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# THE F-WORD: A JURISPRUDENTIAL TAXONOMY OF AMERICAN MORALS (IN A NUTSHELL)

Robert F. Blomquist\*

## I. INTRODUCTION

The controversial comedian, George Carlin, provides an apt introduction to the F-word subject in a segment of his 1970 album, *Occupation Foole*. In *Federal Communications Commission v. Pacifica Foundation*,<sup>1</sup> Carlin's creative performance in *Occupation Foole* was indirectly attacked in a radio station licensing dispute. In his album, Carlin opined:

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 . . . . 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 maybe, even bring us, God help us, peace without honor . . . . And now the first thing that we noticed was that word fuck was really repeated in there because the word motherfucker is a compound word and it's another form of the word fuck. [If y]ou want to be a purist it doesn't really—it can't be on the list of basic words. . . . Then you have the four letter words from the old Anglo-Saxon theme. Uh, shit and fuck. . . .

. . . .

. . . *The big one, the word fuck that's the one that hangs them up the most.* 'Cause in a lot of cases that's the very act that hangs them up the most. So, it's natural that the

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1. *Federal Communications Comm'n. v. Pacifica Found.*, 438 U.S. 726 (1978).

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 syllable, short u. Fuck. You know, it's easy. Starts with a nice soft sound fuh ends with a *kuh*. Right? A little something for everyone. Fuck. Good word. Kind of a proud word, too. Who are you? I am *FUCK, FUCK OF THE MOUNTAIN*. Tune in again next week to *FUCK OF THE MOUNTAIN*. It's an interesting word too, 'cause it's got a double kind of 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, yeah, we're going to fuck. . . . 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. Right? You finally can't make out. Oh, fuck you, man. I said, fuck you. Stupid fuck. Fuck you and everybody that looks like you, 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 these 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, fuck the ump. Easy on the clutch Bill, you'll fuck that engine again.<sup>2</sup>

Indeed, the F-word, in all its stunning variations and word combinations,<sup>3</sup> is a form of "American slang"—the body of words and expressions frequently used by or intelligible to most of the general American public but not accepted as proper usage by the majority.<sup>4</sup> As one commentator has pointed out, Americans love to use slang:

Americans . . . use . . . slang more than any other people.

. . . .

American slang reflects the kind of people who create

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2. *Id.* at 751-54 (emphasis added).

3. *See infra* Part II.

4. Stuart Berg Flexner, *Preface* to *NEW DICTIONARY OF AMERICAN SLANG* at xvii (Robert L. Chapman ed., 1986) ("No word can be called slang simply because of its etymological history; its source, its spelling, and its meaning in a larger sense do *not* make it slang. Slang is best defined by a dictionary that points out who uses slang and what 'flavor' it conveys.").

and use it. Its diversity and popularity are in part due to the imagination, self-confidence, and optimism of our people. Its vitality is in further part due to our guarantee of free speech and to our lack of a national academy of language or any "official" attempt to purify our speech.<sup>5</sup>

Slang allows us to communicate with each other "more quickly and easily, and more personally, than does a standard word."<sup>6</sup> Moreover, "[s]ometimes we resort to slang because there is no one standard word to use."<sup>7</sup> In addition, "[w]e also use slang because it often is more forceful, vivid, and expressive than are standard usages. Slang usually avoids the sentimentality and formality that older words often assume."<sup>8</sup> Furthermore, slang can be used in those situations where we do not want to commit ourselves too strongly to what we are saying.<sup>9</sup>

In an interesting way, slang implicates gender issues. While there are, no doubt, a number of foul-mouthed females in America, males—particularly young males—are fond of slang for its shock value where "[t]he rapid tempo of life, combined with a sometimes low boiling point of males, can evoke emotions—admiration, joy, contempt, anger—stronger than our old standard vocabulary can convey."<sup>10</sup> For example, "[i]n the stress of the moment a man is not just in a standard 'untenable position,' he is *up the creek*. Under strong anger a man does not feel that another is a mere 'incompetent'—he is *a jerk* or *a fuck-off*."<sup>11</sup>

5. *Id.* at xx. Furthermore, Americans are restless and frequently move from region to region and from job to job. This hopeful wanderlust, from the time of the pioneers through our westward expansion to modern mobility, has helped to spread regional and group terms until they have become general slang. Such restlessness has created constantly new situations which provoke new words.

*Id.*

6. *Id.* at xxii.

7. *Id.*

8. *Id.*

9. *See id.* at xxiii.

10. Flexner, *supra* note 4, at xxv.

11. *Id.* (emphasis in original). It is important, however, to understand that ["slang"] actually does not exist as an entity except in the minds of those of us who study the language. People express themselves and are seldom aware that they are using the artificial divisions of "slang" or "standard" . . . . [L]anguage is language, an attempt at communication and self-expression.

*Id.* at xxviii.

This article focuses on the following inquiry: what are the types of cases where American courts have had the occasion to adjudicate disputes involving the F-word, or its variations, and how have they resolved those disputes? I call this inquiry a “jurisprudential taxonomy of American morals” because in the process of labeling, reporting, or legally characterizing the use of the F-word in their opinions, judges have explicitly or implicitly made some interesting moral assessments of the use of language in particular circumstances.<sup>12</sup> Part II, as a foundation for this inquiry, covers the definitions, etymological origins, and modern-day multiplicity of American meanings of the F-word and its permutations.<sup>13</sup> Part III examines and categorizes a number of American cases that have mentioned the F-word or one of its variations.<sup>14</sup> In this regard, the article focuses on the judges’ reactions to use of the F-word (e.g., good/bad, harmful/harmless, protected/unprotected) and the legal consequences realized by the speaker or writer who utilized the F-word. Finally, Part IV includes a short and tentative synthesis and critique of F-word jurisprudence.<sup>15</sup>

## II. THE COMPLEX ETYMOLOGY AND LEXICOLOGY OF THE F-WORD: A MULTIPLICITY OF MEANINGS

### A. *Early History*

“Fuck” is a word “related to words in several . . . Germanic languages, such as Dutch, German, and Swedish, that

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12. In a fascinating, non-judicial (at least at this point in time), moral debate on use of another extremely controversial and socially taboo slang word—the “N-word”—the National Association for the Advancement of Colored People (NAACP) threatened to boycott *Merriam Webster’s Collegiate Dictionary* because of the Dictionary’s continued use of the N-word to describe a “black person,” without indicating that the word is a “racial slur.” See Eric Felten, *Improper Nouns*, THE WKLY. STANDARD, June 1, 1998, at 18. As a result of the threatened boycott, according to Felten, “Merriam Webster convened a multicultural group of in-house experts and outside consultants to determine whether, and how, to change the way it describes a wide range of opprobrious slang and other vulgarities.” *Id.*

13. See *infra* Part II.

14. See *infra* Part III. For the remainder of this article, whenever I mention the “F-word” I mean to include the original Anglo-Saxon, four-letter word, “fuck,” and all potential embellishments and variations discussed *infra* in Part II.

15. See *infra* Part IV.

have sexual meanings as well as meanings like 'to strike' or 'to thrust'.<sup>16</sup> Amazingly, "[d]espite the importance of the F-word, scholars have yet to discover an example of *fuck* (or any of its Germanic relatives) before the fifteenth century."<sup>17</sup>

Why the relatively recent evidence of usage of the F-word? One author has cogently reasoned that the simplest and most probable explanation is "that the word carried a taboo so strong that it was never written down in the Middle Ages."<sup>18</sup> Moreover, "[t]he fact that its earliest known appearance in English, around 1475, is in a cipher lends surprising, though limited, support to this interpretation."<sup>19</sup> A related reason for the F-word's relatively recent usage is the abundant record of legal "restrictions on certain forms of speech from the earliest times in England."<sup>20</sup> By way of illustration, "one seventeenth century law from Kent reads: 'If anyone in another's house . . . shamefully accosts him with insulting words, he is to pay a shilling to him who owns the house.'<sup>21</sup>

16. THE F-WORD at xxiv (Jesse Sheidlower ed., 1995).

17. *Id.* at xxiv-xxv (emphasis in original).

18. *Id.* at xxv. According to one author, a "taboo" is:

a ban or prohibition; the word comes from the Polynesian languages where it means a religious restriction, to break which would entail some automatic punishment. As it is used in English, taboo has little to do with religion. In essence it generally implies a rule which has no meaning, or one which cannot be explained. Captain Cook noted in his log-book that in Tahiti the women were never allowed to eat with the men, and as the men nevertheless enjoyed female company he asked the reason for this taboo. They always replied that they observed it because it was right. To the outsider the taboo is irrational, to the believer its righteousness needs no explaining. Though supernatural punishments may not be expected to follow, the rules of any religion rate as taboos to outsiders. For example, the strict Jewish observance forbids the faithful to make and refuel the fire, or light lamps or put them out during the Sabbath, and it also forbids them to ask a Gentile to perform any of these acts.

Mary Douglas, *Taboo*, in 10 MAN, MYTH & MAGIC 2767 (Richard Cavendish, et al. eds., 1983).

19. SHEIDLOWER, *supra* note 16, at xxv.

20. *Id.*

21. *Id.*

Since many of the earliest examples [of the use of the F-word] come from Scottish sources, some scholars have suggested that it is a Norse borrowing. Norse [had] a much greater influence on the northern and Scottish varieties of English than on southern dialects. But the recently discovered 1528 example—found in that common source of bawdy jokes, a marginal note to a manuscript—and the ciphered example[s] are both from England and prove that *fuck* was not restricted to Scotland in its earliest days. The explanation for the profusion of

### B. *Modern History*

During the early seventeenth century, Shakespeare peppered several of his plays with vulgarities.<sup>22</sup> While it appears that he never actually used the word "fuck" itself, there are "several examples in [his work] of probable puns or references to the word."<sup>23</sup> Apparently, the word was included as a main entry in a dictionary for the first time in 1671.<sup>24</sup> The euphemism "F-word" was not used until the early twentieth century.<sup>25</sup>

### C. *"Fuck" as a Noun*

The word "fuck" is used as a noun in several contexts: first, as "an act of copulation";<sup>26</sup> second, as "copulation itself";<sup>27</sup> third, "a person considered as a sexual partner";<sup>28</sup> fourth, "a jot" (as in "not care a fuck");<sup>29</sup> fifth, "anything whatsoever"<sup>30</sup>—used in the negative (as in "he didn't know fuck"); sixth, "used with *like*, *as* or *than* as an emphatic standard of comparison"<sup>31</sup> (as in "it's raining like a fuck outside"); seventh, "a bit of difference"—used in the negative (as in "it don't make a fuck who it is");<sup>32</sup> eighth, "semen";<sup>33</sup> ninth, "a despicable person, usually a man";<sup>34</sup> and tenth, "an evil turn of events; a cheat of fortune" (as in "I graduated with honors and he flunked out—ain't that a fuck").<sup>35</sup>

The noun form of "fuck" has been used by Americans in a variety of noun-phrases. Chief examples of these noun-phrases include: "flying fuck,"<sup>36</sup> "for fuck's sake,"<sup>37</sup> "fuck of,"<sup>38</sup>

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Scottish examples might simply be that the taboo against the word was less strong in Scotland.

