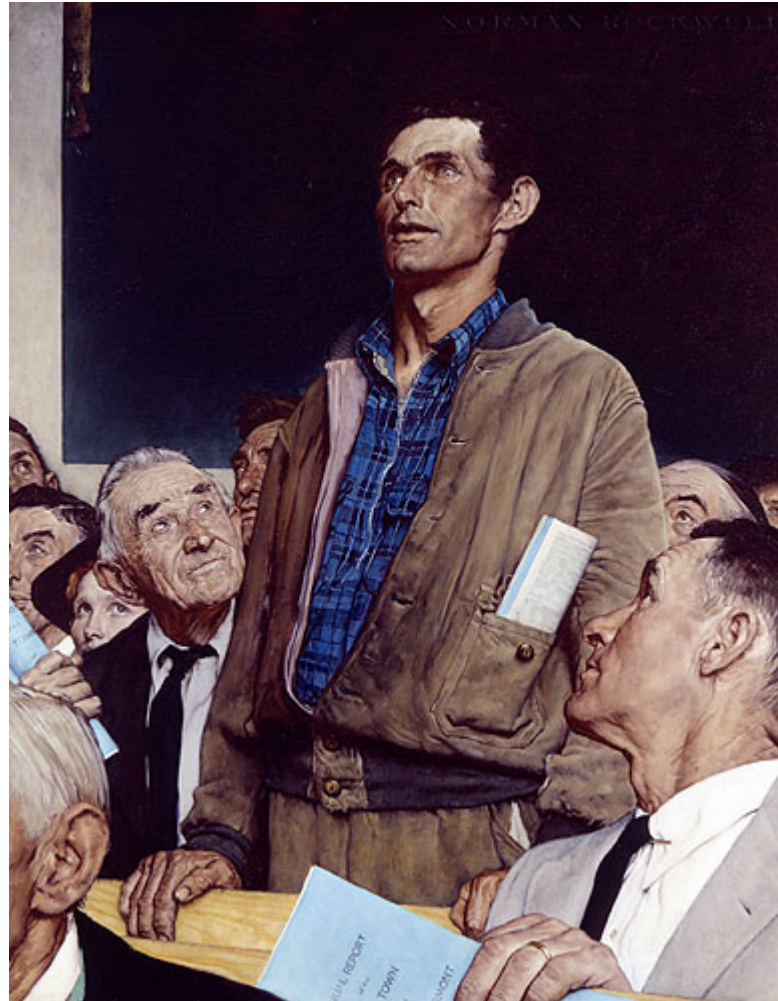


Introduction to Law

Chapter 37 – Freedom of Speech





- the speech clause of the First Amendment exists to protect ideas that may be unpopular or different from those of the majority
- the Constitution protects not only the person making the communication, but also the person receiving it
- freedom of speech is not an absolute as some types of expression are illegal

The Importance of Free Speech

- the essential, core political purpose of the First Amendment is self-governance: enabling people to obtain information from a diversity of sources, make decisions, and communicate these decisions to the government
- the First Amendment also provides us with a “marketplace of ideas”...rather than have the government establish the truth, freedom of speech enables the truth to emerge from diverse opinions
- free speech also gives society a “safety-valve” that helps the people deal with change in a more orderly, stable way



- while some forms of speech may be regulated by the government, the expression of an opinion or point of view is usually protected
- Conflicts involving freedom of expression are often the most difficult to resolve because they frequently involve a clash of fundamental values



I. Forms of Expression Not Fully Protected

- A. Obscenity – anything that treats sex or nudity in an offensive or lewd manner, exceeds recognized standards of decency, and lacks serious literary, artistic, political, or scientific value
- the 1973 Supreme Court case *Miller v. California* developed the three-part test to determine if material is obscene:
 1. Would the average person applying contemporary community standards find that the material, taken as a whole, appeals to prurient interest?
 2. Does the work depict or describe, in a patently offensive way, sexual conduct specifically outlawed by applicable state law?
 3. Does the work, taken as a whole, lack serious literary, artistic, political, or scientific value?
 - and more recently state and local governments have developed new strategies for dealing with pornography

