## TABLE OF CONTENTS

INTRODUCTION

1. WHAT IS UMCP'S POLICY ON FREEDOM OF EXPRESSION?................................. 2

2. WHAT DOES THE TERM “PUBLIC FORUM” MEAN AS IT IS USED IN THE UMCP POLICY ON FREEDOM OF EXPRESSION?................................. 2

3. DOES THE FIRST AMENDMENT GIVE LICENSE TO ALL TYPES OF EXPRESSION?................................................................................................. 3

4. WHAT CONSTITUTES “OBSCENITY”? “FIGHTING WORDS”?.......................... 4

5. CAN THE UNIVERSITY PLACE LIMITS ON PROTECTED EXPRESSION?........... 6

6. WHAT REASONS ARE RECOGNIZED AS LEGALLY SUFFICIENT TO JUSTIFY A UNIVERSITY’S REGULATION OF PROTECTED SPEECH?................. 7

7. DOES UMCP HAVE REGULATIONS REGARDING STUDENTS’ USE OF CAMPUS FACILITIES FOR PURPOSES OF SPEECH AND ASSEMBLY?................. 7

8. WHAT RULES APPLY TO THE USE OF STUDENT FEES FOR PROGRAMS AND ACTIVITIES OUTSIDE OF THE CLASSROOM?................................. 8

9. MAY THE UNIVERSITY REGULATE SPEECH THAT IT FINDS TO BE “OFFENSIVE”?................................................................................................. 10

10. WHAT MAY BE DONE ABOUT BEHAVIOR THAT IS RACIST, SEXIST, OR OFFENSIVE TO A PARTICULAR ETHNIC GROUP?........................................... 12

CONCLUSION

APPENDIX
INTRODUCTION

During the Vietnam conflict, in a case called Tinker v. Des Moines Independent Community School District, the United States Supreme Court was asked to decide if schools could prohibit students from wearing arm bands to protest the war. School officials had argued that the arm bands would provoke disturbances and thus disrupt the educational process. Ruling for the students, the Supreme Court held that "to justify prohibition of a particular expression of opinion, [school officials] must be able to show [their] action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."

Substituting flags for arm bands, the University of Maryland at College Park community recently has had the opportunity to be reminded of the Supreme Court's decision in Tinker. Other colleges and universities have been reminded of the complexities springing from the need to guarantee constitutional freedoms in contexts other than political dissent. For example, in a case discussed below, a federal court struck down a University of Michigan policy designed to stop an increase in discrimination and harassment on its campus. The court found that the policy subjected students to discipline for "offensive" speech—speech, which in fact, was protected under the First Amendment. The Michigan case illustrates the difficult necessity of balancing values relating to equality of educational opportunity with values relating to freedom of expression. How to strike that balance in the educational setting is a subject of current debate, not only in the courts, but on campuses across our country, among scholars and educational policy makers, and in the national press. This paper does not take up that debate, but aims to inform the reader about some legal principles relevant to it.

This publication answers ten questions commonly asked by members of our campus community about freedom of expression. It presents an overview of the University of Maryland at College Park’s policies regarding freedom of expression, a discussion of how these policies relate to fundamental principles of First Amendment law and gives case law examples. It identifies federal and state law and university policy that prohibit discriminatory and harassing conduct. This discussion of freedom of expression is intended as a "primer"; it sets forth some basic rules but does not attempt to be comprehensive. A question-answer format has been chosen to sharpen the issues and to invite additional questions.
1. **WHAT IS UMCP'S POLICY ON FREEDOM OF EXPRESSION?**

The institution's current policy, *Statement on Freedom of Expression*, was developed by the President's Select Committee on Freedom of Expression and submitted to President William E. Kirwan in March, 1989. The policy statement, endorsed by the Campus Senate in March, 1990, recognizes the particular importance that the university, as an institution of learning, places on the free exchange of ideas. The policy states the university's commitment to open, vigorous debate and speech. It places each member of the campus community on notice of his or her obligation to promote free expression and prohibits interference with such expression. While it expects members of the campus community "to consider the hurt which may result from the use of [discriminatory] slurs or epithets," the policy does not prohibit or sanction speech which violates those social and ethical considerations. While members of the campus community are free to deplore what they find unacceptable or offensive, and those responsible may be urged to change, the policy establishes that the educational mission of the university requires "the need for freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable."