*Id.*

22. *Id.* at xxvi.

23. *Id.*

24. *Id.* at xxvii.

25. See SHEIDLOWER, *supra* note 16, at xxix.

26. *Id.* at 90.

27. *Id.* at 91.

28. *Id.*

29. *Id.* at 92.

30. *Id.* at 94.

31. SHEIDLOWER, *supra* note 16, at 94.

32. *Id.*

33. *Id.*

34. *Id.* at 95.

35. *Id.* at 96.

36. *Id.* at 96. "Flying fuck" means "[a] damn; the least bit—usually used in the negative, with *give*. Also in euphemistic variants" (e.g., "I don't give a flying

"the fuck,"<sup>39</sup> "the fuck of it,"<sup>40</sup> and "holy fuck!"<sup>41</sup>

#### D. *"Fuck" as a Verb*

The word "fuck" is used as a verb in numerous situations: first, "to copulate or copulate with";<sup>42</sup> second, "to harm irreparably; finish; victimize" (as in "Vietnam fucked you");<sup>43</sup> third, "to botch; bungle" (as in "you fucked it again");<sup>44</sup> fourth, "to cheat; victimize; deceive; betray" (as in "you know you're going to be fucked, you just don't know when");<sup>45</sup> fifth, "to exploit to one's own benefit" (as in "I'm going to stay here, but I'm going to fuck the job to death");<sup>46</sup> sixth, "to cease or abandon, especially suddenly; ditch" (as in "I got the idea to fuck everything and head for California");<sup>47</sup> and seventh, "to trifle, toy, meddle, or interfere; fool; play; to harass, tease, or provoke; mess—used with . . . *with*" (as in "Tony tells me you're good at law. I used to fuck with it").<sup>48</sup>

The verb form of "fuck" has been used by Americans in a variety of verb-phrases. Prominent exemplars of these verb-phrases include: "fuck a duck,"<sup>49</sup> "fucked [up] and far from home,"<sup>50</sup> "fucked by the fickle finger of fate,"<sup>51</sup> "fuck (some-

fuck what you do"). *Id.* at 65-66. Another variation of this phrase is "[go] take a flying fuck," meaning "Get away! Go to hell!" (e.g., "why don't you go take a flying fuck at a rolling doughnut?"). *Id.* at 66-67.

37. See SHEIDLOWER, *supra* note 16, at 96. "For fuck's sake" means "for heaven's sake" (e.g., "Now he is on tour for fuck's sake"). *Id.*

38. *Id.* at 96. "Fuck of" means "a notable example or quantity of; hell of" (e.g., "It would be a fuck of a lot more interesting"). *Id.*

39. *Id.* This phrase is "used as an expletive" (e.g., "Where the fuck are we?"). *Id.* at 98.

40. *Id.* at 99. "The fuck of it" means "the fun of it; the hell of it." (e.g., "I went down there just for the fuck of it."). *Id.*

41. *Id.* at 97. This phrase is "used to express astonishment" (e.g., "Holy fuck! We're going to freeze our asses off!").

42. *Id.* at 100.

43. SHEIDLOWER, *supra* note 16, at 106-07.

44. *Id.* at 107.

45. *Id.* at 108-09.

46. *Id.* at 110.

47. *Id.* at 113.

48. *Id.* at 113-14.

49. SHEIDLOWER, *supra* note 16, at 115. "Fuck a duck" has a variety of meanings including "Get out! Go to hell!" (e.g., "Go fuck a duck") and "to engage in indiscriminate sexual promiscuity." *Id.*

50. *Id.* at 116. "Fucked [up] and far from home" means "in a hopeless situation" (e.g., "When the IRS was through auditing my return, I was fucked and far from home").

51. *Id.* "Fucked by the fickle finger of fate" means "thwarted or victimized



one's) mind,"<sup>52</sup> "go fuck [yourself],"<sup>53</sup> and "get fucked!"<sup>54</sup>

### E. *F-word Adjectives*

When combined with certain other words, the F-word can be employed as an adjective. By way of illustration, the phrase "fucked up" is used as an adjective that can have a variety of possible meanings including (1) "ruined or spoiled, especially through incompetence or stupidity; chaotic" (as in "I never heard of such a fucked-up mess");<sup>55</sup> (2) "heavily intoxicated by liquor or drugs" (as in "We'll smoke up some weed, get all fucked up, feel no fuckin' pain");<sup>56</sup> (3) "thoroughly confused; mentally or emotionally ill; crazy" (as in "He wasn't a bad kid, just fucked-up");<sup>57</sup> (4) "deeply troubled or upset; distraught" (as in, "I was all fucked up when I wrote it and threw away about 100,000 words which was better than most of what I left in");<sup>58</sup> (5) "contemptible; worthless; miserable" (as in "I've met a lot of politicians, and politicians are fucked up everywhere . . .").<sup>59</sup> The creative compound word "fuck-faced" is also used as an adjective meaning "having an ugly or miserable face; despicable" (as in "gradually people filed down for breakfast. Totally bleary-eyed and fuck-faced").<sup>60</sup>

### F. *F-word Adverbs*

In various verbal formulations, an F-word can be utilized as an adverb. For example, the word "fucking" as an adverb means "exceedingly; damned" (as in "You're very fucking

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by bad fortune" (e.g., "I was being totally and fatally fucked by the fickle finger of fate"). *Id.* at 116-17.

52. *Id.* at 119. "Fuck (someone's) mind" means "to astonish, intimidate, or befuddle" (e.g., "[Solitary confinement] fucks your mind").

53. *Id.* "Go fuck [yourself]" means "Go to hell! Get out! Be damned!" (e.g., "Joe got sore and told him to go fuck himself"). *Id.*

54. *Id.* at 120. "Get fucked!" means "Go to hell!" (e.g., "Tell that dipshit to get fucked!").

55. SHEIDLOWER, *supra* note 16, at 134.

56. *Id.* at 135.

57. *Id.* at 135-36.

58. *Id.* at 137.

59. *Id.* at 137-38.

60. *Id.* at 142. Some other adjective variations of the F-word are "FUBAR" (e.g., "It's FUBAR—fucked up beyond all recognition"), *id.* at 88, and "fucked over" (e.g., "I was fucked over last night"), *id.* at 133-34.

rude. . .").<sup>61</sup> Other examples are the adverbs "fuckinglly," meaning "extremely; damned" (as in "[M]y life has been so fuckinglly complicated . . .")<sup>62</sup>—which is very close in meaning to "fucking" and "abso-fucking-lutely," meaning "absolutely" (as in "[t]hat's abso-fucking-lutely right").<sup>63</sup>

### G. *Endless Variations*

It seems that Americans coin endless variations of the F-word. From a linguistic standpoint, this elasticity of word format and accompanying meanings is what makes study of the use of the F-word such a fascinating subject. Without attempting to provide definitions or examples of word usage, the following is a random list of F-word variations not previously discussed in this article: "AMF: Adios Motherfucker,"<sup>64</sup> "BFD: Big Fucking Deal,"<sup>65</sup> "Bumfuck, Egypt,"<sup>66</sup> "Dumbfuck,"<sup>67</sup> "Fanfuckingtastic,"<sup>68</sup> "Fiddlefuck,"<sup>69</sup> "Fuck-off,"<sup>70</sup> "Give-a-fuck,"<sup>71</sup> "Guaran-fucking-tee,"<sup>72</sup> and "SNAFU" (meaning "Situation Normal: All Fucked Up").<sup>73</sup>

## III. F-CASES AND F-CLASSIFICATIONS

### A. *Cop Cases*

A number of reported cases discuss the use of the F-word by civilians against police officers or other civilians.<sup>74</sup> In the majority of these cases, the courts have generally detected a tension between the potential disruption of the law enforcement function and order of the community occasioned by

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61. SHEIDLOWER, *supra* note 16, at 146-47.

62. *Id.* at 151.

63. *Id.* at 39. Some other adverb permutations of the F-word are "fucking well" (e.g., "He better fucking well run into me"), *id.* at 152; "motherfucking" (an adjective) (e.g., "He's a motherfucking liar"), *id.* at 206; and ASAFP (e.g., "ASAFP — as soon as fucking possible"), *id.* at 39.

64. *Id.* at 39.

65. *Id.* at 41.

66. *Id.* at 46.

67. SHEIDLOWER, *supra* note 16, at 56.

68. *Id.* at 58.

69. *Id.* at 60.

70. *Id.* at 154.

71. *Id.* at 176.

72. *Id.* at 178.

73. SHEIDLOWER, *supra* note 16, at 220.

74. *See, e.g., infra* Part III.A.

F-word epithets, on the one hand, and the presumed ability of police officers to manage potentially violent disputes without unnecessary force, on the other hand.

A good illustration of this type of analysis is an Alabama case, *B.E.S. v. State*,<sup>75</sup> which discussed the fairly frequently encountered scenario of a civilian hurling F-word insults at the police. The defendant in *B.E.S.* was a juvenile at the time of the F-word usage. The *B.E.S.* court, referring to two previous F-word cases it had decided, noted:

Unfortunately, epithets . . . directed at a police officer in the performance of his duties are not uncommon in today's law enforcement environment. The fact that an officer encounters such vulgarities with some frequency, and the fact that his training enables him to diffuse a potentially volatile situation without physical retaliation, however, means that words which might provoke a violent response from the average person do not, when addressed to a police officer, amount to fighting words.<sup>76</sup>

The Alabama court's more extended discourse in *B.E.S.* regarding hypothetical civilian use of the F-word—as well as other potentially insulting slang—is interesting for three reasons. First, relying upon the seminal 1942 Supreme Court opinion in *Chaplinsky v. New Hampshire*,<sup>77</sup> the Alabama judges in *B.E.S.* identified “fighting words” (also referred to as “insulting” words) as among “certain well-defined and narrowly limited classes of speech”—like “the lewd and obscene, the profane, the libelous”—which do not have any constitutional freedom of speech protection under the First Amendment.<sup>78</sup> Thus, *B.E.S.* implied that “fuck” is a fighting word and therefore unprotected. Second, the Alabama court reasoned that a police officer, by virtue of his or her extensive training in peaceful dispute resolution techniques, would rarely—if ever—be justified in being provoked to physically retaliate against a civilian, who, without accompanying physical violence or threats, merely used the F-word against

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75. *B.E.S. v. State*, 629 So. 2d 761 (Ala. Crim. App. 1993).

