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“Fighting Words” Teacher Page

Overview:

The First Amendment guarantees freedom of speech, even for groups we frequently know are “outside of the mainstream.” However, what if the words being uttered are “so offensive” that they might lead others to violent action—are those words protected?

The Supreme Court has frequently been asked to decide whether speech can be limited because it constitutes “fighting words,” as was first defined in the 1942 case of *Chaplinsky v. New Hampshire*. In that case, the court created what it called the “Fighting Words Doctrine.”

Objectives:

Students will:

- investigate limits on freedom of speech as defined by the Supreme Court
- review various refinements on the “Fighting Words Doctrine”
- draw conclusions about the effectiveness of the Doctrine and the scope of the First Amendment as it pertains to “fighting words”

Web Sites Used in this Lesson:

Send students to <http://www.freedomforum.org/packages/first/fightingwords/>, which is the Freedom Forum’s information page on the Fighting Words Doctrine. The page includes an overview of the doctrine, as well as how various Supreme Court cases have refined the doctrine over the years. Also, send them to http://www.legalaffairs.org/issues/May-June-2002/scene_rosen_mayjun2002.html, which is a Legal Affairs article from the May–June, 2002 issue, which is critical of the doctrine.

Strategies:

Introduce this lesson with a discussion of what students believe constitutes protected speech under the umbrella of the First Amendment. You might also note or ask the class whether words or slurs uttered against THEM should be considered protected under the First Amendment.

Distribute the question sheets to students, and ask them to access the Web sites (alternately, you can print the resources for students). Note: The Legal Affairs article may not print correctly, and a link for alternative printing instructions is located on the site.

Students should then answer the questions based on the readings and their interpretations of each reading.

Wrap-Up:

After completing the questions, lead the class in a discussion of whether the First Amendment protects any statement, even racial or ethnic slurs.

Extension Activity:

Direct students to look at the decision in the *Chaplinsky* case (<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=315&invol=568>) and write an editorial either applauding or condemning the decision.

“Fighting Words” Student Worksheet

Introduction:

While the First Amendment protects various forms of expression, in 1942 the Supreme Court created a special category called “fighting words,” which were not considered protected speech and for which a person might be prosecuted if they uttered them. Specifically, in the case of *Chaplinsky v. New Hampshire*, the Supreme Court noted that “fighting words” were not included in the umbrella of First Amendment protection.

Directions:

All Web links for this lesson can be found at:

<http://www.socialstudies.com/civilrightslinks.html>

“What Is the Fighting Words Doctrine?”—The Freedom Forum

<http://www.freedomforum.org/packages/first/fightingwords/>

Answer the following questions:

1. According to this page, what did the New Hampshire statute prohibit? Why was Chaplinsky arrested?

2. Describe the “fighting words doctrine” that the Supreme Court developed as a result of the *Chaplinsky* decision.

3. According to this site, how many “fighting words” convictions has the Supreme Court upheld since *Chaplinsky*?

4. How was the “Fighting Words Doctrine” revised by the Supreme Court in *Terminiello v. Chicago*? In *Street v. New York*? In *R.A.V. v. City of St. Paul*?

“Fighting Words”—Jeffrey Rosen, *Legal Affairs*

http://www.legalaffairs.org/issues/May-June-2002/scene_rosen_mayjun2002.html

5. Jeffrey Rosen, the author of this story, begins with the case of Sami Al-Arian, a former computer engineering professor at the University of South Florida who was fired after he was named by television commentator Bill O’Reilly as a founder of the “Islamic Committee for Palestine.” In your view, based on the “Fighting Words Doctrine,” was Al-Arian’s firing justified? Explain your answer.
6. According to Rosen, what was the legal basis for most of the “fighting words” legislation of the 19th and 20th centuries? How does Rosen explain the reasoning behind this purpose for “fighting words” legislation?
7. According to Rosen, how did the “Chaplinsky Court” define “fighting words”? How does Rosen explain that the impact of “fighting words” in the 1940s was much different than what would have existed in the 19th century?
8. Rosen cites a work by James Q. Whitman, “Enforcing Civility and Respect: Three Societies,” to argue that even the labeling of a person as a “damned fascist” in the 1940s would not be considered “fighting words.” What reasoning does Rosen use to explain this view?

9. At the close of his essay, Rosen notes that “It’s tempting to make exceptions to basic liberties in wartime, but courts—and citizens—should resist the temptation. Isn’t a free country what we’re fighting for?” In your view, is wartime a special circumstance where fundamental freedoms, such as freedom of speech and/or press, can or should be limited? Explain your answer.
10. In light of the continued refining of the “Fighting Words Doctrine,” would it be appropriate for the Supreme Court to overturn the precedent set in *Chaplinsky*? Write a paragraph supporting your view.