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Foul Language and Free Speech

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Foul language and free speech

Bono and Nicole take note! The Supreme Court upheld the federal Communications Commission policy of punishing broadcasters for transmitting even fleeting expletives. No longer should Bono, as he did during the Golden Globes Awards, use the "f-word" to accentuate his delight at being honored. And Nicole Richie should not, as she did during the Billboard Music Awards, use the "s-word" to describe counselor stuck to her Prada purse.

Thus far, all the Supreme Court held was that the FCC followed administratively procedures in adopting its new policy. The court left for another day the question of whether the policy violated the First Amendment. And as Justice Ruth Bader Ginsburg ominously warned: The First Amendment casts a "long shadow" over the commission's action.

But while all of this might be riveting news for those in the media industry — especially broadcasters who complain that cable and satellites have an unfair advantage because they are not subject to the indecency rules — most Americans probably wonder what all the fuss is about.

After all, why shouldn't foul language be banned from broadcast radio and TV? Why not ban it from satellites and cable, too? Doesn't such language just corrupt public discourse? Doesn't it subject our children to such language as proper?

Sure, we all know foul language is sometimes appropriate. No one would expect the soldiers in "Saving Private Ryan" to react to their buddies being slaughtered with "good darts in.

But that is why the application of the FCC rule depends upon the context in which the language is used.

Yet outside these special contexts, why not ban foul language in the mass media? Indeed, why not ban it in all public settings?

Why should we have to say "(blank) happens" bumper stickers when driving our cars or "(blank) the war" placards when passing a group of protesters? Why can't the protesters just say "I hate the war?"

Probably the best insight into these questions can be found in Cohen v. California, a Supreme Court decision from the Vietnam War era. Paul Cohen had been convicted of distributing the peace for walking into a courthouse with a jacket that said "(blank) the draft." In a landmark ruling, the Supreme Court overturned his conviction, concluding it violated Cohen's free speech rights.

Of course, the court recognized that Cohen's message might offend some, if not most, people. But it said nothing outside our homes we are "often captive" to objectionable speech. The court noted that any other approach would "empower a majority to silence defendants simply because the majority didn't like their messages. Yet defendants in U.S. history have included everyone from the revolutionaries who advocated independence from Britain to Martin Luther King Jr.

The court also recognized the practical difficulties of determining which epithets should be denied First Amendment protection. For while the court acknowledged that the "f-word" is "more distasteful than others of its genre," it also recognized that "one man's vulgarity can be "another's lyric."

Even further, the Court said that speech serves two functions — it conveys ideas as well as emotions. — and that the First Amendment needs to protect both. "(Blank) the draft," for instance, conveys more passion than "I hate the draft."

The court rejected the "facile assumption" that specific words can be forbidden without "running the risk of suppressing ideas in the process."

Aware of the consequences of its decision, the court acknowledged that the constitutional right of free expression is a "powerful medicine."

One that constrains the government from deciding what people can hear and instead puts "the decision as to what views shall be voiced largely into the hands of each of us."

The court conceded that the product of this medicine might be "bewilful tumult, discord, and even offensive utterances."

Yet, the court assured, are merely the "side effects" of the "broaden enduring values." our commitment to open debate helps us achieve. Indeed, the court proclaimed, this "verbal cacophony" is "not a sign of weakness but of strength."

In what might seem a surprising and annoying instance of individual distasteful abuse of privilege, in truth, is the sound of our fundamental societal values being upheld. Which, as Bono might say, is "blanking brilliant!"

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