

FREE EXPRESSION IN A DEMOCRATIC SOCIETY

I. Objectives

As a result of participating in this lesson, students should be able to:

- Describe the freedoms outlined in the First Amendment
- Explain pure and symbolic speech
- Examine some of the legal limits placed on free expression
- Define hate speech
- Evaluate arguments for limiting or protecting hate speech
- Express their personal positions regarding whether to protect or limit hate speech

II. Materials

- Reading
- PowerPoint Presentation
- Deliberation Handout
- Handout for Essay Contest
- Index Cards (optional)
- Flip chart or whiteboard
- Pen for flip chart or whiteboard

III. Procedures

Time

This lesson is meant to take approximately **50 minutes**. This time may vary slightly depending on the class. Approximate times for each section of the lesson are listed.

Introduction Activity (5 Minutes)

- Provide an overview of the lesson: Tell students that they will be spending the class time discussing freedom of expression as outlined in the First Amendment to the United States Constitution and exploring whether or not freedom of expression is a protected or limited freedom. NOTE: It may be important to tell students ahead of time that you will be discussing hate speech and that you expect them to show maturity in discussing a topic that has the potential to cause hurt feelings for some of their classmates.
- To provide a hook that focuses students' attentions, ask: **What freedoms do we have in the United States?** Write their responses on a board or flip chart paper (Alternative activity: pass out note cards and ask students to write an answer to the question before having a discussion) Circle any of the students responses that address the freedoms listed in the First Amendment **[CORRALATES WITH SLIDE #2]**

Defining Freedom of Expression (15 Minutes)

- Ask: Who can tell me what the First Amendment is? (solicit answers)
- Show the text of the First Amendment and ask for a volunteer to read it out loud **[CORRALATES WITH SLIDE #3]**

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- C. Explain that some people say that the First Amendment includes five freedoms and explain each of the freedoms **[CORRALATES WITH SLIDE #4]** Talking points include:
1. **Religion:** Our government does not support one religion that everyone in our country belongs to, interfere with people's religious beliefs, or make laws that favor one religion over another.
 2. **Speech:** Our government does not interfere with people's ability to express ideas and opinions or exchange information.
 3. **Press:** The government must allow publishers (in all media) to gather and report news and opinions without interference in their content.
 4. **Assembly:** The government does not stop people from gathering for peaceful and lawful purposes.
 5. **Government Petition:** People may join together to seek change from our government or relief through our court system or other lawful government action.
- D. Explain that expression includes both pure speech (what people say or write) and symbolic speech (what people communicate non-verbally) **[CORRALATES WITH SLIDE #5]**. Ask the students if they can come up with examples of pure speech (i.e., letters to the editor, writing a blog or putting a posting on your Facebook page) and symbolic speech (i.e., wearing a t-shirt, holding a protest, wearing a plastic bracelet to support a cause).
- E. Define some of the limits on free expression. Explain that over the years the Supreme Court has placed some limits on free expression. **[CORRALATES TO SLIDE #6]** Talking points include:
- **Defamation:** Defamatory speech refers to false statements that harm another's reputation.
 - **Fighting Words:** The fighting words doctrine holds that certain words are so insulting that their utterance inflicts injury or can lead to acts of violence by the person(s) to whom the remarks are addressed.
 - **Causing Panic:** In situations in which a reasonable person could conclude that speech could cause real harm to others, speech can be limited. The classic example of speech which causes panic is falsely shouting "fire" in a crowded theater.
 - **Obscenity:** In what has become known as the Miller Test, material or expressions are considered obscene if: 1) The average person, applying contemporary community standards, would find the work lewd or unwholesome; 2) The work depicts or describes sexual conduct in an offensive way; and 3) The work lacks serious literary, artistic, political, or scientific value.
 - **Commercial Speech:** Courts allow the government to ban commercial speech (such as advertising) that is false, misleading, or provides information about illegal products or services.

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Ask students why the Court might have placed these limits [**NOTE:** There's no right or wrong answers here, this is just a way of helping students to participate in some critical thinking.]

Deliberating on the Issue of Hate Speech

- A. Define hate speech and then provide some examples (i.e., burning a cross on someone's lawn, hanging someone in effigy, using a racial slur, saying something sexist, making fun of homosexuals, etc.) [**CORRALATES TO SLIDE #7**]
- B. Explain to students that they are going to participate in a deliberation concerning hate speech and that a deliberation is a meaningful discussion where people share ideas and analyze arguments on both sides of an issue.
- C. Show the deliberation question [**CORRALATES TO SLIDE #8**]
- D. Explain the procedures [**CORRALATES TO SLIDE #9**] which include:
 1. Each student will silently read lines 48 to 133 in the reading "*Freedom of Expression in our Democracy*"
 2. Each student will fill out the Deliberation handout
 3. Each student will pair with another student (easiest to have them pair with a student sitting next to them) and share what they have written in their Deliberation handout
 4. Bring the class back together into a full group and ask for volunteers to share their personal opinions (make sure that students are fully aware that they are not to castigate anyone for their opinions and that it's important to be able to disagree without being disagreeable). First ask: By show of hands, how many of you think we should limit free speech. Why? After time to share ask: By show of hands how many of you think we should protect free speech? Why?

