

Freedom of Speech

Part II

More Symbolic Speech

Texas v. Johnson

- Burning of American Flag is protected form of symbolic speech



Virginia v. Black

- Cross Burning is Not protected
- Typically carried out with the intent to intimidate (historical reference KKK)
- Attacking your government is one thing, but burning a cross means "attacking people, threatening life and limb,"



"The flag is a symbol of the government," "anyone can attack the government."

1989 Flag Protection Act

Congress passed the Flag Protection Act, legislatively challenging the Court's ruling and prohibiting the desecration of American flags

Whoever knowingly mutilates, defaces, physically defiles, burns, maintains on the floor or ground, or tramples upon any flag of the United States shall be fined under this title or imprisoned for not more than one year, or both. This subsection does not prohibit any conduct consisting of the disposal of a flag when it has become worn or soiled.

As used in this section, the term "flag of the United States" means any flag of the United States, or any part thereof, made of any substance, of any size, in a form that is commonly displayed.



**Texas v. Johnson
Flag burning Constitutional**

Exceptions to First Amendment – Freedom of Speech

- **Time, Place, and Manner Restrictions**
- Some based on content (obscenity)
- Others when, where, and how speech is allowed
- Towns and cities may require special permits, regulate loudspeakers, where political posters may be displayed, and a manner in which demonstrations may be conducted
- Would you be arrested if you were screaming at your neighbor at 3:00 a.m.?

1. Defamation = statement of alleged fact which is false and which harms the reputation of another person
 - slander = spoken,
 - libel = written

Tort Law = Civil Law Suits

Who is liable? Who is responsible?



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2. Fighting Words = utterances which inflict injury to tend to incite immediate breach of the peace

Fighting words are words intentionally directed toward another person which are so venomous and full of malice as to cause the hearer to suffer emotional distress or incite him/her to immediately retaliate physically.

Fighting words are not an excuse or defense for a retaliatory assault and battery. However, if they are so threatening as to cause apprehension, they can form the basis for a lawsuit for assault, even though the words alone don't constitute an assault.

“Verbal slap in the face”

3. Causing Panic = for example shouting fire in a crowded theater
4. Hate Speech – based on race, gender, color, religion, etc...
5. Establishment of Religion = for example Principal lead prayer
6. Obscenity
7. Sedition-during time of war



7. Incitement to Crime =incite someone else to commit a crime

- “kill the cops”, “kill whities”

OR what about lyrics, should they be considered incitement to a crime?

- Rap lyrics
- Anti war lyrics
- Mention of drugs
- Anarchy

Internet, Media, Broadcasting, etc...

- **EARLY CHILDHOOD** Titles rated EC - (Early Childhood) have content that may be suitable for ages 3 and older. Contains no material that parents would find inappropriate.
- **EVERYONE** Titles rated E (Everyone) have content that may be suitable for ages 6 and older. Titles in this category may contain minimal cartoon, fantasy or mild violence and/or infrequent use of mild language.
- **EVERYONE 10+** Titles rated E10+ (Everyone 10 and older) have content that may be suitable for ages 10 and older. Titles in this category may contain more cartoon, fantasy or mild violence, mild language, and/or minimal suggestive themes.
- **TEEN** Titles rated T (Teen) have content that may be suitable for ages 13 and older. Titles in this category may contain violence, suggestive themes, crude humor, minimal blood and/or infrequent use of strong language.
- **MATURE** Titles rated M (Mature) have content that may be suitable for persons ages 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content, and/or strong language.
- **ADULTS ONLY** Titles rated AO (Adults Only) have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.
- **RATING PENDING** Titles listed as RP (Rating Pending) - have been submitted to the ESRB and are awaiting final rating. (This symbol appears only in advertising prior to a game's release.)



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I got kicked off AOL for cursing in several messages. Doesn't that violate my free speech?

- No. Online services have the right to establish and enforce codes of conduct. When you sign up, you're using a service that belongs to a private company, and you are subject to its rules. Because the online service is a private company, its restrictions do not constitute government censorship and, therefore, do not violate the First Amendment

Filtering at school

- In 2000, Congress passed the Children's Internet Protection Act, which requires public schools and public libraries to install a "technology protection measure"
- In June 2003, the U.S. Supreme Court ruled in [United States v. American Library Ass'n, Inc.](#) that mandatory filtering in public libraries does not violate the First Amendment.

Could the president sue me if I posted a message critical of him?

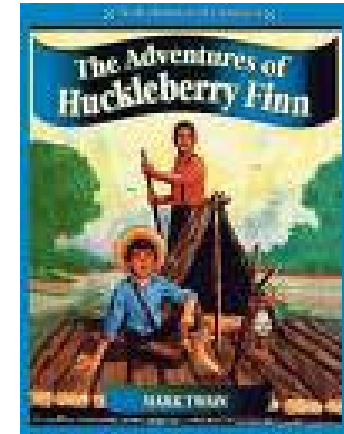
- No. With any free-speech issue pertaining to the Internet, established rules of First Amendment jurisprudence apply.
- If you were to post on a Web site a message criticizing a renowned scholar, a movie actor, or even the president, you could not be sued for libel unless “actual malice” was shown.
- If criticism turns into threat, however, the situation changes. Threats are not protected speech
- See [New York Times Co. v. Sullivan](#),

Can public employees be disciplined for the content of their blogs?

- That is a difficult question. Certainly, public employers have authority to prohibit employees from writing their blogs on employer time. The trickier question is whether a public employee can be disciplined for expression created on his or her own time. One theory is that since the expression was created off-duty, then the employer has no control over such content. A key factor could be whether the expression causes a disruption at the workplace. A few courts, for instance, have disciplined employees for racist comments they have made off-duty. This is a developing area of the law that merits close attention

Speech and Works of Art

- Books and censorship
 - Books ranging from *Adventures of Huckleberry Finn* to *Harry Potter*



Many books up to school district-First Amendment right to receive information and ideas

Books removed if “pervasively vulgar”



- How did 'Son of Sam' laws come to be known by their unusual name? Serial killer David Berkowitz terrorized the city of New York during much of 1976 and 1977. He killed and wounded several people, allegedly on orders from a spirit that inhabited the body of his neighbor whose first name was Sam. According to Berkowitz, this spirit spoke to him through Sam's dog. The media dubbed Berkowitz the "Son of Sam" after he referred to himself as such in a letter left at one of the crime scenes. After he was apprehended, Berkowitz was reportedly offered a substantial amount of money for the rights to his story. After hearing these reports, the New York
- Assembly in 1977 passed a law that was designed to prevent criminals from profiting from their crimes. This statute, which inspired several similar laws across the country, was nicknamed the "Son of Sam" law.