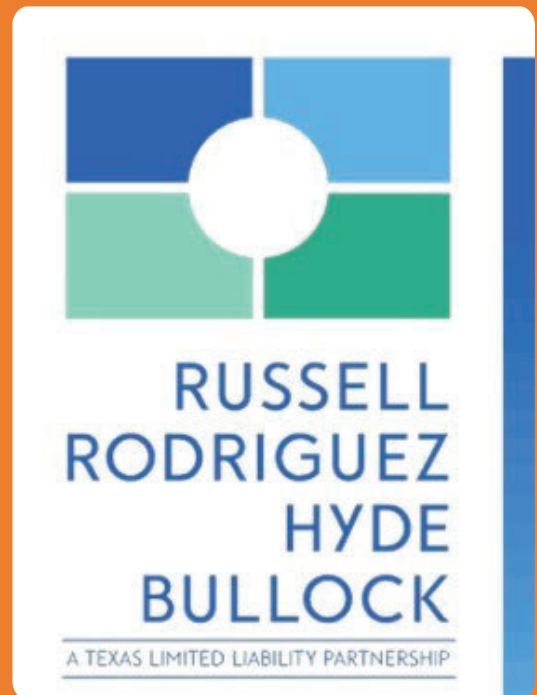


Turn Out the Lights – The Party’s Over

Municipal Regulation of Live Performance

Bradford E. Bullock
Partner



He Who Must Not Be Named

- A satiric humorist named George Carlin recorded a 12-minute monologue entitled “Filthy Words” before a live audience in a California theater. He began by referring to his thoughts about “the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever.” He proceeded to list those words and repeat them over and over again in a variety of colloquialisms. The transcript of the recording, which is appended to this opinion, indicates frequent laughter from the audience.

F.C.C. v. Pacifica Found., 438 U.S. 726, 729, 98 S. Ct. 3026, 3030, 57 L. Ed. 2d 1073 (1978).



No-No Words



Oh, F\$*#!

- [No-no words] place in the hierarchy of First Amendment values was aptly sketched by Mr. Justice Murphy when he said: “Such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.”

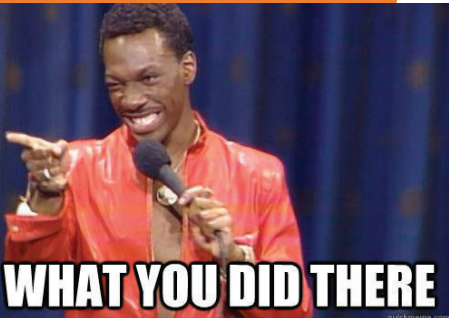
F.C.C. v. Pacifica Found., 438 U.S. 726, 746, 98 S. Ct. 3026, 3039, 57 L. Ed. 2d 1073 (1978)

In Other Words, We Make This Up As We Go

- It is a characteristic of speech such as this that both its capacity to offend and its “social value,” to use Mr. Justice Murphy's term, vary with the circumstances. Words that are commonplace in one setting are shocking in another. To paraphrase Mr. Justice Harlan, one occasion's lyric is another's vulgarity.

F.C.C. v. Pacifica Found., 438 U.S. 726, 747, 98 S. Ct. 3026, 3039, 57 L. Ed. 2d 1073 (1978)

I See What You Did There



- APPENDIX TO OPINION OF THE COURT
- The following is a verbatim transcript of “Filthy Words” prepared by the Federal Communications Commission.