76. *Id.* at 764. (quoting *Shinault v. City of Huntsville*, 579 So. 2d 696, 700 (Ala. Crim. App. 1991) (Bowen, J., concurring) (citing *Robinson v. State*, 615 So. 2d 112, 114 (Ala. Crim. App. 1992))) (internal quotation marks omitted). The *B.E.S.* case itself, however, involved a juvenile who directed the F-word at civilians, and was subject to delinquency proceedings.

77. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942).

78. *B.E.S.*, 629 So. 2d at 763 (quoting *Chaplinsky*, 315 U.S. at 571-72).

the officer.<sup>79</sup> The court implied that extremely personal use of the F-word, aimed at a specific police officer, might conceivably be unprotected by the First Amendment and therefore, justify legal punishment.<sup>80</sup> Third, the Alabama court, recognizing the realities of human nature, noted that "[w]ithout offering any approval of such use, . . . that the word 'fuck' is used habitually . . . by any number of people" for the purpose of "add[ing] emphasis, much in the manner as 'hell' or 'damn' might be used."<sup>81</sup>

In *Robinson v. State*,<sup>82</sup> an Indiana Court of Appeals two-judge panel majority upheld the conviction of the defendant for disorderly conduct under a state statute. The defendant's disorderly conduct included screaming F-word epithets at the investigating police officer, telling the officer to "to get the fuck away" and that the officer was a "lying motherfucker."<sup>83</sup> Regarding the issue of whether or not Robinson's words were constitutionally unprotected "fighting words," Judge Shields, the dissenting judge, acknowledged that "at some earlier point in [American history]," the F-word "undoubtedly had a meaning which would fall within the scope of 'fighting words' . . . [but] in present common usage [the F-word is deployed to refer to] 'a mean, despicable, or vicious person,' and 'anything considered to be despicable [or] frustrating'" and, therefore, does not constitute fighting words.<sup>84</sup> Thus, according to the Shields' dissent, "[s]o defined, the [F-word] terms are no more injurious than the terms 'asshole,' defined as 'a stupid mean, [sic] or contemptible person,'" the latter which was judicially found not to constitute fighting words.<sup>85</sup>

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79. *See id.* at 764.

80. *See id.* *See also* *Robinson v. State*, 588 N.E.2d 533, 535-36 (Ind. Ct. App. 1992) (arrested civilian screamed that officer was a "lying motherfucker"). The *B.E.S.* court also distinguished the typical situation of F-word usage by civilians against police by citing *L.J.M. v. State*, 541 So. 2d 1321, 1322-23 (Fla. Dist. Ct. App. 1989) (calling police officer "pussy-assed motherfucker").

81. *B.E.S.*, 629 So. 2d at 765 (citing *Diehl v. State*, 451 A.2d 115, 122 (Md. 1982) (noting that, with regard to the F-word, "[o]ne man's vulgarity may well be another's vernacular"). *See also* *State v. Human Rights Comm'n*, 534 N.E.2d 161, 169 (Ill. App. 1989) (upholding magistrate's finding that use of "general sexual terms" such as "fuck" and "motherfucker" as expletives "did not amount to sexual conduct" in sexual harassment case).

82. *Robinson*, 588 N.E.2d at 533.

83. *Id.* at 535-36.

84. *Id.* at 536 (Shields, J., dissenting).

85. *Id.* *See also* *Cavazos v. State*, 455 N.E.2d 618, 620 (Ind. Ct. App. 1983).

*C.J.R. v. State*,<sup>86</sup> a Florida court decision, also involved use of the F-word to a police officer. However, the legal issue was different from the legal issues addressed in *B.E.S.* and *Robinson*.<sup>87</sup> In *C.J.R.*, the dispute involved the juvenile delinquency of a minor. The juvenile in *C.J.R.* appealed from a trial court order, which had found him to be a delinquent for both carrying a concealed weapon (num-chucks) and cursing at the arresting officer, thereby impeding the officer from conducting a breathalyzer test to determine whether the juvenile was intoxicated.<sup>88</sup> The facts indicated that the juvenile cursed in "an extremely loud voice," used phrases such as "fuck this shit" and "motherfucker," and indicated that he had no intention of cooperating with the officer.<sup>89</sup> While the majority determined that the juvenile's various uses of the F-word were unprotected speech—being "fighting words"—Judge Ervin dissented from that portion of the appellate decision that labeled the F-word usage constitutionally unprotected speech.<sup>90</sup> According to the dissent, "[t]he [juvenile's] verbal indiscretions were unaccompanied by any threat to the personal safety of the officers. After they were made, the juvenile turned away for the purpose of calling his mother, and at that point he was seized from behind, arrested and handcuffed."<sup>91</sup> Judge Ervin contrasted *C.J.R.* with a similar Florida Supreme Court case, *D.C.E. v. State*,<sup>92</sup> in which the juveniles also used the F-word at a police officer with no threat of physical violence. However, in *D.C.E.*, the Florida Supreme Court found no disorderly conduct occurred by the youths shouting the F-word, while in *C.J.R.* the majority held the juvenile a delinquent for speaking the F-word.<sup>93</sup> Therefore, given the Florida Supreme Court precedent, Judge Ervin's analysis is correct.

*Village of North Randall v. Bacon*,<sup>94</sup> an Ohio decision, presents an interesting twist on the typical cop case scenario.

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86. *C.J.R. v. State*, 429 So. 2d 753 (Fla. Dist. Ct. App. 1983).

87. See *supra* notes 75-85 and accompanying text.

88. See *C.J.R.*, 429 So. 2d at 753.

89. *C.J.R.*, 429 So. 2d at 754.

90. See *id.* at 754-55 (Ervin, J., dissenting).

91. *Id.* at 755.

92. *D.C.E. v. State*, 381 So. 2d 1097 (Fla. 1979).

93. *C.J.R.*, 429 So. 2d at 755 (citing *D.C.E.*, 381 So. 2d 1097).

94. *Village of N. Randall v. Bacon*, No. 42686, 1981 WL 5013 (Ohio Ct. App. 1981) (ordered unpublished by OHIO SUP. CT. R. 2).

*Bacon* involved a store customer utilizing the F-word in an extremely aggressive context ("go fuck yourself" and "I'll break your fucking neck") to a private store security guard. The court held that the store customer had violated a town ordinance prohibiting fighting words.<sup>95</sup> While the court gives no explanation, it is probable that the fact that the guard was a private, rather than public, employee was an important factor in this decision.

*Larez v. City of Los Angeles*<sup>96</sup> involved another interesting twist to the typical cop case scenario. In *Larez*, Los Angeles citizens brought a federal civil rights action against Los Angeles police officers for excessive force and violation of the citizens' civil rights.<sup>97</sup> The police were found liable for compensatory and punitive damages for misuse of their legal authority to investigate crimes and arrest perpetrators.<sup>98</sup> The significant evidence, which supported the plaintiffs, included the use of the F-word in a number of contexts. For instance, the F-word was used by police officers during searches of premises ("[we have] every damn fucking right to be on [the] property").<sup>99</sup> Another incident involved a police officer pointing a revolver at a victim's head while using the F-word ("I could blow your fucking head off right here and nobody can prove you did not try to do something").<sup>100</sup> Yet another occurrence involved an arrest while members of the police used various F-words ("Get up here with that fucking baby"; "Put [your] fucking face on the floor"; and "I'll blow your fucking head off").<sup>101</sup> Use of the F-word by police officers was apparently viewed by the *Larez* court as a violation of what citizens have a right to expect in interacting with officers of the state.

### B. Courtroom Cases

Numerous judicial opinions address the legal consequences of the use of the F-word, or its symbolic equivalent, in open court or in out-of-court communications to a judge or

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95. *Id.*

96. *Larez v. City of Los Angeles*, 946 F.2d 630 (9th Cir. 1991).

97. *Id.* at 633.

98. *Id.* at 636, 639.

99. *Id.* at 634.

100. *Id.*

101. *Id.* at 634-35.

court official.<sup>102</sup> These cases typically concern the maintenance of good order and dignity of the court and trial proceedings. In this category of cases, the most salient legal issue is whether the F-word deployer should be held in contempt of court, or otherwise legally sanctioned.

The California opinion of *People v. Colbert*<sup>103</sup> illustrates a relatively clear-cut case justifying the imposition of judicial punishment in the face of F-word use. *Colbert* involved an extreme emotional and physical disruption of ongoing judicial proceedings in open court. George Kenneth Colbert, a *pro se* criminal defendant in a burglary trial, repeatedly used the F-word in conjunction with other insulting language, specifically directing his outbursts at the trial court judge. For example, Colbert told the judge, "[F]uck you and your contempt of court, man" and said, "[F]uck that, man" during the trial proceedings.<sup>104</sup> In addition, Colbert used the word "shit" in a number of outbursts in open court.<sup>105</sup> The court found it apparent that Colbert's entire course of conduct was an attempt to insult and humiliate the trial judge. Therefore, the appellate court readily affirmed the trial court's gag order, restraining order, and subsequent removal of the defendant from the courtroom while the trial proceeded without him.<sup>106</sup> Justice Hanson's concurring opinion in *Colbert* provided additional facts regarding the defendant's conduct which amplify the disruptive nature of the defendant's courtroom conduct.<sup>107</sup> For example, Colbert "constantly referred to the [trial] court [judge] as a 'racist motherfucker,' among other expletives."<sup>108</sup> Colbert also intentionally turned over the counsel's table.<sup>109</sup>

With regard to a finding of contempt of court, "courts have uniformly [*sic*] held that use of profane language in court [like the F-word] is, by itself, grounds for contempt."<sup>110</sup> Thus, courts have, by way of illustration, found contempt orders proper when an individual uses profanities or obscenities

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102. See *infra* notes 103-36 and accompanying text.

103. *People v. Colbert*, 192 Cal. Rptr. 836 (Cal. App. 1983) (ordered unpublished by CAL. CT. R. 976).

104. See *id.* at 838 n.3.

105. See *id.*

106. See *id.* at 842.

107. See *id.* at 843 (Hanson, J., concurring).

108. *Id.* at 852.

