

STUDENT HANDOUT B

LIMITS ON FREEDOM OF SPEECH: HOW DOES THE COURT DECIDE?

Democracies have long grappled with what limits, if any, to place on the expression of ideas and beliefs. The First Amendment to the Constitution of the United States reads, in part, that "Congress shall make no law ... abridging the freedom of speech." Almost since the adoption of the Bill of Rights, however, people have disagreed about the meaning of this protection.

The Supreme Court of the United States has never interpreted the First Amendment to mean that anyone can say anything at any time. Instead, the Court has held that some types of speech or expression may be regulated, even as it has also granted protection to other types of speech or expression. Below are guidelines (or tests) that the Court has used at different times when assessing speech rights.

- **Time, Place, and Manner.** Did the expression occur at a time or place, or did the speaker use a method of communicating, that interferes with a legitimate government interest? First Amendment rights cannot be exercised at any time or in any situation. For example, demonstrators cannot block traffic or create excessive noise levels at certain times and in certain places. Time, place, and manner restrictions are content-neutral: they apply to every speaker in the same situation.
- **Clear and Present Danger.** Will this act of speech create a dangerous situation? The First Amendment does not protect statements that are uttered to provoke violence or incite illegal action.
- **Fighting Words.** Was something said face-to-face that would incite immediate violence? "Fighting words" are those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.
- **Libel and Slander.** Was the statement false, or put in a context that makes true statements misleading? You do not have a constitutional right to tell lies that damage or defame the reputation of a person or organization.
- **Obscenity.** Obscene materials do not enjoy First Amendment protection. The Supreme Court introduced a three-part test for obscenity:
 1. Would the average person, applying the contemporary community standards, viewing the work as a whole, find the work appeals to the prurient interest?
 2. Does the work depict or describe sexual conduct in a patently offensive way?
 3. Does the work taken as a whole lack serious literary, artistic, political, or scientific value?If the answer to all three questions is "yes," then the material is obscene. Although obscenity is not protected by the First Amendment, "indecent" speech is protected—for adults (not for children). The Court has held that "higher standards" may be established to protect minors from exposure to indecent material over broadcast media.
- **Conflict with Other Legitimate Social or Governmental Interests.** Does the speech conflict with other compelling interests? The Court has held that First Amendment rights must be balanced with other legitimate interests. For example, in times of war, the Court has sometimes held that First Amendment rights can be restricted when they are in conflict with the compelling interest of national security. First Amendment rights can also be limited in order to ensure the rights of the accused: a judge may place a "gag" order on participants in the trial, including attorneys, to prevent disclosure of prejudicial information before or during a trial. The Supreme Court established three criteria that must be met before a judge can issue a gag order and restrain the media during a trial.