The policy also sets forth guidelines for the protection of free speech in areas of the campus designated as "public forums." It acknowledges the right to dissent. The policy provides that violators of the guidelines shall be subject to appropriate legal and administrative action. For example, the *Code of Student Conduct* prohibits students from intentionally and substantially interfering with the freedom of expression of others and stipulates that such actions may result in suspension or expulsion from the university.

2. **WHAT DOES THE TERM "PUBLIC FORUM" MEAN AS IT IS USED IN THE UMCP POLICY ON FREEDOM OF EXPRESSION?**

A state university is a "public" institution; however, this does not mean that its campus and facilities are open to the general public to use for purposes of communication. The law provides that a public institution, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated. This means that a state university need not make its facilities available to non-students.

With respect to students, a university may designate certain areas of the campus as "public forums" or common areas open for individual or student group activity. These "public forums" are thus distinguished from other areas on campus, such as classrooms and administrative offices.
A university may create "public forums" for students or for the general public by practice or by specific written policy. Courts prefer that regulations be written in order to give individuals specific notice of the institution's expectations with respect to the use of its facilities.

The UMCP Statement on Freedom of Expression guidelines apply to those areas designated as "public forums" on our campus. The guidelines address the right to dissent through such means as picketing, silent or symbolic protest and audible protests. Thus, for example, the Office of Campus Activities has designated certain areas on campus as "public forums" for use by registered student groups. Specific regulations for the use of campus facilities by registered student groups are found in the Office of Campus Activities' Program Planning Manual. These regulations are discussed in Question 7 in this publication.

3. DOES THE FIRST AMENDMENT GIVE LICENSE TO ALL TYPES OF EXPRESSION?

The First Amendment "protects" speech. This means that the state cannot undertake directly or indirectly to limit or punish the expression of ideas because of the messages those ideas convey. Speech is a broad term meaning actual speech, the written word, visual arts, music, drama, dance, and forms of symbolic expression.

The assumption is that all these manifestations of speech are "protected" from interference. There are a few narrowly drawn exceptions. The Supreme Court has determined that some speech has no value under the First Amendment and constitutes "utterances [that] are no essential part of any exposition of ideas [and] of... slight social value as a step to truth." Categories of speech excluded from protection include defamation, invasion of privacy, fraudulent misrepresentation, obscenity, advocacy of imminent lawless behavior, and "fighting words."

Commercial speech is another exception. While commercial speech is entitled to First Amendment protection, it does not receive the full range of protection afforded to speech which is closer to the First Amendment's core values, such as "political" speech. In general, the state may restrict commercial speech more than non-commercial speech."
4. WHAT CONSTITUTES "OBSCENITY"? "FIGHTING WORDS"?

"Obscenity" and "fighting words" are categories excluded from First Amendment protection which often raise questions in the university setting.

**Obscenity**

The Supreme Court has labored through the years to define obscenity. In 1973 a bare majority of the Court agreed on a definition, described by one constitutional scholar as "a formula likely to be as unstable as it is unintelligible." The definition requires each element of a three-part test be met:

1. whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to prurient interests;

2. whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by applicable state law;

3. whether the work taken as a whole, lacks serious literary, artistic, political, or scientific value.

The Supreme Court provided examples along with its definition: "patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; and, patently offensive representations or descriptions of masturbation, excretory functions, and lewd exhibitions of the genitals."

**CASE EXAMPLE:**

The Supreme Court's test generally restricts obscenity to hard core pornography. The Supreme Court thus summarily held that the University of Missouri could not expel a student whom the university decided had violated "conventions of decency." The student had published the headline "Mother F--- Acquitted" over a cartoon in the student newspaper depicting a policeman raping the Statue of Liberty.
Fighting Words:

While political dissent, advocacy of opposition to government policies, insult, and offensive speech are protected under the First Amendment, incitement to criminal acts is not. Thus, "fighting words" receive no First Amendment protection. "Fighting words" are words which are likely to make the person to whom they are addressed commit an immediate act of violence either against the speaker or against someone else.