Wrapping Up (5 Minutes)

- A. Ask the wrap up question [**CORRALATES TO SLIDE #10**]
- B. Make sure to ask if they have any other questions

Freedom of Expression in Our Democracy

The Role of Free Expression

1 The First Amendment of the United States Constitution states: “*Congress shall*
2 *make no law respecting an establishment of religion, or prohibiting the free exercise*
3 *thereof; or abridging the freedom of speech, or of the press; or the right of the people*
4 *peaceably to assemble, and to petition the government for a redress of grievances.*”

5 This amendment covers what some people call “The Five Freedoms” including:

- 6 1. **Religion:** Our government does not support one religion that everyone in our
7 country belongs to, interfere with people’s religious beliefs, or make laws that
8 favor one religion over another.
- 9 2. **Speech:** Our government does not interfere with people’s ability to express
10 ideas and opinions or exchange information.
- 11 3. **Press:** The government must allow publishers (in all media) to gather and
12 report news and opinions without interference in their content.
- 13 4. **Assembly:** The government does not stop people from gathering for peaceful
14 and lawful purposes.
- 15 5. **Government Petition:** People may join together to seek change from our
16 government or relief through our court system or other lawful government
17 action.

18 Collectively, these rights are often referred to as freedom of expression. It’s
19 important to note that freedom of expression includes more than “pure speech” –
20 what people say or write. It also protects “symbolic speech” -- nonverbal expression
21 whose purpose is to communicate ideas. It can include what a person wears, or
22 works of art, or even marching in a parade.

Portions of this reading were adapted from "Freedom of Expression," developed as part of Deliberating in a Democracy, www.deliberating.org. (c) 2006, 2007 Constitutional Rights Foundation Chicago. Used with permission.

23 Democracies believe that free expression is essential to their societies. Free
24 expression, they argue, distinguishes them from non-democratic countries. When
25 ideas can be heard, examined, and questioned, society can develop culturally,
26 economically, and scientifically. Free expression also allows people to vent their
27 anger or frustration with the government and with other problems. It can therefore
28 decrease the likelihood that people will turn to violent means to express themselves.
29 Freedom of expression remains one of the most basic rights in a democracy.

Limits on Free Expression

30 While democratic governments protect freedom of expression, they also retain
31 certain powers to limit it. Freedom of expression has never been considered absolute
32 in the United States. While in recent years the Supreme Court has increased
33 protections for those who support unpopular ideas, the Court has also held that the
34 government retains the power to limit or punish the content of certain kinds of
35 speech they consider harmful or dangerous. Some examples of speech that can be
36 limited by the government include:

- 37 • **Defamation:** Defamatory speech refers to false statements that harm
38 another's reputation.
- 39 • **Fighting Words:** The fighting words doctrine holds that certain words are so
40 insulting that their utterance inflicts injury or can lead to acts of violence by
41 the person(s) to whom the remarks are addressed.
- 42 • **Causing Panic:** In situations in which a reasonable person could conclude
43 that speech could cause real harm to others, speech can be limited. The classic
44 example of speech which causes panic is falsely shouting “fire” in a crowded
45 theater.

- 46 • **Obscenity:** In what has become known as the Miller Test, material or
47 expressions are considered obscene if: 1) The average person, applying
48 contemporary community standards, would find the work lewd or
49 unwholesome; 2) The work depicts or describes sexual conduct in an offensive
50 way; and 3) The work lacks serious literary, artistic, political, or scientific
51 value.
- 52 • **Commercial Speech:** Courts allow the government to ban commercial
53 speech (such as advertising) that is false, misleading, or provides information
54 about illegal products or services.

Freedom Shaped by History

55 Many democratic societies are composed of people from different races, cultures,
56 languages, religions, or ethnicities. Often tension arises between the majority and
57 distinct religious, ethnic, cultural, or ideological minorities. This tension can
58 increase during times of economic or social unrest, or when a group believes that it
59 is being treated unfairly. Some of these grievances go back many centuries.

60 More fundamentally, the histories of democratic societies have shaped their laws.
61 Democracies share a common devotion to free expression, equality, and respect for
62 their citizens. But how they balance these values depends, in part, on their specific
63 histories.

64 The United States was born in a war for independence from Great Britain.
65 Americans understood the war in part as a rebellion against British restrictions on
66 their rights. As one result, the First Amendment to the U.S. Constitution protects
67 freedom of expression.

68 Yet after independence, the United States sanctioned legal slavery for millions of
69 persons of African descent. Only after 80 years and a civil war did Americans abolish
70 slavery. Another century passed before African Americans began to gain their full
71 and equal rights, often in the face of vicious racism and violent resistance.

Hate Speech

72 As one result of our past, many American cities and states have identified certain
73 expressions as hate speech. Hate speech is a term for speech (either pure or
74 symbolic) that attacks or disparages a person or group of people based on their social
75 or ethnic group, such as race, gender, age, sexual orientation, or any other
76 distinction that might be considered by some as a liability.

