

The Final Round¹

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Resolved: Inflammatory speech and publications should not be protected under the First Amendment.

A Note about the Notes

I've reproduced my flow chart for the final round at Farmington High School augmented by what I remember from the debate. The notes are limited by how quickly I could write and how well I heard what was said. I'm sure the debaters will read them and exclaim, "That's not what I said!" I apologize for any errors, but I hope debaters will appreciate this insight: what a judge hears may not be what they said or wish they had said.

There are two versions of the notes. The one below is chronological, reproducing each speech in the order in which the arguments were made. It shows how the debate was actually presented. The second is formatted to look more like my written flow chart, with each contention "flowed" across the page as the teams argued back and forth. It's close to the way I actually take notes during the debate.

The Final Round

The final round at Farmington High School was between the Joel Barlow team of Brendan Coppinger and Nicolo Mazaro on the Affirmative and the Joel Barlow team of Cormac Commiskey and Cooper D'Agostino on the Negative. The debate was won by the Negative team.

1) First Affirmative Constructive

- a) The internet has changed the world, but not for the better
- b) Introduction
- c) Statement of the Resolution
- d) Definitions
 - i) "Inflammatory": demeaning or destructive of human dignity and leading to violence
- e) A1²: Inflammatory speech makes the US unsave
 - i) E.g., "Innocence of Muslims" (IoM³) video

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² "A1" indicates the Affirmative first contention, "N2" the Negative second contention and so forth.

³ Introduces "IoM" as an abbreviation for "Innocence of Muslims"

- ii) E.g., Westboro Baptist protest of military funerals
 - iii) E.g., Hamden High School race riots in the '60's and '70's
 - f) A2: Dignity has priority over speech
 - i) The 1st Amendment is valuable
 - ii) Aff believes it should be reinterpreted, as judicial review has done since the time of Marbury vs. Madison
 - iii) Brandenburg and Schenk decisions show the limits imposed in the past
 - iv) Other democracies present examples
 - (1) UK, Germany limit free speech for safety or compelling state interest
 - v) 14th Amendment requires that we not disrespect or dehumanize others
 - g) A3: The resolution will improve our international and internal relations
 - i) In the US, the Westboro Baptist protests have led to suicides and homicides
 - (1) We want to eliminate all of the "cides"
 - ii) Internationally, just look at what occurred in Libya
 - (1) Martin Luther King said this will only restrain the heartless.
- 2) Cross-Ex of First Affirmatives**
- a) Your definition includes any speech intended to dehumanize? And denigrate human dignity
 - b) Who decides? You can easily tell civil discourse versus something like IoM. Intent is obvious, and can be determined by a court.
 - c) What about the rap "Cop Killer" by Ice-T? I don't listen to music
 - d) By A2 you mean to apply the Bryer-Ginsberg test? Yes, we would compare the value of the right to the position taken by other democracies.
 - e) Isn't the point of an inalienable right that it can't be violated? We believe there is a compelling interest to limit it.
 - f) CIA said the Libyan attack was a planned terrorist act? You can't say it isn't all related. al Qaeda is a problem due to the West's lack of respect for Muslims. al Qaeda is in part our own problem.
- 3) First Negative Constructive**
- a) Intro
 - b) Resolution
 - c) Definitions
 - i) Aff definition was very broad
 - ii) They have no plan, no judge, it's entirely in the eye of the beholder
 - iii) There is no enactment mechanism.
 - (1) Would it be retroactive? Permit the government to invade homes?
 - d) N1: Free speech is central to democracy
 - i) The high regard is indicated by the fact that it is the 1st Amendment
 - (1) One of the earliest court cases, Zimmerman, deals with free political speech
 - (2) Boston Tea Party was an act of protest that was clearly free speech
 - (3) "The Feminine Mystique" spurred the women's rights movement
 - ii) But we despise to this day:
 - (1) Alien and Sedition Acts
 - (2) Wilson's World War I efforts to suppress speech
 - e) N2: Implementation is not consistent with the Constitution. Consider two tests:

- i) Scalia—it would violate a fundamental right
- ii) Palko—ordered liberty
 - (1) “anything intended” and “destructive of dignity” fits
 - (2) Gov’t would have power to suppress almost anything
- f) N3: Impossible to implement effectively
 - i) Any criticism of Muslims would seem to denigrate
 - ii) Can’t regulate the internet w/out totalitarian restrictions.

4) Cross-Ex of First Negative

- a) Are the Scalia and Palko precedents the only ones used by the Supreme Court? No, but we have two precedents, you only have one.
- b) What is wrong with Breyer/Ginsberg precedent? It fails the strict scrutiny test.
- c) The Scalia test is based on tradition? The decision should be ingrained in the fundamental characteristics of the Constitution.
- d) Was slavery ingrained? Not everywhere. And it was ended by an amendment.
- e) Have we ever changed our interpretation of the 1st Amendment? We’ve always protected the basic rights narrowly defined.
- f) Don’t we have a tradition of amending interpretations through judicial review? Not the 1st Amendment.
- g) Can’t we review through the Scalia test? Your changes wouldn’t pass the test.
- h) What prevents you from robbing a bank? I don’t have an armored car, a weapon, a ski mask...
- i) So, are you going to rob a bank? No.