Related to the issue of "fighting words," is the problem of the "heckler's veto," or how to referee between a controversial speaker and an angry audience. The Supreme Court has not ruled directly on this issue. Thus, "no general rule of constitutional etiquette—no functional equivalent of Robert's Rules of Order—can be stated," other than heckling which meets the test for "fighting words" may be prohibited. Some courts, however, have ruled that heckling which substantially interferes with the rights of a speaker to speak or an audience to hear may be prohibited.

CASE EXAMPLE:

The last time that the Supreme Court upheld a "fighting words" conviction was in 1951.

A college student made a street corner speech in which he called President Truman "a bum," the American Legion "Nazi Gestapo" and urged blacks in the racially mixed crowd to "rise up in arms and fight for equal rights." Two policemen, facing a crowd of about eighty people, asked the speaker to stop after at least one listener threatened violence. When the speaker refused, the police arrested him for disorderly conduct. The Supreme Court affirmed the conviction on the basis that the speaker's expression constituted incitement to riot.

CASE EXAMPLE:

A student at the University of Indiana was convicted of disorderly conduct during a campus protest against the Cambodian invasion. The student had said, "We'll take the f---ing street again." The Supreme Court, scrutinizing the record, noted, "that [the student] did not appear to be exhorting the crowd back into the street; that his tone although loud, was not louder than that of other people in the area [and] at worst [the remarks] amounted to nothing more than advocacy of illegal action at some indefinite future time." Finding no evidence that the student's remarks were directed at anyone specifically, or that they were likely to produce any imminent disorder, the Court reversed the conviction.
5. MAY THE UNIVERSITY PLACE LIMITS ON PROTECTED EXPRESSION?

The state may not undertake to control the content of protected speech through regulations. However, protected speech is subject to nondiscriminatory time, place and manner restrictions. Such restrictions must be content neutral, narrowly tailored and allow for reasonable alternative channels of communication. A university must be able to clearly articulate significant reasons which justify the regulations. The institution must be prepared to point to facts which support its reasons for restrictions.

CASE EXAMPLE: Students at the University of Virginia twice erected shanties on the Lawn (a registered historic landmark) of the Rotunda Building to protest the university's investment in South Africa. After the second incident, the students were subjected to campus disciplinary action. The campus judicial board dismissed the charges because the university had no rules regulating the use of the Lawn. The university President appointed a committee to create a Lawn use policy. The policy, adopted by the President and approved by the Board of Visitors, banned "any structure or extended presence" on the Lawn. Students promptly erected another shanty. The university promptly removed it. The students sued.

The university asserted its "interest in maintaining the aesthetic integrity of the campus" as the sole justification for the Lawn use regulations. While the court recognized that this may be a legitimate interest in this case, it held that the university had failed to present evidence that the students at any time had inflicted temporary or permanent damage to the Lawn. The court also rejected the university's argument that the Lawn use rules allowed for reasonable alternate forms of demonstrations. Students chose the Lawn so that the shanty would be visible to the Board of Visitors who meet in the Rotunda. The court found that the language of the rule, particularly the term "extended presence" was so vague it failed to alert students as to the scope of its prohibition and therefore had a chilling effect on students' use of the Lawn "as a forum even for clearly protected expression." The university's permitted alternatives were not, the court said, "sufficient to vitiate the university's sweeping restraints on its students' protected behavior." The court granted the students an injunction which allowed them to rebuild the shanty on the Lawn. (Note: See endnote 24 for UVA's ultimate success in writing a constitutional Lawn use policy.)
6. WHAT REASONS ARE RECOGNIZED AS LEGALLY SUFFICIENT TO JUSTIFY A UNIVERSITY'S REGULATION OF PROTECTED SPEECH?