Aruba-du, ruba-tu, ruba-tu. I was thinking about the curse words and the swear words, the cuss words and the words that you can't say, that you're not supposed to say all the time, [I] cause words or people into words want to hear your words. Some guys like to record your words and sell them back to you if you can. (laughter) I heard on the telephone, write down what you say. A guy who used to be in Washington, knew that his phone was tapped, used to answer, Fuck Hoover, yes, go ahead. (laughter) Okay, I was thinking one night about the words you couldn't say on the public, ah, airplanes, um, the ones you definitely wouldn't say, ever, [I] cause I heard a lady say bitch one night on television, and it was cool like she was talking about, you know, ah, well, the bitch is the first one to notice that in the litter Johnie right (murmur) Right. And, uh, bastard you can say, and hell and damn so I have to figure out which ones you couldn't and ever and it came down to seven but the list is open to amendment, and in fact, has been changed, uh, by now, ha, a lot of people pointed things out to me, and I noticed some myself. The original seven words were, shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. Those are the ones that will curve your spine, grow hair on your hands and (laughter) maybe, even bring us, God help us, peace without honor (laughter) um, and a bourbon. (laughter) And now the first thing that we noticed was that work fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. (laughter) You want to be a punist? *732 doesn't really—it can't be on the list of basic words. Also, cocksucker is a compound word and neither half of that is really dirty. The word—the half sucker **3042 that's merely suggestive (laughter) and the word cunt is a half-way dirty word, 50% dirty—dirty half the time, depending on what you mean by it. (laughter) Uh, remember when you first heard it, like in 8th grade, you used to giggle. And the cock crowed three times, heh (laughter) the cock—three times, it's in the Bible, cock in the Bible. (laughter) And the first time you heard about a cock-fight, remember—What? Huh? raw. It ain't that, are you stupid? man. (laughter, clapping) It's chickens, you know, (laughter) Then you have the four letter words from the old Anglo-Saxon fame. Uh, shit and fuck. The word shit, uh, is an interesting kind of word in that the middle class has never really accepted it and approved it. They use it like, crazy but it's not really okay. It's still a rude, dirty, old kind of gushy word. (laughter) They don't like that, but they say it, like, they say it like, a lady now in a middle-class home, you'll hear most of the time she says it as an expletive, you know, it's out of her mouth before she knows. She says, Oh shit oh shit, (laughter) oh shit. If she drops something, Oh, the shit hurt the broccoli. Shit. Thank you. (footsteps fading away) (papers ruffling)

Read it! (from audience)

