SHELDON NAHMOD

UNIVERSITY DISTINGUISHED PROFESSOR OF LAW

IIT CHICAGO-KENT COLLEGE OF LAW

Email: [snahmod@kentlaw.edu](mailto:snahmod@kentlaw.edu)

Blog: nahmodlaw.com

Twitter: @nahmodlaw

YouTube: search “sheldon nahmod”

**The First Amendment and Political Protests: A Primer**

**Congress shall make no law … abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances**.

I. The Major Theories of the First Amendment

A. Marketplace of Ideas

B. Self-government

C. Avoiding government suppression

II. Three Important Considerations in Every First Amendment Case: The WHAT (Content), the

HOW (Medium) and the WHERE (Forum)

III. The WHAT: dangerous speech (Brandenburg v. Ohio, 395 U.S. 444 (1969)); the hostile

audience (Feiner v. NY, 340 U.S. 315 (1951)(Justice Black dissenting)); falsehoods (NY Times v.

Sullivan, 376 U.S. 254 (1964)); true threats (Elonis v. US, 135 S. Ct. 2001 (2015)); obscenity

(Miller v. California, 413 U.S. 15 (1973)); child pornography (NY v. Ferber, 458 U.S. 747

(1982)); hate speech

A. Some general principles: viewpoint/content neutraiity

B. Practical takeaway

IV. The HOW: speaking; writing; demonstrations; leafletting (Schneider v. State, 308 U.S. 147

(1939)(on streets)); Martin v. City of Struthers, 319 U.S. 141 (1943)(knocking on doors));

soundtrucks (Kovacs v. Cooper, 336 U.S. 77 (1949)); billboards (Metromedia v. San Diego, 453

U.S. 490 (1981))

A. Some general principles

B. Practical takeaways

V. The WHERE: streets and parks (Hague v. CIO, 307 U.S. 496 (1939) and traditional public

forums); designated or voluntary public forums; nonpublic forums (Perry Educators’ Assn. v.

Perry Local Educators’ Assn., 460 U.S. 37 (1983)(interschool mail system)); private property

A. Some general principles: permits and reasonable time, place and manner restrictions;

prior restraints (Lovell v. Griffin, 303 U.S. 444 (1938))

(1938); symbolic conduct (Texas v. Johnson, 491 U.S. 397 (1989)(flag “desecration”))

B. Practical takeaways