

In the latest episode of *George Washington Slept Here*, host Jason Raia welcomes [Aaron Terr](#), the Director of Public Advocacy at the [Foundation for Individual Rights and Expression \(FIRE\)](#). Aaron discusses his role at FIRE, First Amendment rights, and the challenges of advocating for them. The conversation also explores the critical role of free speech, past and current First Amendment cases, and the initiatives FIRE is taking to safeguard free speech for all Americans. Take advantage of this insightful dialogue on America's state of free expression.

Quotes

"The First Amendment is not just a legal protection, but a cultural value that we need to remind Americans of in order to safeguard our freedom"- Aaron Terr

"Engaging in thoughtful dialogue and addressing opposing views on their merits is crucial for a healthy democracy. "- Aaron Terr

"We must ensure that the rights to free speech and expression are protected not just on college campuses, but in our broader society as well."- Aaron Terr

Featured Guest

Aaron Terr

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Transcript:

We the people of the United States. A house divided against itself cannot stand. Life, liberty, and the pursuit of happiness.

Jason Raia:

Hello, and welcome to *George Washington Slept Here*, the civic education podcast from Freedoms Foundation at Valley Forge, where we explore American history, civics, and the idea of liberty through conversations with some of our favorite thinkers, writers, and leaders. I'm Jason Raia, chief operating officer at Freedoms Foundation and host of *George Washington Slept Here*. The format is simple, a long form conversation with a friend of Freedoms Foundation where everyone can learn something new. Before we go any further, a little housekeeping, we encourage everyone to subscribe to *George Washington Slept Here* wherever you listen to podcasts, and make sure you get every new episode as soon as it is out. We love hearing from our listeners, so please email us at gwshpodcast@gmail.com with your comments, questions, or suggestions, and hit us up at Freedoms Foundation social media @FFVF on Twitter and on Facebook and Instagram @freedomfoundation. Today's interview is with the director of public advocacy at the foundation for individual rights and expression, Aaron Terr. Hello, Aaron.

Aaron Terr:

Hey, thanks for having me.

Jason Raia:

Great to have you here. Our conversation today is going to be structured just to keep us on track. We want to explore your origin story and how you became the person sitting here before us, your current work at FIRE, and then we're gonna talk about some of the cases and issues that FIRE is dealing with in the arena of the First Amendment. And finally, we will end with a quiz, which hopefully learn something about you that we did not know. So Aaron, where were you born and raised?

Aaron Terr:

I was born in Bay Shore, New York, and grew up there. Actually, the title of this podcast kinda reminded me of a little landmark in my hometown. It's called Sagtikos Manor. It's this estate that the British used as headquarters during the Revolutionary War.

Jason Raia:

Oh, very cool.

Aaron Terr:

And after the war, George Washington, when he was president, was touring Long Island. and he actually stayed over there one night. And when he drive by, there's a sign outside that says George Washington slept here 1790.

Jason Raia:

I love it. Well, that's exactly the reason, and we haven't really talked about this, but that's a perfect example of why we wanted to name the podcast *George Washington Slept Here* is there is this neat phenomenon that George Washington as he traveled the country, of course, it's pre-hotel, and he would stay in, you know, taverns and rooming houses and what have you and all of those people worked so and so happily to proclaim that George Washington had slept there that they emblazoned it on brass plaques, and if they had neon lights they would have put it in neon light. And it's really because George Washington was the great uniter of the country. Like, he brought everyone together, everyone -- believed in George Washington. And, of course, after him, parties form, and there's no single individual that draws the country together in the way that George Washington does. And that just got us thinking, you know, that we need to find what it is that makes us Americans. And, certainly, George Washington has been part of that, but what is it for the 21st century? And we thought exploring that - it just worked for our name. So it's I I that's that's really neat that in your hometown is one of those places that.

Aaron Terr:

There is. Yeah. There's always just a cool feeling to be in a place like that, and you can kind of visualize them actually being there.

Jason Raia:

Yeah. Exactly.

Aaron Terr:

-- centuries ago and what the scene was inside, you know, when you go into Independence Hall, where the constitutional convention took place, it just gives you it fills me with this kind of sense of awe and to actually be in that space where these things happened.

Jason Raia:

Right. And we certainly have come to believe that a historic place is really important, and there's nothing that replaces being in a spot like Independence Hall or here in Valley Forge or, you know, in Bay Shore, New York where you're like, he was here. They were here, and we do that with students when we bring them to historic sites. And it is incredible to see a young student who has read about some place and now is standing there and just what a powerful moment it is. And how important those kinds of experiences are in connecting all of us together, that this is something shared amongst us. And so, I'm a big advocate for bringing young people. So you grew up in New York. This is Long Island or?