Shit! (laughter) I won the Grammy, man, for the comedy album. Isn't that groovy? (clapping, whistling) (murmur) That's true. Thank you. Thank you man. Yeah, (murmur) (continuous clapping) Thank you man. Thank you. Thank you very much, man. Thank, no. (end of continuous clapping) for that and for the Grammy, man, [I] cause (laughter) that's based on people liking it man, yeh, that's ah, that's okay man. (laughter) Let's let that go, man. I got my Grammy, I can let my hair hang down now, shit. (laughter) Hi! So! Now the word shit is okay for the man. At work you can say it like crazy. Mostly figuratively. Get that shit out of here, *753 will ya? I don't want to see that shit anymore. I can't cut that shit, buddy, I've had that shit up to here. I think you're full of shit myself. (laughter) He don't know shit from Shinola. (laughter) You know that? (laughter) Always wondered how the Shinola people felt about that (laughter) Hi, I'm the new man from Shinola, (laughter) Hi, how are ya? Nice to see ya. (laughter) How are ya? (laughter) Boy, I don't know whether to shit or wind my watch. (laughter) Guess, I'll shit on my watch. (laughter) Oh, the shit is going to hit de fan. (laughter) Built like a brick-shit-house. (laughter) Up, he's up shit's creek. (laughter) He's had it. (laughter) He hit me, I'm sorry. (laughter) Hot shit, holy shit, tough shit, eat shit. (laughter) shit-eating grin. Uh, whoever thought of that was ill. (murmur) (laughter) He had a shit-eating grin! He had a what? (laughter) Shit on a stick. (laughter) Shit in a handbag. I always like that. He ain't worth shit in a handbag. (laughter) Shitty. He acted real shitty. (laughter) You know what I mean? (laughter) I got the money back, but a real shitty attitude. Heh, he had a shit-fie. (laughter) Wow! Shit-fie. Where! Glad! wasn't there. (murmur, laughter) All the animals—Bull shit, horse shit, cow shit, rat shit, bat shit. (laughter) First time I heard bat shit, I really came apart. A guy in Oklahoma, Boggs, said it, man. Aw! Bat shit. (laughter) Vera reminded me of that last night, ah (murmur). Snake shit, slicker than owl shit. (laughter) Get your shit together. Shit or get off the pot. (laughter) I got a shit-pot full of them. (laughter) I got a shit-pot full, all right. Shit-head, shit-head, shit in your heart, shit for brains. (laughter) shit-face, heh (laughter) I always try to think how that could have originated; the first guy that said that. Somebody got drunk and fell in some shit, you know. (laughter) Hey, I'm shit-face. (laughter) Shit-face, today. (laughter) Anyway, enough of that shit. (laughter) The big one, the word fuck that's the one that hangs them up the most. [I] cause in a lot of cases that's the very act that *754 hangs them up the most. So, it's natural that the word would, uh, have the same effect. It's a great word, fuck, nice word, easy word, cute word, kind of. Easy word to say. One **3043 syllable, short u. (laughter) Fuck. (murmur) You know, it's easy. Starts with a nice soft sound fuh ends with aah. Right? (laughter) A little something for everyone. Fuck (laughter) Good word. Kind of a proud word, too. Who are you? I am FUCK. (laughter) FUCK OF THE MOUNTAIN. (laughter) Tune in again next week to FUCK OF THE MOUNTAIN. (laughter) It's an interesting word too, [I] cause it's got a double kind of a life—personality—dual, you know, whatever the right phrase is. It leads a double life, the word fuck. First of all, it means, sometimes, most of the time, fuck. What does it mean? It means to make love. Right? We're going to make love, yeh, we're going to fuck, yeh, we're going to fuck, yeh, we're going to make love. (laughter) we're really going to fuck, yeh, we're going to make love. Right? And it also means the beginning of life, it's the act that begins life, so there's the word hanging around with words like love, and life, and yet on the other hand, it's also a word that we really use to hurt each other with, man. It's a heavy, it's one that you have toward the end of the argument. (laughter) Right? (laughter) You finally can't make out. Oh, fuck you man, I said, fuck you. (laughter, murmur) Stupid fuck. (laughter) Fuck you and everybody that looks like you. (laughter) man. It would be nice to change the movies that we already have and substitute the word fuck for the word kill, wherever we could, and some of those movie clichés would change a little bit. Madfuckers still on the loose. Stop me before I fuck again. Fuck the ump, fuck the ump, fuck the ump, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again. (laughter) The other shit one was, I don't give a shit. Like it's worth something, you know? (laughter) I don't give a shit. Hey, well, I don't take no shit. (laughter) you know what I mean? You know why I don't take no shit? (laughter) *755 [I] cause I don't give a shit. (laughter) If I give a shit, I would have to pack shit. (laughter) But I don't pack no shit cause I don't give a shit. (laughter) You wouldn't shit me, would you? (laughter) That's a joke when you're a kid with a worm looking out the bird's ass. You wouldn't shit me, would you? (laughter) It's an eight-year-old joke but a good one. (laughter) The additions to the list. I found three more words that had to be put on the list of words you could never say on television, and they were fart, turd and twat, those three. (laughter) Fart, we talked about, it's harmless, it's like tits, it's a cute word, no problem. Turd, you can't say but who wants to, you know? (laughter) The subject never comes up on the panel so I'm not worried about that one. Now the word twat is an interesting word. Twat! Yeh, right in the twat. (laughter) Twat is an interesting word because it's the only one I know of, the only slang word applying to the, a part of the sexual anatomy that doesn't have another meaning to it. Like, ah, snatch, box and pussy all have other meanings, man. Even in a Walt Disney movie, you can say, We're going to snatch that pussy and put him in a box and bring him on the airplane. (murmur, laughter) Everybody loves it. The twat stands alone, man, as it should. And two-way words. Ah, ass is okay providing you're riding into town on a religious feast day. (laughter) You can't say, up your ass. (laughter) You can say, stuff it! (murmur) There are certain things you can say it's weird but you can just come so close. Before I cut, I, uh, want to, ah, thank you for listening to my words, man, fellow, uh space travelers. Thank you man for tonight and thank you also. (clapping, whistling)

F.C.C. v. Pacifica Found., 438 U.S. 726, 751–55, 98 S. Ct. 3026, 3041–43, 57 L. Ed. 2d 1073 (1978)

What CAN You Do?

- This Court has long held that regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment.

On the other hand, so-called “content-neutral” time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication.

City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 46–47, 106 S. Ct. 925, 928, 89 L. Ed. 2d 29 (1986)

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