Some governmental interests which courts have recognized as sufficient to justify restrictions on protected expression include a university's interest in:

— providing a forum for expression of diverse opinions;
— providing for the safety of its students;
— preventing substantial disruption of the educational process;
— protecting the rights of students and others;
— preserving the use of facilities for their normal and intended uses;
— preventing commercial exploitation of students.

It is important to note that each case turns on its particular facts. An institution cannot rely merely on articulating constitutionally approved reasons, but must be prepared to produce facts to support those reasons. Courts will scrutinize all available facts to determine if the circumstances justify the institution's stated rationale.

7. DOES UMCP HAVE REGULATIONS REGARDING STUDENTS' USE OF CAMPUS FACILITIES FOR PURPOSES OF SPEECH AND ASSEMBLY?

Yes. The Office of Campus Activities has published rules for the use of campus facilities by registered student groups in its Program Planning Manual. These rules do not regulate content of expressive activity. They do regulate the time, place and manner of protected expression. The rules govern advertising, posting flyers and announcements, the display of banners, space reservations, demonstrations, and security for events.
8. WHAT RULES APPLY TO THE USE OF STUDENT FEES FOR PROGRAMS AND ACTIVITIES OUTSIDE OF THE CLASSROOM?

The Student Government Association apportions student fees to registered student groups. A student group registers by completing a "Student Organization Registration Form" and submitting it with a copy of the group's constitution to the Office of Campus Activities. In general, the same rules apply to the allocation of student fees as apply to the allocation of university facilities. Fees may be apportioned among groups according to nondiscriminatory criteria. When funds are made available, they must be distributed in a viewpoint-neutral manner, absent other considerations.

On the other side of the equation, challenges to the constitutionality of mandatory fees on the basis that the fees compel students to subsidize views with which they disagree, generally have been unsuccessful. Most courts have upheld the use of mandatory fees if the university can show that the subsidized activity contributes directly and substantially to the educational process. In that event, the university's interest in providing a forum for expression of diverse opinions outweighs any incidental infringement upon students' constitutional rights. However, use of fees cannot be justified if the fees fund an activity which is essentially partisan or non-educational.

CASE EXAMPLE:

Students at Rutgers University's Camden College successfully challenged the use of a mandatory fee to support the New Jersey Public Interest Research Group (PIRG) as a violation of their First Amendment rights. The court, noting that PIRG was "an outside organization independent of [the] university" and "primarily devoted to changing conditions outside the university," found it to function more as a political action group than as a student organization which provided a forum for the exchange of diverse views. PIRG was therefore "not entitled to compelled contributions from those who were opposed [to PIRG's views]."
CASE EXAMPLE: 26

The Gay and Lesbian Students Association (GLSA) of the University of Arkansas at Fayetteville met all objective criteria for funding by the Associated Student Government (ASG), which had been delegated authority to appropriate funds to student groups, subject to administrative approval. The ASG denied the GLSA funds twice. After the GLSA used an unusual procedure to obtain funds, the ASG voted never to fund it again. Student senators freely admitted they voted against the group because of its views. Evidence showed that "[events on campus did not escape the notice of university officials or state legislators]" who met and discussed the "adverse publicity that funding the GLSA has brought to the university." The court, finding in favor of the GLSA, concluded:

Nor is there a compelling state interest justifying the Senate's denial of funds. The University provides no argument, and we can think of none. True, sodomy is illegal in Arkansas. However, the GLSA does not advocate sodomy, and even if it did, its speech about an illegal activity would still be protected by the First Amendment. People may extol the virtues of arson or even cannibalism. They simply may not commit the acts....But government may not discriminate against people because it dislikes their ideas, not even when the ideas include advocating that certain conduct now criminal be legalized.
9. MAY THE UNIVERSITY REGULATE SPEECH THAT IT FINDS TO BE “OFFENSIVE”? 

No. Unless speech falls in one of the categories excluded from First Amendment protection (see Question 3 above), speech cannot be proscribed because it is found to be offensive.