Aaron Terr:

Long Island. Yeah.

Jason Raia:

So who were your influences then? Who were the important people who were sort of, you know, maybe not you didn't realize at the moment, but we're sort of driving you down the path that you would end up at eventually?

Aaron Terr:

Yeah. Well, it's funny. I mean, I I I had a real zigzag path to coming to you know what I do now. I was a big fan of stand up comedy.

Jason Raia:

Okay.

Aaron Terr:

And I just remember, you know, being young, my parents loved George Carlin.

Jason Raia:

Sure.

Aaron Terr:

And I think I would maybe mark that as kind of the first thing in my life that exposed me to the idea of free speech and why it's important.

Jason Raia:

The seven, the seven forbidden words?

Aaron Terr:

Right, the seven words. I won't say them right now. But -

Jason Raia:

The good thing is in podcasts, we don't have to worry about, like, the FTC.

Aaron Terr:

That's true. Maybe I should say. But, you know, I don't know what kind of NLP wants to call -

Jason Raia:

Our audience. might not appreciate it.

Aaron Terr:

But yeah just listening to him. We have my dad who had actual records of his albums. and I remember listening to those. And, I thought he was just hilarious, you know, even at a young age, like twelve or thirteen, also just extremely perceptive, in a way that, you know, few comedians, I think, are. And he had so many great bits about language too. I mean, so he had, like you mentioned, his own run- ins with censorship. And then he just had great actual comedic bits about language and sort of the way that we, police language in our culture. And, you know, he has this great bit on euphemisms. And how they can conceal reality and conceal the real impact of an idea or concept or phenomenon. And I just love the example where he goes from, you know, using the example of shell shock, in WWI.

Jason Raia:

Sure.

Aaron Terr:

That then became battle fatigue during WWII, then it became, I think, operational exhaustion.

Jason Raia:

Oh, wow.

Aaron Terr:

And then finally, with the Vietnam War, and he's like, you know, and now we're up to four, six syllables or whatever. And then finally with Vietnam more post-traumatic stress disorder.

Jason Raia:

Right. Right. But, yeah, that's so that's that's fascinating that here is this, you, beloved, revered comic who, as a young kid, you're you obviously know he's funny but there's that deeper thing with language, and specifically with censorship, that eventually at least nudges you toward a life that you had no idea you'd be working for a First Amendment advocacy shop, as an adult. So you go to Vassar. Yeah. And what'd you study?

Aaron Terr:

So I studied biology at Vassar. And the other thing I didn't mean, my dad has been an influence in my life too.

Jason Raia:

Yeah.

Aaron Terr:

And he's always been very interested in the natural world.

Jason Raia:

Sure.

Aaron Terr:

He loves birds, insects, and spiders. He's probably the only person I know who loves spiders. And plants. And so he, I sort of inherited that same interest from him, particularly an interest in evolutionary biology.

Jason Raia:

Okay. Okay.

Aaron Terr:

I remember, I think in high school reading this book, called *What Evolution Is* by Ernst Mayor, famous evolutionary biologist that my dad had in the house and just be being fascinated with that topic and understanding how all these different species came to be that the way that they are. And, I kinda that's what led me to major in biology in college. and I wanted to be a scientist for a while. That was kind of the path I was on. But I became disillusioned with that after college when I was working a couple of internships on scientific research projects, such as forest ecology, and experiments. I was out in Wisconsin, and I was up in Northern Manitoba, Canada working on these projects going out in the field collecting area.

Jason Raia:

You sure it wasn't just wasn't the climate that turned you off from?

Aaron Terr:

I actually managed to get out of there in mid-November before it got too insane.

Jason Raia:

Before you got stuck there until May.

Aaron Terr:

Yeah. If you're there in January, February, it's every day, it's, like, 25 below. But it was, you know, but it was an interesting experience. I can't say that I loved it. There were things of I I at the same time, I don't think that I would take it back because there are parts of it that were, so I saw I got to see Aurora Borealis. Many nights up there. One of the most amazing things I've ever seen in my life but, you know, I did realize that I I don't think I wanna do this as a career.

Jason Raia:

Mhmm. Mhmm.

Aaron Terr:

And that's what led me to go to law school. And so I was thinking I can kinda use my science background and my interest on the policy side to pursue environmental law.

Jason Raia:

Okay. That would have been an interesting marriage of your studies and your fieldwork with this idea of going to law school.

Aaron Terr:

Right. Right.

Jason Raia:

But George Carlin's still in the back of your head.