109. See *Colbert*, 192 Cal. Rptr. at 852 (Hanson, J., concurring).

110. *In re L.G.*, 639 A.2d 603, 606, n.5 (D.C. 1994).

at a judge.<sup>111</sup> Moreover, courts have reasoned that even when obscenities, profanities, or threats were not directed at the trial judge, herself, the sanction of contempt of court is available and may be imposed by the trial court.<sup>112</sup> Yet courts have found that each use of the F-word during trial does not constitute a separate contempt citation. Instead, the number of contempt citations depends on the record. For example, in *State v. Bullock*,<sup>113</sup> the trial judge found the defendant guilty by of seven counts of contempt of court for screaming "Fuck you" to the trial judge on seven separate occasions during trial.<sup>114</sup> As a result, the court sentenced the defendant to seven consecutive six-month jail sentences.<sup>115</sup> The Louisiana Superior Court affirmed the first three contempt citations, but vacated the last four, emphasizing that "the power to jail for contempt is given to the [trial court] judge on the assumption that it will be judiciously and sparingly employed."<sup>116</sup> Therefore, trial court judges must be circumspect in imposing contempt. The court found that the use of the F-word as a response to a judge's question was excusable because such "a response to a question by this judge [would] seem[] to invite and encourage further verbal sparring."<sup>117</sup> Therefore, the court found that the last four "fuck you" statements by the defendant were not contemptuous because the defendant used them "in response to a colloquy initiated by the trial judge."<sup>118</sup>

Another reason for urging judicial restraint in imposing

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111. See *id.* (citing *Jackson v. Bailey*, 605 A.2d 1350, 1352-53 (Conn. 1992); *Martinez v. State*, 339 So. 2d 1133, 1134-35 (Fla. Dist. Ct. App. 1976), *aff'd*, 346 So. 2d 68 (Fla. 1977); *State v. Allen*, 496 A.2d 168, 171-72 (Vt. 1985)).

112. See *id.* (citing *People v. Barrett*, 342 N.E.2d 775, 777 (Ill. App. Ct. 1976)); *Woody v. Oklahoma ex. rel. Allen*, 572 P.2d 241, 244 (Okla. Crim. App. 1977) (affirming criminal contempt judgment for making obscene gestures and threats to witnesses, holding that it was not necessary that contemptuous behavior be directed at the trial court itself since the actions were "committed in the presence of . . . one of the constituent parts of the court while engaged in the business devolved upon it by law"). See also *Thomas v. State*, 635 A.2d 71, 72 (Md. Ct. Spec. App. 1994) (affirming citation for direct criminal contempt of court for criminal defendant's in-court statements to trial court judge, including "Fuck that judge, man" and "[F]ucker").

113. *State v. Bullock*, 576 So. 2d 453 (La. 1991).

114. See *id.* at 457.

115. See *id.* at 454.

116. *Id.* at 458 (quoting *In re Masinter*, 355 So. 2d 1288 (La. 1978)) (internal quotation marks omitted).

117. *Id.*

118. *Id.* at 458.



contempt citations for use of the F-word in the courtroom is the concern that the speaker may be mentally ill. This concern about mental capacity as a precondition for a contempt citation was articulated by the United States Court of Appeals for the Ninth Circuit in *United States v. Flynt*.<sup>119</sup> The Court's summary of Larry Flynt's use of the F-word before the trial court is stunning. For example, Flynt made the following F-word statements in court: "What the fuck is going on here?"; "You dumb, ignorant motherfucker" (addressed to the magistrate judge); and "No fucking way you're going to get away with it" (addressed to the judge).<sup>120</sup> Flynt also proclaimed, in response to a question,

I went to the United States Supreme Court and called  
every one of them no good, lousy, dumb, mother-fuckers,

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119. *United States v. Flynt*, 756 F.2d 1352 (9th Cir. 1985). Larry Flynt has become an American cultural icon, largely due to the 1996 Oliver Stone-produced film, *THE PEOPLE VS. LARRY FLYNT* (Columbia 1996), starring Woody Harrelson and Courtney Love. A review of the film states:

A warm, fuzzy movie for armchair liberals. *The People vs. Larry Flynt* whitewashes the life of the infamous pornographer for the benefit of viewers who are all for the First Amendment—so long as it doesn't protect anything too unpleasant.

In 1972, Larry Flynt (Woody Harrelson), is running a string of Cincinnati strip clubs when he hits on the idea of publishing a newsletter featuring nude photographs of his strippers. The idea is a big success, largely because the pictures are substantially more explicit than those found in mainstream men's magazines like *Playboy*. Expanded to magazine format, *Hustler* becomes a huge hit. Aided by his wife and business partner (Courtney Love), a former stripper, Flynt becomes a wealthy man by testing the limits of obscenity and good taste. But as the national mood of the late 1970s grows more conservative, the relentlessly provocative Flynt becomes the object of numerous obscenity lawsuits.

You'd be hard-pressed to find another biopic that whitewashes its subject so thoroughly as [this film]. Director Milos Forman [nominated for an Academy Award for Best Director for this film] would like you to believe that Flynt's vulgar catalogue of racism, sexism, and anything else that might be construed as offensive is simply a more honest variation on *Playboy*. Of course, we expect controversial subjects to be watered down in mass-market films, but in a film whose purpose is to salute our Constitutional right to free speech, the contents of *Hustler* properly are an issue: the filmmakers' argument is seriously compromised by their failure to trust their audience with the knowledge of what kind of material that right protects. [The film] is generally an intelligent and entertaining film. Harrelson's good-ol'-boy raunchiness is amusing, and singer Courtney Love gives an astonishingly good performance in her first substantial film role.

THE MOVIE GUIDE 517(Cinebooks 1998).

120. *Flynt*, 756 F.2d at 1355 n.1.

what assholes they were. And that I would be back as soon as I was allowed out of prison to tell them mother-fuckers they had violated my goddamn, mother-fucking civil rights as long as they intend to, and if I am not kept in prison . . . .<sup>121</sup>

Flynt's F-word statements also included, "Every mother-fucking one of them. Blow those mother-fucking judges",<sup>122</sup> "Fuck you. Give me life without parole, you foul mother-fucker" (response to the court),<sup>123</sup> and "Give me more, mother-fucker. Is that all you can give me, you chicken-shit cock-sucker. Lay eighteen months on me, you dumb mother-fucker. . . . Fuck you in your ass."<sup>124</sup> The Ninth Circuit found that there was a substantial issue as to Larry Flynt's mental capacity to commit contempt, thereby suggesting that he should have been given a hearing to present evidence on the issue of his mental capacity.<sup>125</sup> The Court concluded that the "summary contempt power" of courts is "an extraordinary exercise to be undertaken only after careful consideration and with good [cause]."<sup>126</sup>

Conversely, the same standard was not applied to the F-word-spouting criminal defendant in *United States v. Pina*.<sup>127</sup> In *Pina*, the appellate court took a stern view of the defendant's trial behavior:

In the trial below, appellant's behavior was so outrageous as to make the defendants [in other cases discussed in the opinion] look well-mannered by comparison. Appellant called the judge, among other things, a "little child," a "fucking idiot," a "sick individual," a "fucking fool," a "lying bigot, motherfucker," a "cold-blooded fucking Wizard," a "[n]o-good piece of shit," and a "no-good maggot." He told the judge he "should have been a Klansman," to put his "mother in contempt . . . that damn pig that brang you in this world," "to hurry up and have a fucking heart at-

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121. *Id.* at 1357 n.4.

122. *Id.*

123. *Id.* at n.5.

124. *Id.* at n.6.

125. *See id.* at 1358.

126. *Flynt*, 756 F.2d at 1363. "Only 'the least possible power adequate to the end proposed' should be used in contempt cases." *Id.* (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821)) (internal quotation marks omitted).

127. *United States v. Pina*, 844 F.2d 1 (1st Cir. 1988) (involving a defendant charged with federal weapons violations).

tack," to "suck my balls," and to "go fuck your mother."<sup>128</sup>

The court held that sentences for contempt occurring during the course of the trial that did not exceed six months per citation did not entitle a defendant to a jury trial. On the other hand, sentences for contempt in excess of six months per citation did entitle a defendant to a jury trial.<sup>129</sup> In *Pina*, the appellate court discussed various approaches that a trial court judge under attack by a criminal defendant could employ, including periodic summary contempt hearings at various intervals during the trial and removal of the defendant from the courtroom.<sup>130</sup> *Pina* illustrates a case where a court, while not sympathetic with the underlying conduct of a F-word-deploying defendant, insists upon jury consideration of the conduct when serious penalties are at stake.

Before leaving the category of courtroom F-word cases, one further example, illustrating legal consequences of F-word deployment in a courtroom-related context, may be helpful. In *United States v. Bellrichard*,<sup>131</sup> the United States Court of Appeals for the Eighth Circuit upheld the federal conviction of an individual who sent threatening communications through the mail,<sup>132</sup> rejecting the defendant's First Amendment freedom of speech argument. The defendant had sent a postcard to the county attorney who prosecuted some juveniles as adults. The postcard suggested, in part, that the attorney should "leave town, go to prison eventually for fucking up, or probably get killed by somebody you prosecuted."<sup>133</sup> The postcard went on to assert: "Smoke grass and mellow out, you red-necked old whore! Fuck the law, and you too!"<sup>134</sup> This case is significant because of the Eighth Circuit's stern view of extra-legal F-word insults of a judge, which smacked at outright threats of violence.

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128. *Id.* at 13-14.

129. *Id.* at 11 (citing *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974)).

130. *See id.* at 14. *See also* *People v. Colbert*, 192 Cal. Rptr. 836 (Ct. App. 1983) (ordered unpublished by CAL. CT. R. 976); *see supra* notes 103-06 and accompanying text.

131. *United States v. Bellrichard*, 994 F.2d 1318 (8th Cir. 1993).

132. *See id.* The defendant was convicted of violating 18 U.S.C. § 876 (1993).

133. *See id.* at 1320-21 n.4.

134. *Id.* The defendant also sent a postcard to a local government official indicating, "[Y]ou'd better get the rest of those stupid fucking commissioners to oppose and stop that damn incinerator." *Id.* at n.5.

*C. Harassment/Abuse Cases*

Courts have also considered F-word uses in cases involving harassment claims.<sup>135</sup> In this category of cases, courts differentiate between actionable complaints of legal injury and complaints that rely on overbroad legal rules and inhibit freedom of expression.

