ment on freedom of speech and of the press.[1296] The scope of the privilege thus conferred by this decision on the press and on individuals is, however, somewhat unclear, because the Court appeared to reserve consideration of broader questions than those presented by the facts of the case.[1297] It does appear, however, that government would find it difficult to punish the publication of almost any information by a nonparticipant to the process in which the information was developed to the same degree as it would be foreclosed from obtaining prior restraint of such publication.[1298] There are also limits on the extent to which government may punish disclosures by *participants* in the criminal process, the Court having invalidated a restriction on a grand jury witness's disclosure of his own testimony after the grand jury had been discharged.[1299]

Obscenity.—Although public discussion of political affairs is at the core of the First Amendment, the guarantees of speech and press are broader. "We do not accede to appellee's suggestion that the constitutional protection for a free press applies only to the exposition of ideas. The line between the informing and the entertaining is too elusive for the protection of that basic right."[1300] The right to impart and to receive "information and ideas, regardless of their social worth . . . is fundamental to our free society."[1301] Indeed, it is primarily with regard to the entertaining function of expression that the law of obscenity is concerned, as the Court has rejected

---

[1296] 435 U.S. at 838–42. The Court disapproved of the state court's use of the clear-and-present-danger test: "Mr. Justice Holmes' test was never intended 'to express a technical legal doctrine or to convey a formula for adjudicating cases.'" Id. at 842, quoting from Pennekamp v. Florida, 328 U.S. 331, 353 (1946) (Frankfurter, J. concurring).

[1297] Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975), in the context of a civil proceeding, had held that the First Amendment did not permit the imposition of liability on the press for truthful publication of information released to the public in official court records, id. at 496, but had expressly reserved the question "whether the publication of truthful information withheld by law from the public domain is similarly privileged," id. at 497 n.27, and *Landmark* on its face appears to answer the question affirmatively. Caution is impelled, however, by the Court's similar reservation. "We need not address all the implications of that question here, but only whether in the circumstances of this case Landmark's publication is protected by the First Amendment." 435 U.S. at 840.

[1298] *See* Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976).

[1299] Butterworth v. Smith, 494 U.S. 624 (1990).

[1300] Winters v. New York, 333 U.S. 507, 510 (1948). Illustrative of the general observation is the fact that "[m]usic, as a form of expression and communication, is protected under the First Amendment." Ward v. Rock Against Racism, 491 U.S. 781, 790 (1989). Nude dancing is also. Barnes v. Glen Theatre, Inc., 501 U.S. 560, 564 (1991).

[1301] Stanley v. Georgia, 394 U.S. 557, 564 (1969).