



LESSON 10

FREEDOM OF SPEECH, PRESS, AND ASSEMBLY

(450-455)

UNIT 2

Civil Liberties and Civil Rights

(≈10%)

FREEDOM OF SPEECH - HISTORIC TEST

- The Clear and Present Danger Test
 - *Schenck v. United States*, 1919
 - Created a precedent that 1st Amendment guarantees of free speech are not absolute; Public authorities could limit free speech
 - Speech may be restricted when it incites violent action (imminent threat to society such as falsely shouting "Fire" in crowded theater)
 - *Brandenburg v. Ohio* (1969) – the SC limited the "clear and present danger test" by ruling that the government could punish the advocacy of illegal action only if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action"

NON-PROTECTED SPEECH

- Supreme Court holds that all speech is protected unless it falls into one of the four narrow categories – libel, obscenity, fighting words, and commercial speech.
- Libel and slander
 - Libel is a written defamation that falsely attacks a person's good name and reputation
 - Slander is a spoken defamation that falsely attacks a person's good name and reputation
 - *New York Times v. Sullivan* (1964) - Supreme Court established the guidelines for libel cases
 - Public officials and public figures must first prove "actual malice"
 - State laws may allow private persons to collect damages without proving actual malice
 - Limits on student speech
 - *Bethel v. Fraser* (1986) – school can suspend a student from school for making a speech full of sexual double entendres or innuendos.
- Obscenity (i.e. pornography)
 - *Miller v. California* (1973) gave constitutional definition of obscenity
 1. Appeals to prurient interest in sex,
 2. Patently offensive, and
 3. Must lack serious literary/artistic/political/scientific value.
 - If not meeting all three criteria, then not obscene
 - Sexually explicit materials about or aimed at minors are not protected by the First Amendment
- Fighting words
 - Governments may punish certain well-defined and narrowly limited classes of speech that by their very utterance inflict injury or tend to incite an immediate breach of peace
- Commercial speech
 - Commercial speech (such as advertising) is more restricted than are expressions of opinion on religious, political, or other matters.
 - The Federal Trade Commission (FTC) decides what kinds of goods may be advertised on radio and television and regulates the content of such advertising.

PROTECTED SPEECH

- Prior restraint
 - Blocking speech before it is given
 - Such action is presumed by courts to be unconstitutional
 - In the Pentagon Papers case, the court refused to impose prior restraint: the revelations may have embarrassed the government, but they did not endanger national security
- Symbolic speech
 - *Tinker v. Des Moines* (1969) – wearing black armband at school at protest Vietnam War
 - *Texas v. Johnson* (1989) – flag burning

FREEDOM OF THE PRESS – CONTROVERSIAL AREAS

- Executive Privilege
 - Right of presidents to withhold information from the courts.
 - *U.S. v. Nixon* (1974): A President generally does have executive privilege, but not in criminal cases. Even the President is not above the law.
- Shield laws
 - Protect reporters from having to reveal their sources.
 - The press claims that without them, their sources would “dry up,” and they would be unable to provide information to the public.
- Courts have protected press's right to publish
 - The 1966 Freedom of Information Act
 - Liberalized access to non-classified government records
 - Electronic Freedom of Information Act of 1996 requires most federal agencies to put their files online and to establish an index of their records - NASA a leader (UFO documents!)
 - Often described as the law that keeps citizens in the know about their government
 - Student Press
 - *Hazelwood v. Kuhlmeier* (1988)
 - High school newspaper was not a public forum and could therefore be restricted just as other high school activities could be restricted by school authorities

FREEDOM OF ASSEMBLY – PUBLIC FORUMS AND TIME, PLACE, AND MANNER REGULATIONS

- Governments may not specify what can or cannot be said, but they can make reasonable time, place, and manner regulations for the holdings of assemblies, protests, or gatherings
- Police must have right to order groups to disperse (public order)
- Problem of “heckler’s veto”: if govt. restricted assembly every time an opposing group claimed that there might be “violence or disorder,” there would be very few assemblies. Courts are therefore reluctant to impose prior restraint.
- The extent to which governments may limit access depends on the kind of forums involved:
 - Public forums (historically associated with free exercise such as streets, parks)
 - Limited public forums (public property such as city hall or schools after-hours)
 - Nonpublic forums (libraries, courthouses, government offices) - cannot interfere with normal activities in order to stage a public protest
- Civil disobedience is not a protected right

FREE RESPONSE QUESTION (FRQ) REVIEW

1. The First Amendment guarantees freedom of speech, but there are limits on that speech.
 - (a) Explain the “clear and present danger test.”
 - (b) Explain libel and slander.

2. The First Amendment’s freedom of speech has been interpreted to include symbolic speech.
 - (a) Explain the significance of the Supreme Court decision in *Tinker v. Des Moines*.
 - (b) Explain the significance of the Supreme Court decision in *Texas v. Johnson*.

3. The Watergate scandal ended the presidency of Richard Nixon.
 - (a) Define executive privilege.
 - (b) Explain the outcome of *United States v. Nixon*.

MULTIPLE CHOICE (MC) REVIEW

1. In *Miller v. California*, the U.S. Supreme Court held that material must have a deficit of meaningful artistic, literary, political, or scientific worth to be considered _____.
(A) illegal
(B) obscene
(C) hate speech
(D) fighting words
(E) a prior restraint
2. A false written statement is considered to be _____, while utterances that have the power to provoke individuals to acts of violence are considered _____.
(A) defamation, slander
(B) slander, libel
(C) libel, defamation
(D) libel, fighting words
(E) slander, defamation
3. *New York Times Co. v. Sullivan* held that there must be proof of which of the following in order to find libel against a public figure?
(A) property loss
(B) actual malice
(C) an audience
(D) a written record
(E) actual harm
4. The doctrine of prior restraint prevents the government from prohibiting speech or publication _____.
(A) that is obscene
(B) after the fact
(C) that is illegal
(D) that is critical of the government
(E) before the fact
5. What kind of speech is by its very utterance intended to inflict injury or incite an immediate breach of peace?
(A) hate speech
(B) symbolic speech
(C) political speech
(D) fighting words
(E) obscenity
6. Journalists argue that they must have the right to _____ in order to protect their sources' confidentiality.
(A) plea bargaining
(B) prior restraint
(C) withhold information
(D) fighting words
(E) double jeopardy