The 1995 Florida case of *Gilbreath v. State*<sup>136</sup> illustrates the difficulty that courts have in reconciling the tension between genuine harassment involving the F-word and circumstances where use of the F-word, while concededly disgusting and inappropriate, involves important concerns of protected speech. The majority opinion in *Gilbreath* reasoned that a Florida statute criminalizing the making of obscene or harassing telephone calls was constitutional—as limited by the decision. As noted by the majority:

We narrow [the Florida] statute's construction and excise the indefinite and vague terms "offend" and "annoy." We do this in accord with the court's discretion to limit a statute to what is constitutional when the statute as so limited is complete in itself and consistent with the stated or obvious legislative intent. . . . We conclude that the intent of the statute is to prohibit intentional abusive, threatening, and harassing conduct by use of the telephone in the manner specified [by the legislature] against a person where that person has an expectation of privacy. "Offend" and "annoy" [as written in the statute] are indefinite as to meaning and give rise to subjective vague connotations.<sup>137</sup>

The *Gilbreath* majority, therefore, affirmed the conviction of an individual who repeatedly used the F-word during the course of a telephone conversation. However, Florida Supreme Court Justice Anstead dissented and argued that criminal prosecution would unreasonably chill legitimate forms of expression. For example, the dissent raised the possibility that a Florida citizen "reading the [statutory] provision might reasonably believe it criminalizes telling an 'off-color joke' to a willing listener or forbids a sexually oriented conversation (phone sex) between lovers."<sup>138</sup> Furthermore,

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135. See *infra* notes 136-55 and accompanying text.

136. *Gilbreath v. State*, 650 So. 2d 10 (Fla. 1995).

137. *Id.* at 13.

138. *Id.* at 14 (Ansted, J., dissenting) (citations omitted). Query: would William Jefferson Clinton have theoretically faced another impeachment count for

under the majority's interpretation of the Florida criminal statute, "friends discussing politics in a friendly conversation may often violate the statute when they reach a point of disagreement and one uses a 'dirty' word to 'annoy' or 'offend' the other."<sup>139</sup>

Free speech concerns were outweighed by real abuse and harassment in *In re Ionosphere Clubs, Inc.*<sup>140</sup> *Ionosphere* involved a labor dispute between Eastern Airlines and a striking employees' union where the picketers surrounded the prospective passengers and yelled "these planes will not fly, it is going to fall, going to crash, your daughter is going to . . . die."<sup>141</sup> The picketers also "call[ed] [a passenger] 'a fucking stupid ass'" and called Eastern employees and persons doing business with Eastern "scumbag," "cocksucker," "mother-fucker," "fucking whores," "nigger," "faggot," "punk," "sissy," and "filthy bitch."<sup>142</sup> The court found that the conduct of the picketers warranted the imposition of a limited injunction against the union and precluded the union picketers at airports from engaging in egregious instances of "verbal abuse, intimidation and harassment."<sup>143</sup>

Conversely, in *Hershfield v. Commonwealth*,<sup>144</sup> the court readily determined that no real harassment or threat of abuse existed. At trial, Hershfield was convicted of violating Virginia's breach of the peace statute<sup>145</sup> for telling a woman, from a distance, to "go fuck yourself."<sup>146</sup> The Virginia inter-

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violating a criminal statute had he phoned Monica Lewinsky from a Florida hotel room? See OFFICE OF THE INDEP. COUNSEL, REFERRAL FROM INDEPENDENT COUNSEL KENNETH W. STARR IN CONFORMITY WITH THE REQUIREMENTS OF TITLE 28, UNITED STATES CODE, SECTION 595(C), H.R. DOC. NO. 105-310, at 19-20 (1998) ("On 10 to 15 occasions, [Lewinsky] and the President had phone sex.").

139. *Gilbreath*, 650 So. 2d at 14 (Ansted, J., dissenting).

140. *In re Ionosphere Clubs, Inc.*, 108 B.R. 901 (S.D.N.Y. 1989).

141. *Id.* at 912 (omission in original).

142. *Id.* at 920-21.

143. *Id.*

144. *Hershfield v. Commonwealth*, 417 S.E.2d 876 (Va. Ct. App. 1992).

145. The statute reads:

If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.

*Id.* at 877 (quoting VA. CODE ANN. § 18.2-416 (1992)).

146. *Id.*

mediate appellate court reversed, reasoning in part that since the parties were separated by at least fifty-five feet and a chain link fence when the comments were made, telling an individual to "go fuck yourself" was not the type of face-to-face meeting likely to provoke breach of the peace.<sup>147</sup> In his concurring opinion, Judge Benton stated that Hershfield's utterance, "go fuck yourself," did not reach the level of constitutionally unprotected "fighting words"—differing from the majority's implicit view that the spoken F-word was not protected speech. According to Benton's scholarly concurring opinion,

[w]hen Hershfield said to his neighbor, "Go fuck yourself," he conveyed a message of disrespect to her. However, the statute may not be interpreted to prohibit a person's expressions merely because the words offend or anger the addressee. Nor may the state use the statute as a device to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Indeed, almost [twenty] years ago Justice Powell observed that "[l]anguage likely to offend the sensibility of some listeners is now fairly commonplace in many social gatherings as well as in public performances."

The words used by Hershfield were vulgar, insulting and offensive, but they were not punishable under the statute unless they are "fighting words." Hershfield's words offensively suggested to his neighbor a sexual activity; however, they did not suggest a challenge or an intimation of threatening contact.<sup>148</sup>

Judge Benton also elaborated on the Constitutional difference between merely vulgar, but protected, words and unprotected words that were "inherently likely to cause vio-

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147. See *id.* at 878.

148. *Id.* at 880 (quoting *Eaton v. City of Tulsa*, 415 U.S. 697, 700 (1974) (Powell, J. Concurring)) (citations omitted) (certain internal quotation marks omitted). In *Rozier v. State*, 231 S.E.2d 131 (Ga. Ct. App. 1976), the court held as a matter of law that a vulgar sexual proposition made to a female in her presence did not constitute "fighting words." Other courts have held that use of the words "fuck you," even when addressed to another, are not punishable as fighting words in the absence of compelling reasons. See *Diehl v. State*, 451 A.2d 115 (Md. 1982), *cert. denied*, 460 U.S. 1098 (1983). See also *City of Bismarck v. Schoppert*, 469 N.W.2d 808 (N.D. 1991); *Downs v. State*, 366 A.2d 41, 41-46 (1976), *cert denied*, 431 U.S. 974 (1977); *Ware v. City and County of Denver*, 511 P.2d 475 (Colo. 1973).

lence."<sup>149</sup> He wrote:

If one assumes, as the majority implicitly does, that the words fall within the proscribed category, I find no evidence that the circumstances reasonably tended to cause a breach of the peace. There is no evidence that Walker's reaction [as the recipient of the F-word] was uncharacteristic of a reasonable person in a like situation. Although Walker heard the comment, the parties were separated by some twenty yards and a fence when Hershfield spoke. There is no evidence that Hershfield's tone was one of violence or severe agitation. Neither party had approached or spoken to the other prior to Hershfield's utterance of this phrase. The record does not show that Walker manifested a disposition to retaliate violently upon hearing Hershfield's comment.<sup>150</sup>

Judge Benton also stressed the important linguistic, psychological, and cultural point that verbal insults—like the F-word—are emotional, not cognitive; variable, not literal. With wit and sophisticated analysis, Benton observed:

"A word is not a crystal, transparent and unchanging, it is a skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." Unseemly words . . . may cause discomfort and anger but do not rise to the level of fighting words. "Words are often chosen as much for their emotive as their cognitive force."<sup>151</sup>

Courts have also considered whether the use of the F-word constitutes sexual harassment. *Kloke v. Buckley Industries, Inc.*<sup>152</sup> involved claims brought against a company and various individuals for alleged Title VII sexual harass-

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149. *Hershfield*, 417 S.E.2d at 880.

150. *Id.*

151. *Id.* at 880-81 (citations omitted).

Curses, oaths, expletives, imprecations, maledictions, and the whole vocabulary of insults are not intended or susceptible of literal interpretation. They are expressions of annoyance and hostility—nothing more. To attach greater significance to them is stupid, ignorant, or naive. Their significance is emotional, and it is not merely immeasurable but also variable. The emotional quality of exclamations varies from time to time, from region to region, and as between social, cultural, and ethnic groups.

*Id.* at 880-81 (quoting *City of St. Paul v. Morris*, 104 N.W.2d 902, 910 (Minn. 1960)).

152. *Kloke v. Buckley Indus., Inc.*, No. 95-1298-JTM, 95-1392-JTM, 1996 WL 363032 (D. Kan. June 28, 1996).

ment, wage discrimination based on race and gender, and retaliation. The F-word references in *Kloke* arose in relation to the issue of whether or not this language was sufficient evidence of sexual harassment. Granting summary judgment on the plaintiffs' Title VII claims against individual defendants, the district court held that vulgar language—both written and verbal—when made as a “blatant sexual statement to an employee or referring to an employee in a sexual manner” could constitute sexual harassment.<sup>153</sup> The *Kloke* opinion is of particular interest, from the standpoint of American F-word jurisprudence, because of a memorandum, written by Buckley Industries “management” to all employees. The memorandum stated, in pertinent part:

It has been brought to management's attention that some individual's have been using offensive language in the course of normal conversation between co-workers. Due to complaints from some of the more easily offended co-workers, this conduct will no longer be tolerated.

Management, does, however, realize the importance of each person being able to properly express their feelings when communicating with their fellow co-workers. Because of this, management has recruited a team of individuals to compile a list of code phrases, so that the free and proper exchange of ideas and information can continue.

*Old Phrases*

No fucking way.

You've got to be shitting me.

Tell someone who gives a fuck.

Ask me if I give a fuck.

It's not my fucking problem.

What the fuck?

Fuck it, it won't work.

Why the fuck didn't you tell me sooner?

When the fuck do you expect me to do this?

Who the fuck cares?

He's got his head up his ass.

*New Phrases*

I'm not certain that's feasible.

Really?

Perhaps you should check with . . .

Of course I'm concerned.

I wasn't involved in that project.

Interesting behavior.

I'm not sure I can implement this.

I'll try to schedule that.

Perhaps I can work late.

Are you sure it's a problem?

He's not familiar with the

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153. *Id.* at \*7.



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|--|---|
| Eat shit.                                  | problem.  |
| Eat shit and die.                          | You don't say.  |
| Eat shit and die, motherfucker.            | Excuse me.  |
| What the fuck do they want from my life?   | Excuse me, sir.   |
| Kiss my ass.                               | They weren't happy with it.                                     |
| Fuck it, I'm on salary.                    | So you'd like my help with it.                                  |
|  | I'm a bit overdedicated at the moment.                          |
| Shove it up your ass.                      | I don't think you understand.                                   |
| This job sucks.                            | I love a challenge.   |
| Who the hell died and made you boss?       | You want me to take care of this?                               |
| Blow me.                                   | I see.  |
| Blow yourself.                             | Do you see?   |
| Another fucking meeting.                   | Yes, we should discuss this.                                    |
| I really don't give a shit.                | I don't think it will be a problem.                             |
| Fuck you.                                  | How nice, how very, very nice.                                  |
| Get the fuck out of my office.             | Have a nice day.  |
| Oh, fuck, what [do] you want now, dipshit? | What can I do for you, pal?                                     |
| I don't give a fuck.                       | I can't be concerned by that at this time.                      |
| Asshole.                                   | Buddy.  |
| What asshole thought up this fucking idea? | Good idea, we should implement this immediately. <sup>154</sup> |

Harassment/abuse cases involving use of the F-word illustrate the importance of understanding the specific context of each case and the relative degree of abuse suffered by each plaintiff.

