

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Fort Collins, CO 80521 (970) 498-6100	FILED IN COMBINED COURTS LARIMER COUNTY, CO 2003 JUL -1 PM 3:07
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, In the Interest of: [REDACTED], a Child.	▲ COURT USE ONLY ▲ Case Number: [REDACTED]
DAVID S. KAPLAN Colorado State Public Defender ERIC VANATTA (#24823) Deputy State Public Defender Fort Collins Regional Office 1 Old Town Square, Suite 201 Fort Collins, Colorado 80524 Phone: (970) 493-1212, Fax: (970) 498-8867 E-mail: fcollins.defenders@state.co.us	Courtroom: 4B
<p style="text-align: center;">MOTION TO DISMISS: THE CONSTITUTIONALITY OF FUCK, "FUCKER" AND "FUCKING FAG"</p>	

Counsel hereby asks the Court to dismiss the case at bar. He states the following:

1. Mr. [REDACTED] is charged with Interference with Staff, Faculty or Students of Educational Institutions, a class three misdemeanor. The charge was amended from the original charge of Disorderly Conduct.
2. The basis of the prosecution is an alleged statement Mr. [REDACTED] made to his principal at school. During lunch, Mr. [REDACTED] was contacted by the vice principal for suspicion of smoking in the boy's room. He was taken to the principal's office where he allegedly called the principal a "fucker, a fag, and a fucking fag." He was charged with the present offense based on his statements to the principal and he is being prosecuted for the words he spoke.
3. In order to provide a context for the alleged crime, we must first examine the history of Fuck and its evolution in society. Fuck's earliest recorded use is prior to the year 1500 from the English-Latin poem Flen Flyys: "Non sunt in celi quia fuccant uuiuys of heli," which translates to "they are not in heaven because they fuck the wives of Ely" See www.wikipedia.org/wiki/fuck.

4. Although still offensive to some, Fuck is a more commonly used and accepted term in today's twenty-first century society than it was in the past. Use of the word Fuck "has been accepted in R-rated movies (and occasionally in PG-13 movies, though not often). Since the 1970's, the use of the word Fuck in R-rated movies has become so commonplace in mainstream American movies that it is rarely noticed by most audiences." *Id.* Some movies such as Scarface, Porky's and Goodfellas are known for the extensive use of the family of Fuck words (Fuck, Fucking, Fucker, Fuckface, Fucked, Absofuckinglutely, etc.) and in the non-US version of the comedy Four Weddings and a Funeral, Fuck is the chief word and repeatedly uttered during the first five minutes of the film. *Id.* Pulp Fiction was nominated for seven academy awards and took home the Oscar for *best screenplay* with its zealous and gratuitous use of Fuck phrases. It would be far fetched to argue that the Fuck family has not made its way into mainstream society.

5. In the world of the performing arts, Fuck and its many variants are not limited to Hollywood and the big screen. George Carlin, a well known and admired American comedian, for years has based his act on the use of the more colorful words in the English language, including extraordinarily large amounts of Fuck phraseology. In fact, one of the most well known comedic skits in American history is George Carlin's "Seven Dirtiest Words," two of which are Fuck and Motherfucker. Andrew Dice Clay, Eddie Murphy, Chris Rock, Robin Williams and countless others have used the Fuck family to entertain audiences across the land, enriching their lives with the entertainment and comedic value of Fuck and its progeny.

6. The word Fuck can be heard almost anywhere at anytime, not just at your local movie theatre or comedy club. Numerous other mainstream and well respected artists have used the family of Fuck words in their music and performances. The Rolling Stones (who have nine number one albums, thirty-four top 10 ten albums and thirty-eight gold/platinum albums) have used the word in numerous recorded songs and hoards of additional live performances. Other popular musical artists such as Eminem, Lenny Kravitz, Tupac Shakur, Kid Rock, Busta Rhymes, 311, Bad Religion, Beck, Dr. Dre, Blink 182, Spleen Dingo and Everlast have actually titled songs that contain some variation of the word Fuck. For a complete listing of at least 417 song titles containing a member of the Fuck family, one only need access to a computer to visit the non-pornographic site inlyrics.com. Literally millions of Fucking recordings have been distributed by national recording artists, who are backed by national record labels, who seem not to have a problem proliferating this prolific word and its closely related cousins. Counsel knows of no record label or record label executive that has been prosecuted for titling a band, a song or an album with a member of the Fuck family.

7. From Fa (a syllable used to represent the fourth tone of a major scale or sometimes the tone F) to Fytte (archaic variation of Fit), there are roughly eight thousand six hundred words in the English language that begin with the letter F. Webster's 3rd New International Dictionary of the English Language, Unabridged, pp. 811-926, (1986). Fuck has the unique distinction of being the only word commonly known as the F word. Fuck is so popular that a 272 page book entitled "The F Word" was published by the well respected national publisher Random House Books in 1999. Coincidentally, Random House also happened to be 1999's number one ranked distributor of children's books. "The F word" is readily available at the world's largest online bookseller, Amazon.com, or your local Barnes and Noble bookseller for around fifteen dollars.