Aaron Terr:

He's still in the back of my head but, you know, the and when I got to law school, and this is this is kind of a complaint I have about, and I've heard it from other people, other lawyers that you not only do law schools tend to not encourage you to look into First Amendment and free speech advocacy as a career option that even can sometimes actively discourage or make it seem like it's just a fun thing to, to study while you're in law school. And maybe you can even do the First Amendment clinic, but it's like, so few people make an actual career out of it. There's just not that many opportunities. And to be fair, I mean, I don't think there are compared to there aren't compared to something like corporate law. But, as I am now actually on FIRE, I looked to hire somebody to join my department, actually think back to that and think, I'm like, I'm looking. I'm trying to find somebody who's a perfect fit, and I wouldn't mind if I, you know, there were more people out there that were –

Jason Raia:

Yeah.

Aaron Terr:

That's in this type of work.

Jason Raia:

Yeah but then realized in law school that this was an area of interest and had pursued it more, but they're not being encouraged to. Do you think that's generally true in law schools or of Con Law in general or the First Amendment more so, because it feels like not having gone to law school, I wonder is a better way to say it. I wonder if it is more that sort of career track, whether you're going toward taxing corporate law or litigation and criminal law or any number of the types of law, but whereas Con Law is fairly theoretical. Again, like you said, that's great to argue about, but is there a career there? But that for those who could have a career, there leaves them in a bit of a disadvantage.

Aaron Terr:

Right. Yeah. I think that's true. but it is also true that most people who go to law school, certainly most people who I went to law school with, they ended up wanting to pursue careers in big law, or in criminal law. That may not have been what they said that they wanted to do when they, when they applied –

Jason Raia:

Right.

Aaron Terr:

-- when they arrived.

Jason Raia:

That wasn't in their personal essay?

Aaron Terr:

Yeah. Yeah. I can't wait to defend large corporations. But, you know, the money is pretty tempting.

Jason Raia:

Sure.

Aaron Terr:

And you know, it it can be interesting and --

Jason Raia:

Oh, absolutely. Yeah. For sure, no doubt.

Aaron Terr:

So I don't wanna denigrate it. But, but so but I was doing, I did the environmental law clinic. I interned at an environmental law nonprofit, and I just didn't find the work –

Jason Raia:

It didn't connect. Yeah.

Aaron Terr:

-- that exciting. It just did not, yeah. It didn't, it didn't excite me.

Jason Raia:

Yeah. Yeah.

Aaron Terr:

And so I ended up taking a judicial clerkship after law school, and I worked in that position for several years. And I kinda figured this is a way I can keep sampling different areas of law.

Jason Raia:

Right.

Aaron Terr:

And kinda figure out what area I ultimately wanna specialize in. So as a clerk, you know, you work for a judge and, you know, it and it's a fun gig. You get, I got to the write draft opinions in cases coming up on appeal. This is the Pennsylvania Superior Court. It's the state's intermediate appellate court.

Jason Raia:

Right. This is above the Court of Common Pleas, which is sort of your entry level court. So they're deciding cases that have been appealed.

Aaron Terr:

That's right. And it's general jurisdiction. So criminal cases, civil cases of all kinds with the exception of a few that are into the jurisdiction of the sister Commonwealth Court. So there's actually two courts you can appeal to after the Common Pleas. and then And then above the oh, those appeals go to the state Pennsylvania Supreme Court.

Jason Raia:

Right.

Aaron Terr:

I'm sandwiched in between.

Jason Raia:

So this is real. I think most people might find I don't know if any he finds fascinating as I do. But the idea that you how old are you out of law school that you are helping to draft opinions for the Pennsylvania Appellate Court?

Aaron Terr:

I would have been twenty-seven years old--

Jason Raia:

Yeah.

Aaron Terr:

--when I started, and I decided a couple of years in between college and law school.

Jason Raia:

So how does that work? Does this because again, I'm just fascinated by this. Does, you know, the judge hears this and what? How like, how does it get to the stage that you, as a clerk, are drafting something that of course needs to be representative of what the judge thinks.

Aaron Terr:

For sure. Yeah. And so in the beginning, you really are very closely supervised in all the writing and research that you're doing to ensure that sort of alignment but they so the cases come up on appeal. Actually, only a small percentage of them are argued so orally.

Jason Raia:

Mhmm.

Aaron Terr:

Before the court, most are submitted on the written briefs. So you read the briefs, and then you have the record, the certified record from the trial court, all the evidence.

Jason Raia:

Right.