#### D. Attorney Disciplinary Cases

A fascinating category of cases involves professional sanctions against attorneys for in- or out-of-court uses of the F-word. These cases illustrate how courts generally disapprove of attorneys' use of the F-word and are not restricted by the First Amendment from ordering serious professional sanctions for such deviance—at least when F-word uses impede the orderly administration of judicial proceedings.

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154. *Id.* at \*14-15.

*In re Vincenti*<sup>155</sup> illustrates the willingness of courts to sanction attorneys for making repeated discourteous, insulting, and degrading F-word verbal attacks on the judge and his or her rulings that substantially interfere with the orderly process of trial. Attorney Vincenti repeatedly used the F-word and other vulgarities in front of other lawyers and witnesses in the courtroom. According to the New Jersey Supreme Court, Vincenti's aberrant conduct warranted a one-year suspension from the practice of law or until further order of the court.<sup>156</sup>

*Attorney Grievance Commission v. Alison*<sup>157</sup> involved a more ambiguous set of facts than did *Vincenti*. Attorney Alison made his F-word references outside of judicial proceedings, during the course of his bitter and emotionally devastating divorce.<sup>158</sup> Yet, because of the cumulative weight of these incidents, coupled with other erratic behavior, the Maryland court suspended Alison from the practice of law for ninety days.<sup>159</sup> According to the court, Alison's professional misconduct "had its roots in marital discord."<sup>160</sup> During a two-year period, Alison (1) was arrested for drunk driving and called the arresting trooper a "motherfucker;" (2) effected a "citizen's arrest" of his ex-wife for allegedly taking his property, by using a hammer to open the car door of his ex-wife and taking the keys out of the ignition; (3) filed a forgery complaint against his ex-wife; (4) harassed his ex-wife by placing trash on her property; (5) resisted a court-ordered search and used the phrase "fuck you" to his ex-wife's attorney; and (6) verbally abused the court clerk, insisting that the clerk "take the fucking papers," among other incidents.<sup>161</sup> The court rejected Alison's argument that F-word language was constitutionally protected speech. Instead, the court held that use of epithets or personal abuse was not communication of information or opinion. Further, even out-of-court F-word usage involving court personnel had the potential of "damag[ing] . . . the court system and . . . the reputation of

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155. *In re Vincenti*, 458 A.2d 1268 (N.J. 1983).

156. *See id.* at 1275. Among the attorney's F-word deployment was a remark he made to a female attorney: "Go fuck yourself." *Id.*

157. *Attorney Grievance Comm'n v. Alison*, 565 A.2d 660 (Md. 1989).

158. *See id.*

159. *See id.* at 668.

160. *Id.* at 661.

161. *See id.* at 661-64.

the legal profession."<sup>162</sup>

### E. *Written Word Cases*

Most F-word jurisprudence involves spoken or predominantly spoken language. However, some cases involve situations where the F-word is written—in or on books, clothing, newspapers, or other objects.<sup>163</sup>

Two United States Supreme Court cases aptly illustrate this classification for purposes of this article. First, in the classic 1971 case, *Cohen v. California*,<sup>164</sup> the Court reviewed the conviction of Cohen for disturbing the peace by entering a county courthouse wearing a jacket inscribed with the words "Fuck the Draft."<sup>165</sup> The Supreme Court, in an opinion written by Justice Harlan, reversed the conviction. As elegantly explained by Professor Lackland H. Bloom, Jr. in his article *Fighting Back: Offensive and Cultural Conflict*:<sup>166</sup>

*Cohen v. California* is probably the Court's most important precedent protecting offensive speech. There, in a very influential opinion by Justice Harlan, the Court held that the First Amendment prohibited the state from punishing a person under a statute which prohibited "maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person" by "offensive conduct" for wearing a jacket that said "Fuck the Draft" in the corridor of a courthouse. Justice Harlan's opinion is noteworthy in part for the care he took in defining the issue as he explained why the doctrines of conduct versus speech, time place and manner regulation, obscenity, fighting words, hostile audience reaction and captive audience were not controlling. . . . The Court again emphasized that the state is not

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162. *Id.* at 667. Interestingly, however, the *Alison* court, citing an out-of-jurisdiction precedent, observed that, "[a]ttorneys are not prohibited from using profane or vulgar language at all times and under all circumstances." *Id.* (citing *In re Williams*, 414 N.W.2d 394, 397 (Minn. 1987)).

163. *Cf. Bennet v. State*, 273 A.2d 461 (Md. Ct. Spec. App. 1971) (reversing defendant's conviction for violating Maryland's obscenity law by possession of an "underground" newspaper containing the F-word); *Dillon v. Waller*, 1995 WL 765224 (Ohio Ct. App. 1995) (involving libel, invasion of privacy and intentional infliction of emotional distress allegations arising from a neighbor's dispute triggered by the painting of "fuck you" on a church bus adjacent to the plaintiff's property).

164. *Cohen v. California*, 403 U.S. 15 (1971).

165. *Id.* at 16.

166. Lackland H. Bloom, Jr., *Fighting Back: Offensive Speech and Cultural Conflict*, 46 SMU L. REV. 145 (1992).

free to assume, absent clear proof, that members of the public are likely to violently attack a person who utters offensive words, and that where practicable the state is under a duty to protect the speech against hostile reaction. Then, in the most crucial part of its opinion, it made four significant points regarding the nature of offensive speech and attempts to regulate it. First, it observed that the "verbal cacophony" which may occur when offensive speech is permitted is a sign of strength rather than weakness. Second, it emphasized that it may be impossible for the state to determine which words are sufficiently offensive to be prohibited, noting that "one man's vulgarity [may be] another man's lyric." Third, the Court observed that language, especially offensive language, is often chosen for its emotive rather than its cognitive force. Finally, the Court recognized that words and ideas may often be inseparable and that the suppression of the former may result in the suppression of the latter as well. As long as Cohen is taken seriously and read honestly, significant regulation of offensive speech should remain the exception rather than the rule.<sup>167</sup>

The second United States Supreme Court case regarding the written F-word is *Board of Education, Island Trees Union Free School District v. Pico*.<sup>168</sup> In *Pico*, the local school board removed from the school library several allegedly vulgar books that used the F-word. In a five-to-four decision, the Court declared the school board's action in removing the books unconstitutional on First Amendment grounds. The Court held "that local school boards may not remove books from school library shelves simply because they dislike the ideas contained in those books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion."<sup>169</sup> Justice Powell, however, voicing his vigorous dissent, noted:

In different contexts and in different times, the destruction of written materials has been the symbol of despotism and intolerance. But the removal of nine vulgar or racist books from a high school library by a concerned local school board does not raise this specter. For me, today's

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167. *Id.* at 150-51 (footnotes omitted).

168. *Board of Educ. v. Pico*, 457 U.S. 853 (1982).

169. *Id.* at 872 (quoting *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)) (internal quotation marks omitted).

decision symbolizes a debilitating encroachment on the institutions of a free people.<sup>170</sup>

Interestingly, from the standpoint of F-word jurisprudence, Powell attached an appendix to his dissenting opinion providing a summary of excerpts from the relevant books as follows:

1) *SOUL ON ICE* by Eldridge Cleaver[:] . . . There are white men who will pay to fuck their wives. . . .

2) *A HERO AIN'T NOTHING BUT A SANDWICH* by Alice Childress[:] . . . Fuck the society . . . yeah, and fuck you too! . . . I'm too old for them fuckin bunnies anyway.

3) *THE FIXER* by Bernard Malamud[:] . . . fucking their mothers . . . . Fuck yourself . . . go fuck yourself. . . .

4) *GO ASK ALICE* by Anonymous[:] . . . Then he said that all I needed was a good fuck. . . .

5) *SLAUGHTERHOUSE FIVE* by Kurt Vonnegut, Jr.[:] . . . you dumb motherfucker . . . never fucked anybody . . . go fuck yourself . . . fucking sorry . . . I'll never fuck a Polack anymore. . . .<sup>171</sup>

Written F-word cases are important because of their focus on ideas and communication that must be protected for society to gain from tolerating diverse viewpoints.

#### F. Wiretap "Criminal Culture" Cases

In an extraordinary group of F-word cases, the annals of American jurisprudence reveal the tawdry and unseemly communication style of an assortment of organized crime figures caught by law enforcement wiretaps in what they thought were private conversations. These cases constitute a cornucopia of creative, shocking, and arguably humorous F-word language games. For example, in *United States v. Marino*,<sup>172</sup> the following phrases are contained in the court's summary of the facts, involving a wiretapped conversation: "Fuck that little guinea";<sup>173</sup> "A fucking success";<sup>174</sup> "What the fuck?";<sup>175</sup> "I don't picture him getting fucking sliced and diced

170. *Pico*, 457 U.S. at 894, 897 (Powell, J., dissenting).

171. *Id.* at 851-54 (internal quotation marks and emphasis omitted).

172. *United States v. Marino*, 835 F. Supp. 1501 (N.D. Ill. 1993).

173. *Id.* at 1510.

174. *Id.* at 1511.

175. *Id.*

in the kitchen";<sup>176</sup> "Keep this fucking thing going";<sup>177</sup> "Where the fuck is this money coming from?";<sup>178</sup> "What do I look like, a fuckin' nitwit?";<sup>179</sup> "Rocky called me that fucking night";<sup>180</sup> "Give him a fucking massage, no blow jobs or nothing";<sup>181</sup> "There's just so many other fucking things going on";<sup>182</sup> "Like Louis can't fuck with you";<sup>183</sup> "Looks like a fucking tank";<sup>184</sup> "I said I don't give a fuck if he's Jesus Christ. You don't fuck and come here and give your money. I says and you're fuckin' lying because you told George to say two was for free, there was no interest. I mean Pete and you told him not to let me know about it. So I says to tell that fucking cousin of yours to call me";<sup>185</sup> "You bulldog motherfucker. I ever catch you in fuckin' Lake County again I'll knock your motherfuckin' head off";<sup>186</sup> "Solly says shit, you fucking squat, 'cause if I turn him loose, he will knock your fucking head off";<sup>187</sup> "He wanted to put a fucking turban on your head";<sup>188</sup> "Louis don't give a fuck";<sup>189</sup> and "That was that fat fucker."<sup>190</sup>

By way of another extraordinary example, in *United States v. Nietupski*,<sup>191</sup> the wiretap recording of the defendant yielded the following F-word language: "Say fuck me";<sup>192</sup> "Yeah, they'll cut your fuckin' throat";<sup>193</sup> "I don't know, fuck";<sup>194</sup> "I cut that fuckin' shit";<sup>195</sup> "I wanna go fuckin' nuts";<sup>196</sup> "For the rest of your fuckin' life";<sup>197</sup> "You're fucked";<sup>198</sup> "Fuck

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176. *Id.* at 1512.

