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Some words are injurious . . . Some cause a raging storm

December 05, 1990 | By Kenneth Lasson

THE OTHER DAY a law student at the University of Maryland bemoaned the fact that, though his required one-semester course on the Constitution was almost over, the professor had yet to say a thing about the First Amendment.

The occasion was a symposium on hate speech -- specifically what to do about the skinheads in Hampden. For the moment that particular group of young punks has receded to the inside pages of the local papers, having been denied a KennethLassonpermit to march through the predominantly white community and declare it a "nigger-free zone." Mayor Schmoke himself denied the permit.

The panel debating the issue gave the few students who showed up a lot to think about. David Rimbaugh, a Methodist minister in Hampden, asked how his community should respond to hate-mongers from the hinterlands. Stuart Comstock-Gay, executive director of the American Civil Liberties Union of Maryland, stated the traditional ACLU position that the government cannot be trusted to draw the proper line between protected speech and that which should be suppressed. Bob Purvis of the National Institute against Prejudice and Violence reported a rising tide of racist incidents on college campuses around the country.

And Charles Jones, a law professor at Rutgers, declared that the law does not, should not and need not protect those who spew injurious hatred -- that words can hurt every bit as much as sticks and stones.

It was the last point to which the law students took almost uniform exception. How can you draw the line between good speech and bad speech, they asked, between espousing offensive ideas and causing someone emotional distress? "Courts make such distinctions all the time," answered Jones, "in cases involving obscenity or 'fighting words,' or in situations where there is 'a clear and present danger' of harm."

He went further, asserting that he thought the courts were wrong in allowing the American Nazi Party to march through the predominantly Jewish town of Skokie, Ill., in the late 1970s. He still hurts, Jones said, from the memory of being verbally harassed (because he is black) or going ice-skating at a rink in a white section of South Chicago. He'd have little trouble drawing a good, clear, legal line between Nazis in Skokie and freedom marchers in Mississippi.

"Shouldn't they both be protected as political speech?" one student persisted. "Suppose the Nazis wanted simply to propose a new social order, with Jews at the bottom?"

"All speech is political," responded the professor. His voice was soft and measured, but his message was hard as marble. If law students cannot discern the difference between calling for a new social order, with Jews at the bottom, and advocating a racial hierarchy -- with Jews at the bottom of a pit -- then there is not much hope for any human rights, much less the right of free speech.

The difference should be just as clear, he might have added, between defamatory speech denying a group its right to equality (or to exist) -- punishable in damages -- and offensive symbolic speech like flag-burning, which the Supreme Court has properly protected.

The debate was highly charged and provocative, and had to end much too soon. Regardless of whether they would ultimately support Mayor Schmoke or the ACLU, it's a shame that so few law students (much less practitioners or fellow citizens) are ever forced to face such fundamental First Amendment issues and to develop informed responses. Not many lawyers would know how to try a civil liberties case; questions involving the freedoms of speech, press, assembly or religion are barely countenanced on the bar exam. And citizens rarely confront such problems of principle except in two-minute television sound bites over dinner -- or when cretinous scruffians stir up trouble in their neighborhoods.

The good burghers of Hampden, and all of us, deserve better.

Kenneth Lasson is a professor of law at the University of Baltimore.

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