77 One example of an attempt to limit hate speech happened in Virginia. For over 50
78 years, Virginia had a law forbidding the burning of a cross with intent to intimidate
79 a person or group of persons. The law stated that a burning cross in itself was
80 sufficient evidence “of intent to intimidate.” In 1998, a man named Barry Black
81 burned a cross at a small rally of the Ku Klux Klan held on private property. Black
82 had the permission of the land’s owner, who also participated. A police officer
83 observed the burning cross and arrested Black.

84 Black was found guilty of violating the anti-cross burning law. He appealed his
85 decision to the Supreme Court. In 2003, the Court made a distinction between the
86 act of burning the cross and the intent of the persons who burned it. The Court held
87 that “the First Amendment permits Virginia to outlaw cross burnings done with the
88 intent to intimidate.” However, the Court also held that the act of cross-burning can
89 be protected expression: if a burning cross were used at a political rally, for example,
90 it would be a statement of ideology or group solidarity. The act of cross burning

91 cannot be unconstitutional, the Court said, because such a law might infringe on the
92 “lawful political speech at the core of what the First Amendment is designed to
93 protect” (Virginia v. Black, 2003).

Protecting Hate Speech

94 Some people believe that hate speech is not a crime. They think that although
95 certain expressions are painful and hateful, they are a small price to pay for
96 freedom. What is legal is not necessarily acceptable or desirable. The better way to
97 counter hateful expression is to condemn such thoughts and to shun those who say
98 them. With arguments, persuasion, and even “loving” speech, everyone can use free
99 expression to promote the kind of society he or she desires.

100 Others who would permit hate speech argue that laws prohibiting it are
101 unworkable. Such laws require the government to determine the intent of the
102 speaker. This is a difficult and often impossible task. If a word or symbol can mean
103 something to one person and something very different to another person, then the
104 law is the wrong way to classify such expressions. The government can use its time
105 better by punishing hateful actions, not presumed hateful intent.

106 People who would permit hate speech worry that laws punishing it will have the
107 effect of “chilling” free speech: people will be less likely to say what they really mean.
108 They argue that once the government has the power to punish expression, the
109 definition of prohibited speech will grow. Governments should be permitted to
110 control only what people can and cannot do, not what they say or believe.

Limiting Hate Speech

111 People who want to limit hate speech argue that there is no absolute freedom of
112 expression. Instead, society must decide—through its laws—the boundaries of free

113 speech. By prohibiting hate speech, the government balances freedom of expression
114 with other democratic values like respect and tolerance. If government gets the
115 balance wrong, then the people can always change it.

116 Further, people who argue for placing limitations on hate speech believe that
117 harm prevented by limiting speech is more important than the freedom those
118 limitations restrict. They believe that the effect of hate speech is much more than
119 hurt feelings; that verbal attacks are a symptom of a history of discrimination that
120 interferes with civil rights. In fact, they believe that the intent of hate speech is to
121 provoke violence.

122 Opponents also believe that punishing hate speech increases equal protection for
123 all persons, not only the powerful. Hate speech directed against marginal or
124 despised minority groups is particularly damaging. It strikes against persons who
125 lack power. Punishing hateful speech helps prevent unequal power relations from
126 turning into overt discrimination.

What Do You Think?

127 The struggle to balance civil rights with civil liberties is a difficult one. In a
128 democratic society we can be forced to make difficult decisions when we face a
129 situation of competing rights. The struggle to balance freedom of expression with
130 dignity and respect for all people remains a central challenge for every democracy.
131 What do you think? When you consider both sides of these competing rights, do you
132 believe our democracy should protect or limit hate speech?

Selected Resources

Arbetman, Lee P., and Edward L. O'Brien, "Freedom of Speech" (Chapter 37), *Street Law: A Course in Practical Law*, 7th Edition (Columbus, OH: McGraw-Hill, 2005), pp. 445-462.

Congressional Research Service, "First Amendment: Annotations, p. 7, Freedom of Expression: The Philosophical Basis," *The Constitution of the United States of America: Analysis and Interpretation* (Washington, DC: Library of Congress, 1992; updated 2000 by FindLaw.com), <http://caselaw.lp.findlaw.com/data/constitution/amendment01/07.html#1>.

Constitutional Rights Foundation, "Should Hate Be Outlawed?" *Bill of Rights in Action*, 10:3 (Summer 1994, updated July 2000), http://www.crf-usa.org/bria/bria10_3.html#hate.

Virginia v. Black, 538 U.S. 343 (2003), <http://laws.findlaw.com/us/538/343.html>.

FREE EXPRESSION DELIBERATION

Question: In our democracy, should the government protect or limit hate speech?

Defining the Reasons

After reading “Freedom of Expression in our Democracy” explain the reasons given for protecting and limiting free speech.

Some people say that the government should protect hate speech because:

1. _____
2. _____
3. _____

Of all those reasons, the best reason given to protect hate speech is:

Some people say that the government should limit hate speech because:

1. _____
2. _____
3. _____

Of all those reasons, the best reason given to limit hate speech is:

My Personal Opinion

Write your opinion on this issue. Should our government protect or limit free expression? Make sure you share the reasons you have to support your opinion.