177. *Id.* at 1513.

178. *Marino*, 835 F. Supp. at 1513.

179. *Id.*

180. *Id.* at 1518.

181. *Id.* at 1522.

182. *Id.* at 1530.

183. *Id.* at 1531.

184. *Marino*, 835 F. Supp. at 1531.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.* at 1532.

190. *Marino*, 835 F. Supp. at 1533.

191. *United States v. Nietupski*, 731 F. Supp. 881 (C.D. Ill. 1990).

192. *Id.* at 887.

193. *Id.*

194. *Id.* at 895.

195. *Id.*

196. *Id.* at 898.

197. *Nietupski*, 731 F. Supp. at 898.

198. *Id.*

me out of \$17,000",<sup>199</sup> and "I want \$1,800 a fuckin' ounce cash, the day I bring it."<sup>200</sup> The wire tap "criminal culture" cases cannot easily be generalized. The chief significance of these cases is that they provide a window into the deviant use of the F-word by various criminal subcultures.

### G. Miscellaneous Cases

Certain F-word cases defy easy categorization. For instance, the Supreme Court's opinion in *Federal Communications Commission v. Pacifica Foundation*<sup>201</sup>—involving comedian George Carlin's F-word monologue recording, discussed at the outset of this Article,<sup>202</sup> is a miscellaneous type of F-word case involving federal telecommunications law. Another F-word case that can be put into this miscellaneous category is *U.S. v. Dellinger*,<sup>203</sup> "the Chicago Seven" criminal proceeding involving the "radical" protesters at the Chicago National Democratic Convention in 1968 who were prosecuted for alleged violations of the federal Anti-Riot Act.<sup>204</sup> In *Dellinger*, the court of appeals reversed the convictions below on various grounds, but upheld the federal statute as not being unconstitutionally vague or overbroad. In the process of reviewing the trial record, the appellate court referenced various portions of the trial record involving testimony utilizing the F-word. These references included the following: "Purpose to fuck up the convention";<sup>205</sup> "We are going to wreck this fucking society because if we don't, it's going to wreck itself";<sup>206</sup> "Look at these mother-fucking pigs . . . standing over here . . . they have to be standing in the park protecting the park, and the park belongs to the people. Let's get these fuckers out of here."<sup>207</sup>

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199. *Id.* at 902.

200. *Id.* See also *United States v. Maltese*, 1993 WL 222350 (N.D. Ill. June 22, 1993) (extensive F-word language used from wiretap recording); *United States v. Marsh*, 26 F.3d 1496 (9th Cir. 1994) (same); *United States v. Green*, 1992 WL 211404 (W.D.N.Y. 1992) (same).

201. *Federal Communications Comm'n v. Pacifica Found.*, 438 U.S. 726 (1978).

202. See *supra* notes 2-3 and accompanying text.

203. *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972).

204. 18 U.S.C. § 2101 (1970).

205. *Dellinger*, 472 F.2d at 399.

206. *Id.* at 405.

207. *Id.*

## IV. A SYNTHESIS AND CRITIQUE OF F-WORD JURISPRUDENCE

A. *Cop Cases and Courtroom Cases*

In both "cop cases"<sup>208</sup> and "courtroom cases,"<sup>209</sup> the appellate courts generally express concern about the disruption of society's law enforcement and law administration functions and therefore generally disapprove of the use of the F-word. However, in both categories, the opinions contain a presupposition of the appropriateness of official restraint by the police or by trial court judges in seeking to punish F-word verbalizers. The key rationale for presupposing official punitive restraint is constitutional is that only "fighting words" that have the potential to immediately incite a breach of the peace are unprotected by the First Amendment shield.<sup>210</sup> However, the cop cases and courtroom cases also contain, either explicitly or implicitly, pragmatic reasons for the official punitive restraint against those who speak the F-word. These pragmatic reasons include: (a) a recognition that those using the F-word may be under great emotional stress; (b) the fact that police officers and trial court judges—as the targets of the use of the F-word—should be able to manage the occasional receipt of an epithet without too much of a problem; and (c) the fact that for flagrant, repeated, deeply personal, or menacing F-word statements, police officers and trial judges may impose proportionate, appropriate legal sanctions.

B. *Harassment/Abuse Cases and Attorney Disciplinary Cases*

In contradistinction to the cop cases and courtroom cases,<sup>211</sup> the "harassment/abuse"<sup>212</sup> and "attorney disciplinary"<sup>213</sup> cases generally exhibit slight judicial tolerance for F-word parlance. This difference in judicial attitude regarding harassment/abuse cases seems premised on concern for the disruption of private lives by stinging, offensive F-word language that intrudes on a person's telephone line, disquiets an airline passenger in the course of commencing a journey, discriminates against a woman employee in the workplace in

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208. See *supra* Part III.A.

209. See *supra* Part III.B.

210. See *generally supra* note 77 and accompanying text.

211. See *supra* Part III.A-B.

212. See *supra* Part III.C.

213. See *supra* Part III.D.



a blatantly sexual manner based on the language utilized, or otherwise shocks a person who cannot be presumed to know how to "handle" the F-word encounter. The basis for the comparatively harsh judicial perspective in attorney disciplinary cases involving attorneys' use of the F-word appears to be high expectations that attorneys, as officers of the court and as paragons of the legal system, will properly comport themselves in court-related proceedings (whether in or out of the courtroom). Thus, the attorney disciplinary cases are akin in their underlying rationale to the cop cases and courtroom cases; but because attorneys are the *users* of F-word language and defendants of the pertinent legal proceedings—as opposed to the paradigmatic cop cases or courtroom cases, where police and trial court judges are the *recipients* of the F-word language and the *initiators* of the pertinent legal proceedings—the appellate judicial attitude toward attorneys differs from the appellate judicial attitude toward police officers and trial court judges. Interestingly, in non-paradigmatic cop cases and courtroom cases (for example, where police officers are the users of F-word language and citizens the recipients), the appellate judicial attitude toward the "official" F-word defendant (i.e., the police officer) resembles the harsh judicial attitude toward the attorney in the paradigmatic attorney disciplinary cases.

### C. *Written Word Cases*

In "written word" cases—where books, clothing, or newspapers employ the F-word to express beliefs or complex human emotions—the courts generally protect the defendants from liability.<sup>214</sup> This appellate judicial forbearance in imposing legal penalties on a written F-word user, while not monolithic in its approach, is rooted in an implicit assumption that written language (particularly language in books and periodicals) tends to express ideas—as compared to merely venting emotions. Therefore, these written ideas, even if highly unorthodox, should be protected by our scheme of constitutional liberty of expression. Another implicit judicial assumption in the written word cases seems to be that written F-word usage—as opposed to spoken F-word deployment—is generally less jarring and intrusive of both public and private

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214. See *supra* Part III.E.

spaces.

#### D. Wiretap "Criminal Culture" F-Word Cases

The "wiretap 'criminal culture'" F-word cases are largely subjective indulgences by appellate courts in observing extreme deviance in action.<sup>215</sup> This category of F-word cases reveals that courts feel tempted to offer up snippets of secretly recorded underworld conversations as an exercise in cultural anthropology. Alternatively, an implicit assumption of courts in F-word wiretap "criminal culture" cases is that such repeated, unrelenting, creative use of the F-word is evidence of evil motives, which when accompanied by extortion, conspiracy, or threatening behavior, justifies the criminal sanctions meted out. No mention is made in this category of cases of freedom of expression, unorthodox ideas, or everyday emotional acting-out.

### V. MORAL THEORY

From a moral standpoint, the cases discussed in this article reveal that judges exhibit situational ethics by condemning or justifying use of the F-word in particular circumstances. On a foundational level, no jurist really *likes* the use of an F-word. Conversely, use of an F-word is almost universally viewed as being unfortunate, messy, repellent, or controversial. But on a more rarefied level of analysis, jurists make judgments about the context of the F-word usage. Unless the F-word recipient is someone who has special training, or an official legal role, most courts tend to view use of the F-word as a "bad" thing—that is, *prima facie*, subject to legal sanction. This presupposition of badness can be overcome if the F-word arguably expresses an idea, either stylistically (e.g., a written novel about life in the ghetto) or substantively (e.g., a political opinion about the draft or the Vietnam War). In such a case, from the standpoint of moral theory, what was "bad" is "good," or at least a "necessary bad." However, if the user of an F-word is someone with special legal duties or status—such as an attorney or an employer—the aforementioned moral presumption of badness is virtually irrebuttable. While it is difficult to figure out why this virtually irrebuttable moral presumption of badness exists, I speculate that it

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215. See *supra* Part III.F.

has something to do with the usage of power-laden, sexually charged, language<sup>216</sup> (because all F-word usage has at least an implicit sexual meaning) by someone (like an attorney or an employer) who already has the power of status. Too much power, it seems, is always bad since too much power is oppressive.<sup>217</sup>

Morally and jurisprudentially speaking, what American appellate courts do in F-word cases—which as we have seen, typically concern open-ended legal standards involving such ambiguous concepts as “contempt of court,” “breach of the peace,” “harassment,” “abuse,” “disorderly conduct,” “public indecency,” “conduct unbecoming an attorney,” or “extortion”<sup>218</sup>—is to practice what legal philosopher Wilfred Waluchow calls “inclusive legal positivism.”<sup>219</sup> This “allows courts to use moral argument to determine legal conclusions when directed by the legal system to do so.”<sup>220</sup>

216. See generally, Sallie Tisdale, *Talk Dirty to Me*, in *THE PHILOSOPHY OF SEX*, 271, 278-80 (Alan Soble ed., 1997) (discussing sex and sexual images as being all about “power”).

217. *Id.* at 278.

