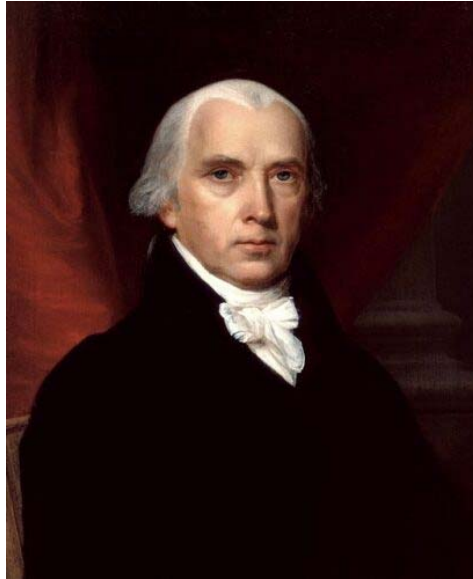
The Framers who crafted the Constitution and the Bill of Rights, both under the leadership and the pen of James Madison, were the same generation that revolted violently against King George III and Parliament and won the American Revolution.

The revolution was more than just six years of war in the colonies. It was a radical change in the minds of men — elites like Thomas Jefferson and Madison, as well as farmers and laborers generally untutored in political philosophy.

Untutored they may have been, but they knew they wanted to be able to speak their minds, associate and worship as they pleased, defend themselves, and be left alone by the government. The key to all this was the freedom of speech. Speech was then, as it is today, the most essential freedom.

The late Harvard Professor Bernard Bailyn read and analyzed all the extant speeches, sermons, lectures, editorials and pamphlets that he could find from the revolutionary period and concluded that in 1776 only about one-third of the colonists favored a violent separation from England. By the war's end in 1781, around two-thirds welcomed independence.

Independence — From England & Government



Portrait of James Madison by John Vanderlyn. (White House Historical Association, Public domain, Wikimedia Commons)

But independence was bilateral. It meant not just independence from England but independence from the new government here as well.

In order to assure independence from the federal government, the colonies ratified the Constitution. Its purpose was to establish a limited central government.

After the Constitution was ratified and the federal government was established, five colonies threatened to secede from it unless the Constitution was amended to include absolute prohibitions on the government from interfering with natural individual rights.

During the drafting of the Bill of Rights, Madison, who chaired the House of Representatives committee that did the drafting, insisted that the word “the” precede the phrase “freedom of speech, or of the press” in order to manifest to the ratifiers and to posterity the Framers’ collective understanding of the origin of these rights.

That understanding was the belief that expressive rights are natural to all persons, no matter where they were born, and natural rights are, as Jefferson had written in the Declaration of Independence, inalienable.

Stated differently, Madison and his colleagues gave us a Constitution and a Bill of Rights that on their face recognized the pre-political existence of the freedom of speech and of the press in all persons and guaranteed that the Congress — by which they meant the government — could not and would not abridge them.

Until now.



“Free Speech * Conditions Apply” by Fukt. (wiredforlego, Flickr, CC BY-NC 2.0)

In the past two weeks, the feds have secured indictments against two Americans living in Russia who are also Russian citizens working for a Russian television network that expressed political views — the feds call this propaganda — contrary to the views of the Biden administration.

The same feds secured an indictment against Americans and Canadians for funneling pro-Russian ideas to the American public through social media influencers. The feds, who call the words being used by their targets “disinformation,” apparently believe that the First Amendment has some holes in it for the speech that the government hates and fears.

That belief is profoundly erroneous.

The whole purpose of the First Amendment is to keep the government out of the business of evaluating the content of speech. The strength of an idea is its acceptance in the public marketplace of ideas not in the minds of government. This is political speech that is critical of government policies — that would be the very speech in which you and I and millions of Americans engage every day.

The speech we love to hear needs no protection because we welcome it. But the speech that challenges; irritates; expresses alternative views; exposes the government’s lies, cheats and killings — even harsh, caustic, hateful speech — is the very speech that the First Amendment was written to protect.

The United States has not declared war on Russia. Under international law, there is no legal basis for such a declaration. The U.S., however, which supplies weapons for its proxy Ukraine to attack Russia, is far more a threat to Russia than Russia is to the U.S. But you’d never know that by listening to the government. Now the government doesn’t even want you to hear speech that contradicts its narrative.

In reading about the Soviet show trial of Daniel and Sinyavsky and the recent indictments of Americans and others for expressing so-called Russian propaganda, my stomach turned. The federal government has become what it once condemned.

Just like the Soviets in 1966, it mocks free speech, it assaults basic human rights, it evades the Constitution it is commanded to uphold and now it punishes those who dare to disagree. This may bring it to the same untimely end as the Soviet Union it now emulates.

Andrew P. Napolitano, a former judge of the Superior Court of New Jersey, was the senior judicial analyst at Fox News Channel and hosts the podcast Judging Freedom. Judge Napolitano has written seven books on the U.S. Constitution. The most recent is Suicide Pact: The Radical Expansion of Presidential Powers and the Lethal Threat to American Liberty. To learn more about Judge Andrew Napolitano, visit <https://JudgeNap.com>.

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By **Andrew P. Napolitano**