Standing up for the First Amendment – and Austin Tice

**By Lata Nott**

Last week, I spoke (virtually, of course) with a group of journalism students about how the First Amendment relates to, and protects, the work they'll soon be doing. I walked them through the major legal doctrines that protect freedom of expression in this country:

* The government can't create laws that censor or punish people for their speech, unless there's a compelling purpose behind them and those laws are the least restrictive way to achieve them;
* It can't apply laws or take actions in a manner that discriminates against people based on the point of view they're expressing;
* It can't engage in prior restraint — prevent something from being published — unless it can prove that that publication would cause immediate and irreparable harm to the United States.

It's a lecture I've given many times over the past few years, but afterwards, one of the students asked me a question I'd never been asked before. "Who makes sure the government isn't doing any of the things it can't be doing? Is there an agency that ensures compliance with the First Amendment?"

"For the most part, it's just us," I replied and made some sort of expansive hand gesture in an effort to let the student know that "us" encompassed her, me, the other 20 people on the Zoom call and the American people as a whole.

It was an off-the-cuff answer, and if I'd had more time and my Wi-Fi connection had been less laggy, I might have said that it's the courts that strike down unconstitutional laws and government actions, although executive agencies like the Department of Justice and legislative bodies like Congress can certainly play a role by pushing for and implementing further safeguards for free expression. But my original answer still stands. Courts hear cases when lawsuits are brought by people whose rights have been violated. The executive and legislative branches respond to demands from their constituents. And the public learns about the government's transgressions through the press.

One of the most interesting things about the press is that despite being the only profession actually named in the Constitution, journalists themselves are not defined by any legal document or ordained by any government body. [As my colleague Gene Policinski wrote](https://www.freedomforuminstitute.org/2016/05/03/lets-celebrate-our-world-press-freedom-day-today/)on World Press Freedom Day a few years back, "In the larger sense, we’re all 'press' every time we post, tweet or blog — whether we want that title or not. Media critics and advocates alike are fond of noting 'the press' has no more and no less privilege under the First Amendment than any other U.S. citizen."

This is as true for the [professional journalists who covered the recent Black Lives Matter protests](https://pressfreedomtracker.us/george-floyd-protests/) as it is for the [Minneapolis teenager who recorded the killing of George Floyd](https://www.startribune.com/teen-who-shot-video-of-george-floyd-wasn-t-looking-to-be-a-hero-her-lawyer-says/571192352/), which sparked those protests in the first place. Anyone who cares enough to expose wrongdoing people in power is serving as a watchdog. Anyone who wants to make truth known to the public at large wields the power of the press.

But the fact that anyone can do this doesn't detract from its significance, or the risks that it might entail.

Next week, it will have been eight years since Austin Tice went missing. Tice was a Georgetown law student and former U.S. Marine Corps officer who went to Syria as a freelance journalist in 2012. He was also one of the only Western journalists on the ground while the Syrian conflict was unfolding and he made it his mission to report on the impact the conflict was having on civilians. On July 25, 2012, [he posted this on his Facebook page](https://www.washingtonpost.com/world/middle_east/austin-tice-its-nice-and-all-but-please-quit-telling-me-to-be-safe/2012/08/23/984488ba-ed4b-11e1-a80b-9f898562d010_story.html), responding to those who told him he was crazy to try to report what was happening in Syria: "We kill ourselves every day with McDonald’s and alcohol and a thousand other drugs, but we’ve lost the sense that there actually are things out there worth dying for. We’ve given away our freedoms piecemeal to robber barons, but we’re too complacent to do much but criticize those few who try to point out the obvious."

On Aug. 14, 2012, three days after his 31st birthday, Austin Tice was taken captive as he was preparing to travel from Daraya, near Damascus, Syria, to Beirut, Lebanon. Diverse credible sources report that he is still alive. Austin's parents, who have unrelentingly advocated for his return, recently published an [open letter](https://s2.washingtonpost.com/camp-rw/?trackId=596c9749ae7e8a44e7f5c1d4&s=5f281e5dfe1ff65e11745d6b&linknum=1&linktot=108)in *The Washington Post's* Press Freedom Partnership newsletter that included this heartbreaking message:

"Each year around Austin’s birthday and the date of his capture, there’s a brief moment of renewed attention and media coverage. Our son is imprisoned every single day. Every single day Austin needs his colleagues in journalism to ask questions about what is being done to bring him home, to dig for answers when they meet with obfuscation and to hold U.S. government officials accountable for their actions or lack thereof."

Advocating for Austin and other journalists who have been unjustly targeted or detained is in our hands. So is safeguarding our First Amendment freedoms. As Austin pointed out, we can't afford to be complacent.