Feminists against pornography . . . hold that our entire culture is pornographic. In a pornographic world all our sexual constructions are obscene; sexual materials are necessarily oppressive, limited by the constraints of the culture. Even the act of viewing becomes a male act—an act of subordinating the person viewed. Under this construct [Tisdale] [is] a damaged woman, a heretic, [since she enjoys pornography].

*Id.* Compare other social contexts’ use of sexually explicit language: JOHN HEIDENRY, *WHAT WILD ECSTASY: THE RISE AND FALL OF THE SEXUAL REVOLUTION* 84, 224, 301 (1997) (sexual titillation, literary avant-gardism, and libidinal satisfaction); JACK BOULUARE, *SEX AMERICAN STYLE: AN ILLUSTRATED ROMP THROUGH THE GOLDEN AGE OF HETEROSEXUALITY* 78-89 (1997) (“bedside smut”).

218. See *supra* Parts III.A-D.

219. W.J. WALUCHOW, *INCLUSIVE LEGAL POSITIVISM* (1994).

220. Roger A. Shiner, *Law and Morality*, in *A COMPANION TO PHILOSOPHY OF LAW AND LEGAL THEORY*, 448 (Dennis Patterson ed., 1996). As Shiner points out, Waluchow’s theory of “inclusive legal positivism” falls midway between “strong versions of legal positivism” and weaker versions of legal positivism:

Strong versions of legal positivism deny any room for moral argument in legal reasoning except where the court has, and exercises, discretion. A court has discretion when it is not bound by any strictly institutional or intra-legal standards. Anti-positivism by contrast urges that it is part of the obligation of a court to reason from the moral point of view whenever the good of justice overall would be served by doing so. There seems room between these extremes for a weaker version of positivism, which asserts that sometimes a court may have an obligation to use moral argument to reach a legal conclusion, and sometimes it may not. . . . Wilfred Waluchow . . . defends what he calls “inclusive legal

This judicial "license to moralize," while rooted in broadly textured legal standards, is also partly attributable to the ambiguous, emotion-laden, and multiple meanings of the F-word.<sup>221</sup> Thus, philosopher Ludwig Wittgenstein's quip about the philosophy of language is particularly apt in the case of F-word jurisprudence: "The results of philosophy are the uncovering of one or another piece of plain nonsense and of bumps that the understanding has got by running its head up against the limits of language."<sup>222</sup> Indeed, a critical limit of F-word language, or as linguists would say, the F-word lexeme,<sup>223</sup> is that it is a "loaded lexicon."<sup>224</sup> This is because the F-word is "highly charged with connotations"<sup>225</sup>—as distinct from "denotations"<sup>226</sup>—giving rise to essentially negative, idio-

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positivism." Using legal systems with constitutions as a model, his "inclusive legal positivism" allows courts to use moral argument to determine legal conclusions when directed by the legal system to do so. The resulting theory claims to be a richer positivistic theory than the stronger form, which forbids legal status to be determined by moral argument only through the legitimate exercise of discretion.

*Id.* at 447-48.

221. See *supra* Parts I and II.

222. LUDWIG WITTGENSTEIN, *PHILOSOPHICAL INVESTIGATIONS* § 119 (1953) (quoted in Martin Davies, *Philosophy of Language*, in *THE BLACKWELL COMPANION TO PHILOSOPHY* 90 (Nicholas Bunnin & E.P. Tsui-James eds., 1996)).

223. "Lexicon" and "lexeme" are related linguistic terms of art.

The term *lexicon* is known in English from the early [seventeenth] century, when it referred to a book containing a selection of a language's words and meanings, arranged in alphabetical order. The term itself comes from Greek *lexis* 'word'. It is still used today in this word-book meaning, but it has also taken on a more abstract sense, especially with linguistics, referring to the total stock of meaningful units in a language—not only the words and idioms, but also the parts of words which express meaning, such as the prefixes and suffixes.

DAVID CRYSTAL, *THE CAMBRIDGE ENCYCLOPEDIA OF THE ENGLISH LANGUAGE* 118 (1995). By way of comparison:

A *lexeme* is a unit of lexical meaning, which exists regardless of any inflectional endings it may have or the number of words it may contain. Thus, *fibrillate*, *rain*, *cats*, and *dogs*, and *come in* are all lexemes, as are *elephant*, *jog*, *cholesterol*, *happiness*, *put up with*, *face the music*, and hundreds of thousands of other meaningful items in English.

*Id.*

224. *Id.* at 170 (explaining the concept of "loaded lexicon").

225. *Id.*

226. According to David Crystal:

A denotation is the objective relationship between a lexeme and the reality to which it refers: so, the denotation of *spectacles* is the object which balances on our nose in front of the eyes; and the denotation of *purple* is a colour with certain definable physical characteristics. A de-

syncratic, personal associations brought to mind by the recipient of an F-word statement. In other words, F-word language is a type of what semantician and former United States Senator S.I. Hayakawa referred to as "snarl words" of the English language.<sup>227</sup> On a more nuanced level, the F-word is a type of "taboo" lexeme: "[i]tems which people avoid using in polite society, either because they believe them to be harmful or feel that they are embarrassing or offensive."<sup>228</sup> Moreover,

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notation identifies the central aspect of the lexical meaning, which everyone would agree about—hence, the concept of a "dictionary definition."

*Id.* By way of contrast:

[*Connotation*] refers to the personal aspect of lexical meaning—often, the emotional associations which a lexeme incidentally brings to mind. So, for many people, *bus* has such connotations such as "cheapness" and "convenience;" for others, "discomfort" and "inconvenience;" for many children, it connotes "school" and for many American adults in this connection, it has a political overtone (because of the 1960's policy in the U.S.A. of "bussing" children to school as a means of promoting social integration in ethnically divided urban communities). Connotations vary according to the experience of individuals, and . . . are to some degree unpredictable. On the other hand, because people do have some common experiences, many lexemes in the language have connotations which would be shared by large groups of speakers. Among the widely-recognized connotations, of *city* for example, are "bustle," "crowds," "dust," "excitement," "fun," and "sin" . . .

*Id.*

227. *Id.* at 171. As described by David Crystal, Hayakawa distinguished between "snarl" words and "purr" words when discussing connotations. To take his examples: the sentence *You filthy scum* is little more than a verbal snarl, whereas *You're the sweetest girl in all the world* is the linguistic equivalent of a feline purr or canine tail wag. There is little objective content (denotation) in either sentence.

*Id.*

228. *Id.* at 172. Interestingly, there have developed in the English language a variety of ways to avoid taboo words. According to David Crystal:

One is to replace [the taboo word] by a more technical term, as commonly happens in medicine (e.g., *anus*, *genitalia*, *vagina*, *penis*). Another, common in older writing, is to part-spell the item (*f\_k bl\_\_*). The everyday method is to employ an expression which refers to the taboo topic in a vague or indirect way—a *euphemism*. English has thousands of euphemistic expressions, of which these are a tiny sample:

Casket (coffin), fall asleep (die), push up the daisies (be dead), the ultimate sacrifice (to be killed), under the weather (ill), after a long illness (cancer), not all there (mentally subnormal), little girl's room (toilet), . . . be economical with the truth (lie), adult video (pornography), let you go (sack), industrial action (strike), in the family way (pregnant), expectorate (spit), tired and emotional (drunk).

*Id.* Crystal also notes, in analysis that is apt for the F-word, that "[a]ll swear words generate euphemisms, sooner or later, and the stronger the taboo, the

the F-word is also clearly a “swear” word<sup>229</sup> and—as previously discussed<sup>230</sup>—a form of “slang.”<sup>231</sup>

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larger the number of avoidance forms. The number of euphemistic expressions based on God is quite impressive, but the strongest taboo word, *cunt*, has accumulated around 700 forms.” *Id.*

229. See CRYSTAL, *supra* note 223, at 173

230. See *supra* notes 3-11 and accompanying text.

231. “Slang is one of the chief markers of in-group identity. As such it comes very close to jargon . . .” CRYSTAL, *supra* note 223, at 182. According to British lexicographer Eric Partridge (1894-1979), slang is employed by humans for any of at least 15 reasons and, therefore, is complex. These reasons, quoted by Crystal, are:

1. In sheer high spirits, by the young in heart as well as by the young in years; “just for the fun of the thing,” in playfulness or waggishness.
2. As an exercise either in wit and ingenuity or in humour. (The motive behind this is usually self-display or snobbishness, emulation or responsiveness, delight in virtuosity).
3. To be “different,” to be novel.
4. To be picturesque (either positively or—as in the wish to avoid insipidity—negatively).
5. To be unmistakably arresting, even startling.
6. To escape from clichés or to be brief and concise. (Actuated by impatience with existing terms).
7. To enrich the language. . . .
8. To lend an air of solidity, concreteness, to the abstract; of earthiness to the idealistic; of immediacy and appositeness, to the remote. (In the cultured the effort is usually premeditated, while in the uncultured it is almost always unconscious when it is not rather subconscious).
9. (a) To lessen the sting of, or on the other hand to give additional point to, a refusal, a rejection, a recantation; (b) To reduce, perhaps also to disperse, the solemnity, the pomposity, the excessive seriousness of a conversation (or a piece of writing); (c) To soften the tragedy, to lighten or to “prettify” the inevitability of death or madness, or to mask the ugliness or the pity of profound turpitude (e.g. treachery, ingratitude); and/or thus to enable the speaker . . . to endure, to “carry on.”
10. To speak or write down to an inferior to amuse a superior public; or merely to be on a colloquial level with either one’s audience or one’s subject matter.
11. For ease of social intercourse. (Not to be confused or merged with the preceding).
12. To induce either friendliness or intimacy of a deep or a durable kind. . . .
13. To show that one belongs to a certain school, trade, or profession, artistic or intellectual set, or social class; in brief, to be “in the swim” or to establish contact.
14. Hence, to show or prove that someone is not *in the swim*.
15. To be secret—not understood around one. (Children, students, lovers, members of political secret societies, and criminals in or out of prison, innocent persons in prison are the chief exponents).

*Id.* (quoting ERIC PARTRIDGE, *SLANG: TODAY AND YESTERDAY* 6, 7 (1934)).

## VI. CONCLUSION

Judicial encounters with the F-word in the facts of various types of cases have spurred an interesting assortment of cases that discuss, either explicitly or implicitly, the morality of F-word usage under the circumstances. This article is merely an initial sketch of some ways of classifying F-word cases and some thoughts on analyzing the fascinating nature of F-word jurisprudence. In this sketch I have discussed the fascinating multiplicity of meanings found in the complex etymology and lexicology of the F-word. My principal contribution, however, is a tentative categorization and classification of various F-word cases. My synthesis and critique of these cases leads to an interesting jurisprudential taxonomy of American morals as seen through the eyes of judges.