8. A search of internet web sites suggests Fuck is a more commonly used word than mom, baseball, hot dogs, apple pie, and Chevrolet. *Google Search Engine at Google.com on June 25th, 2003.*

9. Mr. [REDACTED] is alleged to have spoken two different variations of the root word Fuck. The following table depicts the number of internet search engine hits for [REDACTED] alleged "Fucker" and "Fucking" statements as compared to Fuck itself and other commonly heard words or phrases. All results are approximate.

Word	Approximate number of hits
Fuck	24,900,000
Fucking	24,700,000
Fucker	735,000
Mom	9,040,000
Baseball	13,600,000
Hot Dogs	607,000
Apple Pie	308,000
Chevrolet	4,090,000
Freedom of Speech	542,000
First Amendment	933,000
Unconstitutional	691,000
Sticks and Stones May Break My Bones	7,360

10. Fuck has distinct meanings based on the context in which it is used. When formally defined:

a. "FUCK, n, 1680

1. *usually obscene* : an act of copulation
2. *usually obscene*: a sexual partner
- 3a. *usually vulgar*: DAMN
- 3b. *usually vulgar*: used especially with *the* as a meaningless intensive <what the fuck do they want from me>"

Merriam-Webster's Online Dictionary, www.m-w.com/cgi-bin/dictionary
(emphasis in original)

b. The Cambridge English Readers Online Dictionary adds more zest to the definition of fuck and fucking (emphasis in original):

"fuck (EXTREME ANGER) exclamation offensive
used when expressing extreme anger or annoyance, or to add force to what is being said:

Fuck - the bloody car won't start!

Shut the fuck up!
Who the fuck does she think she is, telling me what to do?

fucking adjective, adverb offensive

used to emphasize a statement, especially an angry one:

What a fucking waste of time!

He's a fucking idiot

He'd fucking well better do it."

11. Fuck possesses incredible versatility. It can be a noun (you fuck), a verb (everything Billy touches, he fucks up), an adjective (I'm really fucking broke), an adverb (I've been fucking drinking too much), an exclamation (holy fuck, Batman!) or question (what the fuck?). This versatility could partially explain the prevalence of the word and why it is so readily available to anyone with access to a computer, VCR, CD player, eight track recorder, DVD player, phonograph, cassette deck or Blockbuster Video outlet. It may explain why Fuck can be used in almost any sentence at any time no matter what the circumstances and why the word has become almost commonplace in United States culture and society.

It is against this backdrop that we turn to the situation at hand.

12. The question presented by the case at bar is not whether Fuck is a desirable or attractive word, or whether a juvenile should be calling his principal a fucker or a fucking fag. Rather, the question is one of constitutionality and whether the State can criminalize the speech in question by application of the statute at issue. The prosecution is attempting to hold a juvenile criminally responsible for the age old tradition of name-calling. Although Mr. ██████ could have selected a more desirable choice in prose such as "I respectfully dissent" or "I am disappointed with your attitude, sir, and politely ask you to cease and desist," the use of the words fucker and fucking nonetheless do not amount to criminal conduct in this particular context.

13. The statement alleged against Mr. ██████ is protected by the First and Fourteenth amendments to the United States Constitution. The United States and Colorado Constitutions both provide that no law abridging or impairing freedom of speech shall be enacted. U.S. Const. Amend. I, applies to the states through U.S. Const. Amend. XIV, and Colo. Const. Art. II, §10.

14. Freedom of thought, speech, expression and ideas are the very concepts upon which America's liberty is founded. An extremely limited number of exceptions have been judicially carved from one of the most fundamental principals of American jurisprudence. Courts have, on occasion, upheld the constitutionality of statutes which prohibit obscenity, libel, incitement, invasion of substantial privacy interests of the home and "fighting words." *People v. Hayden*, 548 P.2d 1278 (Colo. 1976).

15. Fuck is an entirely legal word that may be uttered in public places so long as the manner in which it is uttered will not cause a violent reaction. *Cohen v. California* 403 U.S. 15 (1971). ("Fuck the Draft" jacket worn in a courthouse was protected by the first amendment). In overturning a disorderly conduct conviction, the Cohen Court went on to state:

Against this perception of the constitutional policies involved, we discern certain more particularized considerations that peculiarly call for reversal of this conviction. First, the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true *that one man's vulgarity is another's lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.* Additionally, we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated. Indeed, as Mr. Justice Frankfurter has said, "[o]ne of the prerogatives of American citizenship is the right to criticize public men and measures — and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." *Baumgartner v. United States*, 322 U.S. 665, 673-674 (1944). Finally, and in the same vein, we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process. Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been able, as noted above, to discern little social benefit that might result from running the risk of opening the door to such grave results.

