**The Roe V. Wade leak shows the benefit of a free press**

Well, at least, we know: Roe v. Wade, which has protected abortion rights in the U.S since 1973, seems likely to be overturned.

And we know this not from a government news release or even the announcement of a court decision, but from a leak of a draft document to journalists, whose job is to keep us as informed and up to date as possible on matters of public interest.

At 8:32 p.m. EDT Monday, May 2, the online news organization Politico broke the news that it had obtained a draft of a U.S. Supreme Court opinion showing a 5-4 majority in favor of reversing the court’s seminal Roe v. Wade decision.

Chief Justice **John Roberts**, even as he decried what seems to be the most “egregious” leak of confidential information in the court’s history, confirmed that Politico had it right. The result of the story has been an explosion of public demonstrations, political punditry on the abortion issue and upcoming elections, and outright speculation on the motives of whoever leaked the draft. It has also offered an introduction for many to the operations of the court, a polarizing body that often operates in secret.

For those debating the ethics of publishing the leaked draft, consider this:

If history tells us anything, it’s that when journalists don’t tell us what they know, all they know, or sometimes even just suspect, we are poorer for it. While the tale has been debunked that The New York Times withheld reporting in advance about the misbegotten Bay of Pigs invasion of Cuba in 1961, President **John F. Kennedy** later ruefully remarked that had the newspaper done even more of its detailed stories in advance, the plan might have been shelved.

The classic example of leaks to the press that benefited the nation is **Daniel Ellsberg’s** 1971 leak of the Pentagon Papers, which peeled back years of government misrepresentation, misdirection and outright lies about U.S. involvement in the war in Vietnam.

Would we have known in 2004 without press reports — including leaked photos — of widespread torture at Abu Ghraib by U.S. military jailers? Starting around 2006 and through the 2013 massive information leak by government contractor Edward Snowden, would we know of massive government surveillance of personal online and telephone communications?

None of those examples of a free press doing its job or Politico’s Monday night scoop are without their critics — and perhaps danger as well. We live in a time when [documented attacks on journalists for just doing their job are on the rise](https://www.freedomforum.org/2021/07/07/perspective-assaults-on-local-reporters-are-a-slap-in-the-face-of-our-right-to-know/), in numbers and intensity.

The Associated Press reported that Politico sent a memo to staff members on Tuesday saying it had restricted access to its offices and told security to be “extra vigilant” about visitors. The company also urged employees to consider removing their Politico affiliation on social media accounts. AP reported that The Federalist, a conservative website, headlined a story, “The SCOTUS Abortion Decision Leak is what Actual Treasonous Insurrection Looks Like.”

No, it is not. It is what freedom looks like.

A free press has First Amendment protection from government control to do precisely what Politico did: Tell us things we need to know, with no requirement to wait for official approval or consent.

One thing the online news operation does not have to fear is government prosecution for publishing the leaked material. A 2001 Supreme Court decision involving an intercepted cell phone conversation established that a third party may divulge information they innocently receive, even if the source of that information violated a law in obtaining it. In the case of this leaked Supreme Court draft, it may not have been a criminal act at all.

A clear result of the leaked draft opinion — apart from Justice Roberts’ well-placed concerns about the integrity of court discussions — is a nation energized, engaged and in active debate over the issue of abortion rights.

There’s nothing in the First Amendment that says the five freedoms it protects will always operate in a neat and tidy fashion. In fact, its protection of dissent and “robust and vigorous” discussion appears throughout First Amendment history.

On the likely fate of Roe v. Wade: Now we know. Thanks to a free press.

*Gene Policinski is the Freedom Forum’s senior fellow for the First Amendment.*