Perhaps one of the most well known cases standing for this principle involved the Village of Skokie, Illinois, “Racial Slur” ordinance which made it a misdemeanor to disseminate any material promoting or inciting racial or religious hatred. The ordinance was intended to prevent groups of Nazi party members from marching through the village and so to avoid “the infliction of psychic trauma on resident Holocaust survivors.” In a decision eventually approved by the Supreme Court, a federal court struck down the ordinance as a violation of the First Amendment. The court wrote that the “result we have reached is dictated by the fundamental proposition that if . . . civil rights are to remain vital for all, they must protect not only those society deems acceptable, but also those whose ideas it quite justifiably rejects and despises.”

A distinguished expert in law and policy in higher education has articulated the following rationale for extending First Amendment protection to “offensive” speech:

Punishing [offensive] speech can be an emotionally satisfying catharsis. There will also be occasions where it would be politically expedient as well. Still, those inclined to take that approach need be reminded that they are opening a door through which others will surely follow. (See e.g. Board of Education, Island Trees Union Free School 1982: local school board attempted to remove or restrict access to a number of “anti-American,” “anti-Christian” and “anti-Semitic” books in school libraries, including Best Short Stories of Negro Writers, edited by Langston Hughes; Black Boy by Richard Wright; and Soul on Ice by Eldridge Cleaver.) This was precisely the concern expressed by Justice Black when he wrote in Communist Party (1961) that “freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”
CASE EXAMPLE:

In response to increased racial harassment and intolerance on its campus, the University of Michigan at Ann Arbor enacted a policy that "prohibited individuals, under penalty of sanctions, from 'stigmatizing or victimizing' individuals or groups on the basis of race, ethnicity, origin, ancestry, age, marital status, handicap or Vietnam-era veteran status." A graduate student in biopsychology brought suit. The student said that certain controversial theories positing biologically based differences between sexes and races might be perceived as "sexist" and "racist" and subject to sanctions under the policy. He argued therefore that the policy impermissibly chilled his right to freely and openly enter into classroom discussion. The university defended the suit on the basis that the policy did not apply to speech protected by the First Amendment, pointing to a provision in the policy for a legal review of any claim that charged covered protected speech. The reviewing court, however, refused to confine itself to the "plain language of the policy" because, as the court put it, "[t]he slate was not so clean." The court noted that the history of the policy, as evidenced from memos from university officials, including the Acting President and a university attorney, showed it was intended to be "a remedy for racially insensitive and derogatory remarks which students found offensive." The court also cited an interpretive guide published by the university Office of Affirmative Action which gave examples of sanctionable conduct, including:

A male student makes remarks in class like "Women just aren't as good in this field as men," thus creating a hostile learning atmosphere for female classmates.

The graduate student's ideas, the court said, were sufficiently close to the example in the guide to chill classroom discussion. Finally, the court pointed to the university's discriminatory harassment complaint files which showed that students had been charged for classroom statements such as "homosexuality [is] a disease" and for reading an allegedly homophobic limerick in a speech class. Thus, the policy proscribed speech "simply because it was found to be offensive" and therefore swept "within its scope speech which is otherwise protected by the First Amendment." The court concluded that while it was "sympathetic to the university's obligation to ensure equal educational opportunities for all of its students, such efforts must not be at the expense of free speech. Unfortunately, this was precisely what the university did."
10. WHAT MAY THE UNIVERSITY DO ABOUT BEHAVIOR THAT IS RACIST, SEXIST, OR OFFENSIVE TO A PARTICULAR ETHNIC GROUP?

There is an important distinction to be made here between "speech" and "behavior." Discriminatory conduct is not protected by the First Amendment and is prohibited by a variety of state and federal laws and is subject to civil action. The university, however, cannot regulate speech because of its offensive content—even if it is racist, sexist or derogatory to a particular ethnic group. Offensive speech is protected under the First Amendment.