Cohen at 25-26 (emphasis added)

16. The Colorado Supreme Court used the same reasoning in citing and following *Cohen* by overturning a municipal conviction based on the defendant, Mr. Wade, yelling "Fuck You" at a meeting of over two hundred people at the University of Denver campus. *Ware v. City and County of Denver*, 511 P.2d 475 (Colo. 1973).

17. The statement "I don't need this fuckin' school anyway" in concert with violently slamming a door was found to be constitutionally protected speech. The statement was made by a juvenile to a police officer in a school setting after the juvenile was called to the principal's office to be informed that she was being expelled from school. *L.M.A.W. v. State*, 611 So.2d 497 (Ala. Cr.App. 1992) (conviction for disorderly conduct overturned).

18. "Shut the fuck up" and words to the effect of "don't let the door hit you on the ass on the way out" were ruled to be constitutionally protected speech. *B.E.S. v. State*, 629 So.2d 761 (Ala.Cr.App. 1993).

19. A juvenile telling a police officer "fuck you" was held to be constitutionally protected speech. *R.I.T. v. State*, 675 So.2d 97 (Ala.Cr.App. 1995) (conviction for disorderly conduct overturned). The *R.I.T.* court reasoned that police officers are specially trained to deal with vulgarities and situations when others may be verbally abusive towards them, and thus "fuck you" was not likely to provoke a violent response.

20. A juvenile calling a police officer a "fucking pig, fuckin' kangaroo" and telling the officer "fuck you" during a traffic contact was found to be constitutionally protected speech. *State v. John W.*, 418 A.2d 1097 (Me. 1980). Just like the *R.I.T.* court, *Id.*, the *John W.* court also reasoned that police officers deal with these types of situations on an every day basis and therefore "fucking pig, fuckin' kangaroo and fuck you" were not likely to invoke a violent response.

21. Finally, the Arizona case of *In Re Louise C.* is almost directly on point with the case at bar. Louise C. was brought to the principal's office in relation to a conflict with another student. In the presence of the other student, the principal, and the vice principal, Louise C. was asked whether she planned to fight the other student. She lashed out and said "Fuck this, I don't have to take this shit" and walked toward the door. When the principal asked her to stop she said "Fuck you, I don't have to do what you tell me" and slammed the door behind her. She was later suspended from school for the incident. Louise C.'s statements and conduct were found to be constitutionally protected by the First Amendment. *In Re Louise C.*, 3 P.3d 1004 (Az. App. 1999).

22. The state has the power to protect its citizenry from actual harm, and thus has the power to outlaw one yelling "Fire!" in a crowded theatre. See, *Schenck v. United States*, 249 U.S. 47 (1919). However, yelling "Fuck!" in a crowded theatre does not create a clear and present danger to anyone and thus cannot be outlawed. Although they are both four letter words that start with F, the distinction is constitutionally significant.

23. The elements of Interference with Staff, Faculty or Students of Educational Institutions require proof beyond a reasonable doubt that Mr. [REDACTED] unlawfully and willfully impeded the staff and faculty of the school. The elements also require that he do so by using restraint, abduction, coercion or intimidation. It is difficult to imagine how calling one's principal some naughty words hinders his ability to do his job. Although counsel has not seen a formal description of what his job requires, typically a principal is called on to deal with situations precisely like the one at hand. This is surely not the first time the principal has heard an offensive remark or been called a bad name. In contrast to the general public, one would expect a principal to have special training in dealing with situations that require non-criminal discipline and reprimand. In fact, rather than violently responding to the insults, the principal suspended Mr. [REDACTED] from school for the incident in question, an entirely legal and appropriate reaction to the alleged statements. However, criminal charges and the potential sanctions that come along with them are categorically different than the in-house sanctions that Mr. [REDACTED] already suffered.

24. Fuck is certainly a controversial word that may be appropriate in certain venues and locales (Florida Elections Commission, speed eating contests, public defender offices) and may be inappropriate in others (weddings, Chuck-E-Cheese pizza parlors, district attorney offices). Some people may believe it is always inappropriate. But in all but a very few circumstances, the First Amendment to the United States Constitution prohibits our government from making that determination. This case falls outside of those very limited circumstances and as such, no conviction can result from Mr. [REDACTED] alleged statements.

Therefore, the Court must dismiss this case.

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Deputy State Public Defender

Certificate of Service

I certify that, on 7/11/03, the foregoing document was served by delivering mailing faxing it to opposing counsel.

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