WHY THREATS OF VIOLENCE ARE NOT PROTECTED JOB AID

The United States Supreme Court established the **"fighting words doctrine"** and the **"true threat doctrine"** that inherently placed limitations on the First Amendment's right to freedom of speech and expression. The following court decisions set parameters and progressively expanded on what is considered to be a true threat that is not protected under the First Amendment.

In ***Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)**, Mr. Walter Chaplinsky, a Jehovah's Witness, distributed religious literature on a public street criticizing other religions. A hostile crowd gathered, and police removed Mr. Chaplinsky. While being escorted to the police station, Mr. Chaplinsky accused the government of being racketeers and fascists using profane, lewd, and obscene language. Mr. Chaplinsky was convicted under the Public Law of New Hampshire that forbids intentionally offensive speech, but he appealed and claimed the statute was unconstitutional under the First Amendment. The U.S. Supreme Court affirmed the conviction by citing the law's purpose was to maintain peace by prohibiting words that were likely to incite violence as fighting words, "by their very utterance, inflict injury or tend to incite an immediate breach of peace," and is outside the First Amendment's protection. Subsequent cases would challenge the broad meaning of the fighting words doctrine to what constitutes a true threat.

In ***Watts v. United States*, 394 U.S. 705 (1969)**, an anti-war protester made a threatening statement toward President Lyndon Johnson regarding the military draft for the Vietnam War. The U.S. Supreme Court ruled the statement was only considered political hyperbole, was protected by the First Amendment's freedom of speech, and was not considered a true threat. The court established the true threat doctrine exception based on three justifications of preventing fear, preventing the disruption that follows that fear, and diminishing the likelihood the threat of violence will occur.

In ***Virginia v. Black*, 538 U.S. 343 (2003)**, the U.S. Supreme Court held that any state statute can ban cross burning as a criminal offense but that cross burning alone does not inevitably convey a message of intimidation. Cross burning along with a contextual factor of the intent to intimidate, if proven, would constitute a true threat. Specifically, cross burning along with the intent to intimidate is constitutionally not protected when the speaker directs a threat to a person or group of persons with the intent of placing a victim or victims in fear of bodily harm or death.

In ***Counterman v. Colorado*, 600 U.S. 66 (2023)**, the U.S. Supreme Court weighed on whether or not threats made on social media are protected by the First Amendment. The court expanded the true threat doctrine definition as a serious expression conveying that a speaker means to commit an act of unlawful violence. In using a recklessness standard, the U.S. Supreme Court held that in true threat cases, to convict a person of making a true threat, the state must show that the speaker consciously disregarded a substantially and unjustifiable risk that their conduct would cause harm to another. In proving that Mr. Billy Counterman, who had been convicted of stalking a musician through messages sent on Facebook, conveyed a true threat, it would not be protected under the First Amendment. The U.S. Supreme Court remanded the case back to the lower court for a decision based on these more defined true threat principles and is currently pending.