**Discriminatory Conduct**

Conduct is not protected by the First Amendment. Federal law imposes civil and criminal sanctions against persons depriving or conspiring to deprive others of rights guaranteed by the United States Constitution. Victims of abusive racial, ethnic, religious or other slurs may have recourse in civil suits for intentional infliction of emotional distress. Discrimination in employment, education and government benefits on the basis of race, sex, national origin, age, handicap and religion is generally prohibited by federal and state law. The UMCP Human Relations Code sets forth complaint and resolution procedures for discriminatory practices in relation to employment, job placement, promotion, or other economic benefits or in eligibility for access to residence halls, or for admission to and otherwise in relation to educational, athletic, social, cultural or other activities on campus. UMCP policy prohibits sexual harassment, including conduct which unreasonably interferes with a person’s academic or work performance or otherwise creates an intimidating, hostile or offensive educational or working environment. The UMCP Code of Student Conduct makes students accountable to both civil authorities and to the university for acts which constitute violations of law and published university regulations or policies.

**Maryland’s Religious and Ethnic Crimes Law**

Maryland law specifically addresses conduct directed against an individual, groups or institutions because of their racial, religious or ethnic identity. Maryland’s Religious and Ethnic Crimes Law makes it a criminal offense to:

- deface, damage or destroy or attempt to deface, damage or destroy religious real property or personal property;
- obstruct or attempt to obstruct by force or threat of force a person in the free exercise of that person’s religious beliefs;
- harass or commit a crime upon a person or damage the real or personal property of a person because of the person’s race, color, religious beliefs or national origin.
Maryland’s Racial, Religious and Ethnic Incidents Reporting Law\textsuperscript{36}

All police departments must report all complaints of violence directed against an individual, group or institution because of race, religion, ethnicity or sexual orientation to the Maryland State Police.

Maryland Criminal Law

Many acts of discrimination, intimidation or harassment of a racial, religious and ethnic nature violate other parts of the Maryland criminal code:

- Harassment\textsuperscript{37}
- Explosives \textsuperscript{38}
- Bomb Threats \textsuperscript{39}
- Destroying or damaging property of another\textsuperscript{40}
- Assault\textsuperscript{41}
- Battery\textsuperscript{42}
- Disorderly conduct\textsuperscript{43}
- Possession of a firearm in proximity of a public demonstration\textsuperscript{44}
- Unlawful use of telephone\textsuperscript{45}
- Trespassing\textsuperscript{46}

Board of Regents’ Policy on Acts of Violence and Extremism\textsuperscript{47}

University System policy adopted by the Board of Regents on January 11, 1990, forbids "acts of destruction or violence which are racially, ethnically, religiously, and/or otherwise motivated against the person or property of others and which infringes on the rights and freedom of others." The Board of Regents’ policy provides for "campus judicial and personnel action, including suspension, expulsion or termination" for such acts.
CONCLUSION

When confronted with a question that has the potential to affect freedom of expression, one should consider:

1. Whether the speech/expression is protected by the First Amendment. The presumption should be that it is protected.

2. Whether the place which the speaker seeks to use is a UMCP-designated public forum.

3. Whether a proposed restriction is content neutral, allows for reasonable alternative channels of communication and is limited to time, place and manner.

4. Whether the institution can articulate a significant interest which justifies the regulation.

5. Whether the institution can provide factual justification for its articulated interest in the imposition of any regulation.

In addition to its commitment to freedom of expression, the university has a commitment to equality of educational opportunity. The university will not tolerate discriminatory conduct. Each member of the campus community should be aware of the laws and university policy which prohibit such conduct. Individuals who would like information regarding those laws and regulations may contact:

The Office of Human Relations, (301) 405-2838.

The Office of Judicial Programs, (301) 314-8204.

The UMCP Police Department, (301) 405-5726.

The Office of Legal Affairs, (301) 405-4945.
ENDNOTES:

2. Id., at 508-509.
5. The term "freedom of expression" is used generally to refer to rights of free speech secured under the First Amendment. The complete text of the First Amendment reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peacefully to assemble, and to petition the Government for a redress of grievances." U.S. Const., amend. I.
6. See the Appendix for the full text of the Statement on Freedom of Expression.
7. See Code of Student Conduct, Section 9 (j).
8. Classrooms are places dedicated to instruction and learning, and not to the general exercise of free speech. While a student can not be disciplined for the content of views expressed in class (see discussion in Question 9), a university may limit speech in class to that which is legitimately related to the course subject matter. With this caveat, the rules discussed in this paper also generally apply to classroom discussion.
10. Defamation is the injuring of a person's character, fame, or reputation by the communication to a third party of false and malicious statements. Defamatory statements may be written (libel) or oral (slander).
11. Invasion of privacy is the accurate disclosure of highly personal facts in which the public has no legitimate interest.
12. Fraudulent misrepresentation is an intentional false statement as to a material fact which another party relies upon to his or her detriment.
13. The line between protected advocacy and illegal incitement of criminal acts is drawn by the "clear and present danger" test. This test requires that two conditions be met before speech advocating the use of force or crime be proscribed: 1) the advocacy is directed to inciting or producing imminent lawless action; and 2) the advocacy is "likely to incite or produce such action." Brandenburg v. Ohio, 395 U.S. 444 (1969). The law here has developed from a line of cases dealing with political dissent in wartime, such as "anti-subversive" laws enacted following the Second World War. The "fighting words" doctrine developed as a subset of the "clear and present danger" test.
14. See, Board of Trustees, State University of New York v. Fox, 109 S.Ct. 3028 (1989), in which the Supreme Court held that SUNY regulations prohibiting private commercial enterprises from operating on university property did not have to be the "least restrictive means" of achieving the university's interest in promoting an educational rather than commercial atmosphere on SUNY's campuses.
22. Steven Emanuel, Constitutional Law (1990), 459.
24. Students Against Apartheid v. O'Neil, 660 F.Supp. 333, 671 F.Supp 1105 (W.D. Va. 1978), 883 F.2d 735 (4th Cir. 1988). UVA lost round one. It then revised its rules, allowed for shanties in sight of the Rotunda, defined its terms, and provided evidence of its aesthetic concerns. UVA then won round two (students' lawsuit on the revised rules) and three (appeal of round two).
30. The Supreme Court has distinguished conduct which is not protected under the First Amendment from various forms of nonverbal expression that are protected. This distinction between "pure speech" and "speech plus conduct" often turns on the facts of a particular case. However, the Supreme Court has articulated a two part test to identify "expressive and symbolic conduct": First, is there an intent to convey a particularized message? Second, is there a substantial likelihood that the message will be understood by those who view it? Spence v. Washington, 418 U.S. 405 (1974).
34. Article 49B, Annotated Code of Maryland. Maryland Human Relations Code prohibits discrimination on basis of race, creed, sex, age, color, national origin, marital status, physical or mental handicap in public accommodations, employment, housing.
35. Article 27, Section 470A of the Annotated Code of Maryland.
36. Article 88B, Sections 9(b) and 10(0) of the Annotated Code of Maryland.
37. Article 27, Section 121 A of the Annotated Code of Maryland.
38. Article 27, Section 139 A of the Annotated Code of Maryland.
39. Article 27, Section 151 A of the Annotated Code of Maryland.
40. Article 27, Section 111 of the Annotated Code of Maryland.
41. Common law crime.
42. Common law crime.
43. Article 27, Section 123 of the Annotated Code of Maryland.
44. Article 27, Section 36 G of the Annotated Code of Maryland.
45. Article 27, Section 555 A of the Annotated Code of Maryland.
46. Article 27, Section 576 and 577 of the Annotated Code of Maryland.
47. See the Appendix for the full text of the Board of Regents' Policy on Acts of Violence and Extremism.
APPENDIX

1. President’s Select Committee Statement on Freedom of Expression
2. Board of Regents’ Policy on Acts of Violence and Extremism
March 1, 1989

President's Select Committee
Statement on Freedom of Expression

The primary purpose of a university is to discover and disseminate knowledge by means of teaching, research, and service. To fulfill these functions a free exchange of ideas is necessary not only within its walls but with the world beyond. It follows that a university must do everything possible to ensure within it the fullest degree of intellectual freedom. The history of intellectual discovery and growth clearly demonstrates the need for freedom, the right to think the unthinkable, discuss the unmentionable, and challenge the unchallengeable. Whenever someone is deprived of the right to state unpopular views, others are necessarily deprived of the right to listen to those views. Few institutions in our society have this same central purpose; accordingly, few assign such high priority to the freedom of expression.