5) Second Affirmative Constructive

- a) Intro
- b) I’ll cover the Neg then the Aff
- c) First on Aff Plan and Definitions
 - i) “intended to cause”, where intention is assessed by the courts
 - ii) If you break the law, you pay a penalty.
- d) N1: Free speech is great, but can be altered for cause
 - i) E.g., deaths in Libya, Westboro suicides
 - ii) Hate speech directed at religion is bad
- e) N2: Interpretation of 1st Amendment altered many times
 - i) Schenk and Brandenburg set limits
 - ii) Tea Party speech, Feminine Mystique didn’t dehumanize or incite violence
 - iii) Scalia wouldn’t find this a fundamental right
 - iv) Palko test would distinguish between criticism of Obama’s policies and a racial attack
- f) N3: Election ads could still criticize a Muslim as a bad politician
 - i) Nothing prevents discussions of policy
 - ii) NSA filters everything on the internet
 - (1) Courts can decide which websites are in violation
 - (2) Law creates a deterrence effect. Some will break it and be punished, as a result many others won’t

6) Cross-Ex of Second Affirmative

- a) Would Breyer determine inflammatory speech? The cases would start in local courts

- b) Unelected judges? Judges and juries. We noted 8 deaths resulting from this type of speech.
- c) What would happen if the court changes? You have to show me a case where new judges made a difference. I haven't seen them.
- d) You say this would apply to cases where free speech caused harms. What about the 1950's Red Scare and resultant suicides? We have always had censorship in wartime.
- e) Were we at war with the Soviets in the 1950's? We were fighting proxy wars.
- f) Explain the NSA. What do they do? Sit behind desks and filter stuff.
- g) Do you think the NSA has this power? It would have saved our ambassador in Libya.
- h) Do you have any idea what is inflammatory? Juries will know.
- i) So you would have to give a checklist to the NSA? Courts could do it.
- j) So if it offends your religion...?

7) Second Negative Constructive

- a) (Sings) "Imagine there's no heaven..."
 - i) Some b this a shameful, anti-religious song
 - ii) Aff would have to ban John Lennon
 - iii) Judges opinions vary, so can't know ahead of time
- b) A1: "Arab Spring" not due to video
 - i) Region is unstable, needs help to stabilize
 - ii) We should help the victims, not penalize everyone
 - iii) The Red Scare let to criticism of everything Socialist
- c) A2: No free speech, no human dignity
 - i) Aff definition is very broad, so people would lose the ability to speak
- d) A3: We improve relations by working things out
 - i) Fundamental differences exist
 - ii) Ambassador Stevens was killed by terrorists
 - iii) Regulating speech is dangerous
- e) N2: Regulation doesn't pass the strict scrutiny test
 - i) A compelling interest might exist in narrowly defined cases
 - ii) Aff definition is not narrowly tailored
- f) N3: If we could implement the resolution
 - i) No Jon Stewart, no Fox News, no MSNBC
 - ii) Who would be safe from the NSA?

8) Cross-Ex of Second Negative

- a) Is Paul McCartney violent? Depends
- b) Did he write to be inflammatory? John Lennon wrote to counter religion
- c) Did they incite violence? Depends on your point of view
- d) Did they intend to incite violence? They denigrated human dignity
- e) By singing about peace? By being anti-religious
- f) Free speech is required for dignity? Yes
- g) What are you doing now? Voicing my opinion
- h) You're Italian and you're wrong (shouts)! I can embrace that
- i) What about the suicides caused by the Westboro Baptists? You can't compromise everyone's free speech for the acts of a few.

9) First Negative Rebuttal

- a) Intro
- b) Res
- c) Three key issues: morality, legality, practicality
- d) Morality
 - i) Aff treat symptoms, not disease
 - ii) Why to people speak this way? Underlying tensions persist
 - iii) Neg would settle the issues
- e) Legality
 - i) Aff definition is not narrowly tailored
 - ii) Free speech is protected by US legal canon
- f) Practicality
 - i) It's impossible to enact
 - ii) Censorship panels can't stop publication
 - iii) Publication can still lead to violence
 - iv) Can't stop internet publication
- g) Neg restricts hate speech, libel and slander
 - i) Already capable of prosecuting
- h) Isn't stripping people of free speech inflammatory?

10) First Affirmative Rebuttal

- a) Intro
- b) Neg isn't attacking Aff policy, but one much worse
- c) Morality
 - i) Is there a critical misunderstanding?
 - ii) Innocence did not resolve tensions
 - iii) The video caused the problem
 - iv) Al Qaeda is the result of the West's failure to be respectful
 - v) We have to humanize our opponents
 - vi) The attacks are due to what the Neg calls "symptoms"
- d) Legality
 - i) The US has a living constitution
 - ii) Neg brings up cases where policy changed
 - iii) Current policy is flawed. Aff improves it
 - iv) Details are wobbily, but we are high school seniors
 - v) Leave interpretation to the courts, courts will keep things in bounds
 - vi) We don't need to be authoritarian to implement the resolution

1) Second Negative Rebuttal

- a) I'm lucky to be able to speak; in an Aff world I couldn't
- b) Morality
 - i) Aff says it will solve all problem
 - ii) The choice of Shariah law versus the Constitution is not due to inflammatory speech
- c) Legality
 - i) The question is how much change to the interpretations: where do we draw the line?
 - ii) Aff plan fails under current precedents

- iii) The propose a drastic change, to the point of obscurity, if adapted
- d) Practicality
 - i) There will always be different views
 - ii) Who gets the power to decide
 - iii) Given the complexity of the internet, how will this change the NSA?
 - iv) If you believe in debate, negate, otherwise we will have to debate in a speakeasy

2) Second Affirmative Rebuttal

- a) Intro
- b) Is it really a civil liberty to denigrate a religious group?
- c) Practicality
 - i) We can stop the most notable instances
 - (1) Stopping “Innocence...” would have saved 8 lives in Libya
 - ii) Neg blows definition out of proportion
 - (1) Aff said “denigration leading to violence”
 - iii) Def is tailored to protect the US, but not permit speech that affronts dignity
 - iv) We are talking about language that needs to be changed
 - (1) Is Westboro’s message worth more than all those lives
 - v) Internet needs to be cleaned out.