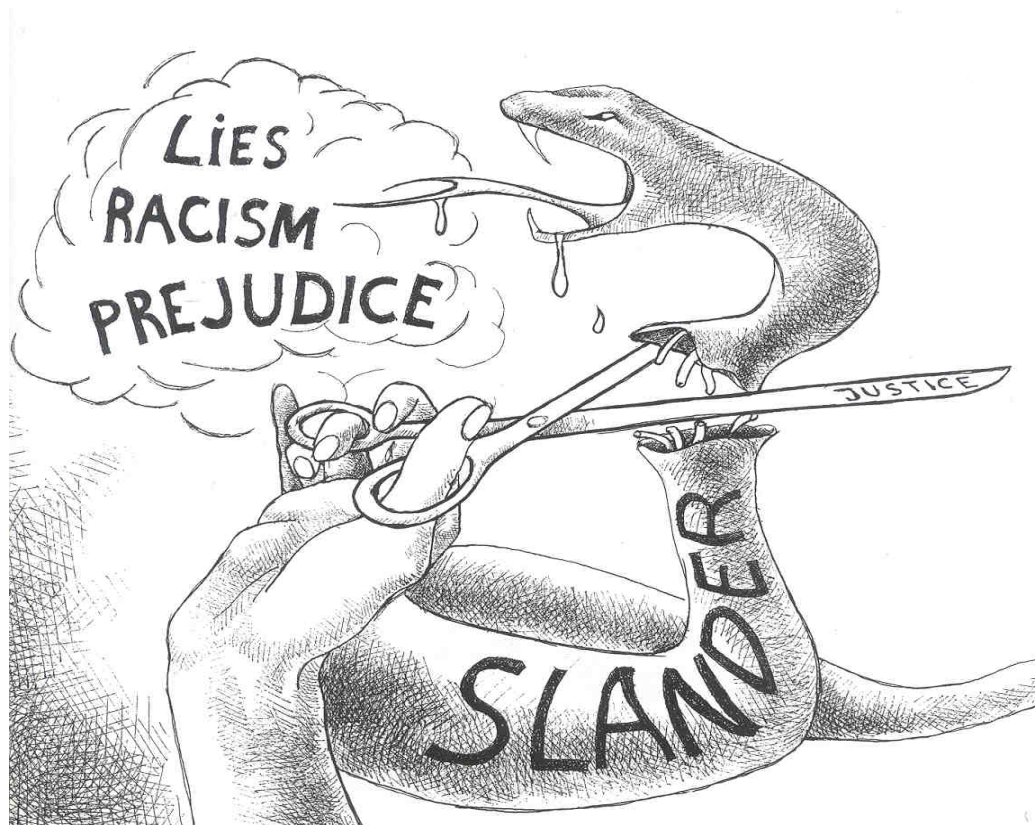


B. Defamation – a false expression about a person that damages that person's reputation

slander – spoken defamation

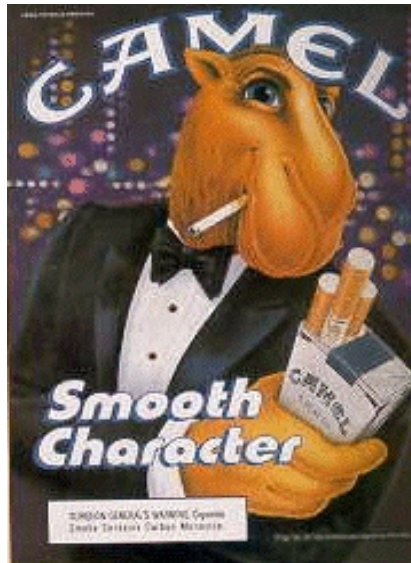
libel – written defamation

- If the statement, no matter how damaging or embarrassing, is proven to be true, the plaintiff cannot win a defamation lawsuit



C. Commercial Speech – speech that is directed at the buying or selling of goods or services

- in general, courts allow the government to ban commercial speech that is false or misleading or that provides information about illegal products



Forms of Speech Not Protected

Fighting Words – words spoken face-to-face that are likely to cause an imminent breach of the peace between the speaker and the listener

- like a verbal “slap in the face”, but is rarely applied by the Court today
- in addition to face-to-face speech, the police must also decide how to handle the responses of a large audience to speech



- prior to the 1950s, the courts used the “**clear and present danger test**”, but by the late 1960s the courts began using the “**incitement test**” for cases in which the speaker urged the audience to take lawful action
- the incitement test requires that the unlawful action be likely to occur within a short period of time, granting greater protection to the speaker

Hate Speech – bigoted speech attacking or disparaging a social or ethnic group or a member of such a group

- these laws are often vague and difficult to enforce



Time, Place, and Manner Restrictions

Laws may regulate expression in one of two ways:

- some regulate expression based on content, they may prescribe *what* a speaker is allowed to say
- others regulate the time, place, and manner of expression...the *when*, *where*, and *how*



- The courts must analyze regulations put in place by municipalities by first determining whether the site affected is a **public forum**
 - regulations for public and nonpublic forums must also be viewpoint-neutral

Symbolic Speech

- Conduct that expresses an idea (sit-ins, flag waving, demonstrations, and wearing armbands, buttons, shirts with messages)
- the government cannot regulate symbolic speech merely because they disapprove of the message

