Freedom of Speech is More than a Slogan

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Employee Development Day 2018

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The First Amendment to the United States Constitution, 1791

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Application

- Applies to government actors: federal government, states, local governments, courts, public universities
- Little to no protection against private entities or individuals
What speech isn’t protected by the First Amendment

Generally not protected:
• Defamation
• True Threats
• Fighting Words
• Obscenity
• Child Pornography
• Commercial Advertising

Defamation

Editorial Ad in in NYT that defended student civil rights protestors in the South. L.B. Sullivan was a Montgomery, AL. Public Safety Commissioner and contended the ad was libel against him. He sued the NYT and clergy that placed the ad.

HOLDING: The First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when the statements are made with actual malice (knowledge they are false or reckless disregard for truth).
True Threats: 
**Watts v. United States** *(1969)*  
August 27, 1966—rally at the Washington Monument. After one speaker said young people need more education, Robert Watts said, “They always holler at us to get an education. And now I have already received my draft classification as I-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L.B.J.”

**HOLDING:** The statute initially requires the Government to prove a “true threat.” Watts used political hyperbole. Debate on political issues should be “uninhibited, robust, and wideopen,” and may include “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”

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Fighting Words Part I:  
**Chaplinsky v. New Hampshire** *(1942)*  
Chaplinsky was passing out pamphlets calling organized religion a racket. After a crowd gathered and began to riot, a police officer removed him. On the way to the police station they encountered the town marshal, whom Chaplinsky called a “damned racketeer” and a “damned Fascist.” He was then arrested.

**HOLDING:** The test is what people of common intelligence would understand would be words likely to cause an average person to fight. “The English language has a number of words and expressions which by general consent are ‘fighting words’ when said without a disarming smile and are likely to cause a fight. This includes obscene or profane insults.”

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Fighting Words Part II:  
**Cox v. Louisiana** *(1965)*  
Rev. Bert Cox was a civil rights activist who lead students in a protest against the arrest of their fellow students for picketing at a segregated restaurant. Counter protestors also showed up. The protestors began to sing hymns and chant and Cox, in a speech, encouraged the protestors to stage sit-in’s. The Sheriff ordered the group to disperse and they refused.

**HOLDING:** Students were peaceably protesting a view contrary to the majority of the community and there was no evidence of fighting words. There was no violence of threat of violence.
Obscenity: 
Miller v. California (1973)

Miller owned a mail order business for pornographic material. He sent out a brochure advertising his products that contained graphic images of a sexual nature. These were mailed to a restaurant where the owner and his mother, who had not requested the material, opened them. Miller was charged with unsolicited sexually explicit material in violation of a California law.

HOLDING: A work may be subject to state regulation where that work appeals to the prurient interest in sex; portrays, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and, taken as a whole, does not have serious literary, artistic, political or scientific value.

Remaining Generally Unprotected Speech

- Child Pornography
- Commercial Advertising (especially when deceptive)

What about “Hate Speech”? 

FREE SPEECH
Hate Speech Protected
Brandenburg v. Ohio (1969)

- Clarence Brandenburg was a leader of the local KKK in Cincinnati. He invited the local news station to cover a rally.
- Rally included speeches with offensive words and “if our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it’s possible that there might have to be some retribution taken.”

HOLDING: A law which, by its own words and as applied, punishes mere advocacy and forbids, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Also imposed an “imminent lawless action” test for speech.

Hate Speech Protected (cont)
Snyder v. Phelps (2011)

- Snyder’s parents sued Phelps family members and received a jury verdict for million of dollars.

HOLDING: Speech on public issues occupies the “highest rung of the hierarchy of First Amendment values and is entitled to special protection. A statement’s arguably inappropriate or controversial character...is irrelevant to the question whether it deals with a matter of public concern.”

So do we have any control over speech on campus?

NO.
Reasonable Time, Place, & Manner

• Rock Against Racism held a yearly concert at a bandshell in Central Park, which, over time, experienced issues.
• NYC adopted a Use Guideline for the bandshell which specified that the city would furnish high quality sound equipment and retain an independent, experienced sound technician for all performances.

HOLDING: The city's sound-amplification guideline is valid under the First Amendment as a reasonable regulation of the place and manner of protected speech.

So when can government actors regulate speech?

• The guideline is content neutral, since it is justified without reference to the content of the regulated speech.
• The guideline is narrowly tailored to serve significant governmental interests.
• The guideline leaves open ample alternative channels of communication.

What does Texas A&M-Corpus Christi say about speech on campus?

• Texas A&M Corpus Christi Procedure 07.03.01 C2.01
  – 1.1 Texas A&M University-Corpus Christi recognizes the rights of citizens to express their opinions through speech, writing, and action.
  – 3.1 University facilities are available for the expression of opinion. The University will maintain a content neutral approach to all expressive activities.
Texas A&M Corpus Christi Procedure 07.03.01.C0.0—Traditional Public Forums

• 3.2.1 Traditional public forums include the University's public streets, sidewalks, parks, and similar common areas. These areas are generally available for expressive activity, planned or spontaneous, for the individual or small groups (generally where a crowd of 25 or less will be present, and/or where an event is not promoted in advance, and/or where an event is not sponsored by a student organization) at any time without the need for reservation, or prior approval. (Obstructing or impeding the flow of vehicular or pedestrian traffic is prohibited).

Texas A&M Corpus Christi Procedure 07.03.01.C0.01 Designated Public Forums

• 3.2.2 Designated public forums include other parts of campus that may become temporarily available for expressive activity as designated by the University. These temporary locations, while in existence, will be treated similar to public streets, sidewalks, and parks in terms of access and availability for expressive activity. (Obstructing or impeding the flow of vehicular or pedestrian traffic is prohibited.)

Texas A&M Corpus Christi Procedure 07.03.01.C0.01 Limited Public Forums

• 3.2.3 Limited public forums have limited open access for public expression, or they may be limited to particular groups or to particular topics. Creation of, and access to, limited public forums for student publications may be requested through the office of University Center and Student Activities. Creation of, and access to, limited public forums for non-university publications may be requested through the office of University Services. The material distributed and the form of distribution may not violate state and federal law. The university will maintain its obligation to place reasonable limits on the times during which its limited public forums may be used by any particular individual or group.
Texas A&M Corpus Christi Procedure
07.03.01.C0.01 Non-public forums

- 3.2.4 Non-public forums are areas that are not traditional public forums or designated public forums. These include areas that are not by tradition or designation forums for public communication. These forums will be restricted to use for their intended purpose and are not available for public expressive activity. Examples include, but are not limited to, classrooms, residence hall rooms, faculty and staff offices, academic buildings, administration buildings, Health Center facilities, library, research and computer laboratories, and research facilities. The University will maintain its obligation to place reasonable limits on the times during which its nonpublic forums may be used by any particular individual or group.

Questions? Comments?

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