The University of Maryland at College Park is committed to maintaining an environment where the free expression of ideas and open, vigorous debate and speech can occur. Every member of the campus community has an obligation to promote free expression in the university. No member shall prevent such expression.

Consistent with these principles, the university has adopted guidelines for the protection of free expression and has specified appropriate sanctions for their violation. These guidelines and sanctions shall appear in pertinent university publications.

In addition to the obligation to promote and protect free expression, individuals assume further responsibilities as members of the university. The campus expects each of its members to consider the hurt which may result from the use of slurs or epithets intended to discredit, for example, another's age, ethnicity, gender, handicap, national origin, political beliefs, race, religion, or sexual orientation. While the need to guarantee free expression may sometimes supersede the values of civility and mutual respect, members of the community should weigh these values carefully in exercising their fundamental right to free expression.

*This statement draws on the Report of the Committee on Freedom of Expression at Yale, Yale University, January 8, 1975, and statements from the Harvard Law School and the University of Michigan.*
Guidelines for Public Forums

The following guidelines apply to all public forums at the University of Maryland at College Park. The guidelines are intended to protect the right to free expression and the safety and integrity of the forum in which this right is exercised.

1. Right to Dissent

The right to dissent is the complement of the right to speak, but these rights need not be exercised in the same forum at the same time. A speaker is entitled to communicate a message to the audience during an allotted time, and the audience is entitled to hear the message and see the speaker during that time. The dissenter must not substantially interfere with the speaker’s ability to communicate or the audience’s ability to hear, see, or question the speaker. Dissent outside the meeting is limited to activity that does not impede access to the meeting and does not substantially interfere with the communication inside.

The following examples suggest the limits of allowable dissent:

a. Picketing; literature. Picketing or distributing literature in an orderly way outside the meeting is allowable unless it impedes access to the meeting. Distributing literature inside a meeting is allowable before the meeting is called to order and after the meeting is adjourned.

b. Silent or symbolic protest. Displaying a sign, gesturing, standing, or otherwise protesting noiselessly is allowable unless the protest interferes with the audience’s view, or prevents the audience from paying attention to the speaker. Any use of signs, prolonged standing, or other activity likely to block the view of any one in the audience should be confined to the back of the room.

c. Noise. Responding to the speaker, spontaneously and temporarily, is generally allowable. Responding in a manner which substantially interferes with the speaker’s communication is not permitted, whether inside or outside the meeting.

2. Force or Violence.

Using or threatening force or violence is prohibited.

3. The Audience’s Responsibility

The audience, like the host and the speaker, must respect the right to dissent. A member of the audience or the host organization who substantially interferes with acceptable dissent is violating these guidelines in the same way as a dissenter who violates the rights of the speaker or audience.
4. Security

The President or President’s designee(s) shall determine, in consultation with members of the campus community, what security measures, if any, should be taken to assure compliance with these policies and guidelines. Because the university has a responsibility to foster a marketplace of ideas, the financial requirements deemed necessary for adequate security must never be used as a subterfuge to suppress freedom of expression.

5. Sanctions

Violators of these guidelines shall be subject to appropriate legal and administrative action. For students, this may include suspension or expulsion from the university as stipulated in the Code of Student Conduct.

UMS Bylaws, Policies and Procedures of the Board of Regents

VI—1.10—POLICY ON ACTS OF VIOLENCE AND EXTREMISM

(Approved by the Board of Regents on January 11, 1990)

The essential nature of the university requires an atmosphere of tolerance and understanding of diverse groups, ideas, and opinions.

Acts of destruction or violence which are racially, ethnically, religiously, and/or otherwise motivated against the person or property of others and which infringe on the rights and freedom of others will not be tolerated at the University System’s institutions or facilities.

Individuals committing such acts at any facility of the System are subject to campus judicial and personnel action, including suspension, expulsion, or termination.

In addition, the Board of Regents encourages its institutions to pursue criminal prosecution of persons committing such acts under state and federal criminal laws.

Replacement for: BOR VI-36.00, and BOT Resolution 1984-14