Aaron Terr:

Another stuff that the trial cord considered. And that could be a small Manila folder. It could be twenty boxes, twenty cardboard boxes full of stuff. But you look, you know, and in that case, you're just looking kind of for, like, the relevant parts of the record, that are needed to decide the issues of law that are on appeal. So, yeah, so like I said, in the beginning, you know, I would read the briefs, look through the record, and then I would meet with the chief clerk and or the judge --

Jason Raia:

-- Mhmm.

Aaron Terr:

-- to discuss the case and what we think the outcome, you know, what I think the outcome should be. And then tell me if I'm wrong.

Jason Raia:

Right. Right.

Aaron Terr:

And then kind of talk and and talk through, you know, what the opinion should look like. And then maybe you write a first draft. And then, they, yeah, they were viewing it. They might be, you know, you might get sent back to you, like, no. This has to be rewritten or heavily edited.

Jason Raia:

You forgot about this, or you should have included that.

Aaron Terr:

Yeah. But, you know, but judges, and I don't know how many people even know necessarily that almost every judge has at least one law clerk because Pennsylvania, actually, for whatever reason, has the busiest docket of any state in the country. At least that was true when I was clerking. And so, it's just nearly impossible for one judge to review all these cases and write write the, write the first drafts of all these opinions in the first instance without any help.

Jason Raia:

Right.

Aaron Terr:

From, you know, without any help from clerks. So that's why judges, you know, almost all of them have clerks that assist with his massive caseloads.

Jason Raia:

Right. Right. And and, and those opinions are the argumentation and the evidence for the decision. But so the judge is making the decision and then clerks are taking that decision and the evidence that you've discussed and fashioning that into the formal written opinion that will stand.

Aaron Terr:

That's right.

Jason Raia:

And of course, we know those opinions then go on to influence future cases because they are precedent settings. So you're at the clerkship. How do you wind up at FIRE because I wanna get to what fire does and, and how you sort of made that turn finally to First Amendment law. and advocacy.

Aaron Terr:

Yeah, I think so while I'm doing this clerkship, I still have that interest in civil liberties. I volunteered for the ACLU for a while. And my first exposure to FIRE, I believe the 2015 incident at Yale involving Halloween costumes.

Jason Raia:

Yes. I think they were Mexican sombreros? Was that the one or is this a different one?

Aaron Terr:

This was, that's definitely happened too.

Jason Raia:

I can't keep, I can't keep track of all the things that go on at Yale.

Aaron Terr:

So, yeah, I'll try to give a quick synopsis here, but this was an infamous incident. It actually involved a Yale administrator sending out an email just advising students to be

Jason Raia:

Oh right.

Aaron Terr:

To be careful about the Halloween costumes that they choose and be careful not to offend their classmates.

Jason Raia:

Right.

Aaron Terr:

And a Yale professor, Erica Christakis replied and questioned whether the administration should be getting itself involved in these decisions that students make, students make about what Halloween customs they wanna wear rather than just leaving them to make those decisions for themselves as adults and to work out any disagreements they have amongst each other.

Jason Raia:

Right.

Aaron Terr:

And that caused a huge uproar, that they weren't creating a safe space for students, and Erica's, husband, Nicholas Christakis, also a professor at Yale, came to her defense, and there's this you might have seen this video that actually happened to be shot by FIRE president Greg Lukianoff on Yale's campus. He just happened to be there at the time, but these students confronting Nicholas Christakis over this incident, shouting at him, and he's doing his best to try and just kind of calmly engage in dialogue with them. And I just remember thinking that Wow.

This, is this is this the type of speech that's considered unacceptable on a college campus and on at Yale, one of the premiere institutions of higher education in the country? I, I just increasingly became concerned by this growing mindset on college campuses that we should, we should suppress speech that causes offense that that impact of speech matters more than the intent of the speaker. That even even equating speech with violence. And, and a college campus of all places. Right? The places that are supposed to be dedicated to free thought and free inquiry and advancing human knowledge. Really, I'm just thinking, this is the last place right, that people should be shutting down speech deemed controversial or, you know, outside the, the line the lines of of propriety. and, you know, I, I ultimately just and and I was also becoming concerned with the way that these ideas were be also being exported to the broader society.

Jason Raia:

Right.

Aaron Terr:

And our institutions. So I kinda came to the realization that this is a cause that I could really dedicate my career to. And I applied the FIRE. I did not get an offer the first time I applied or the second time for that matter.

Jason Raia:

Oh, wow.

Aaron Terr:

But the third time was the charm. You know, I was also applying for, these open staff attorney litigation positions without having any litigation experience, which was probably part of the reason that --

Jason Raia:

Okay.

Aaron Terr:

Ultimately ended up getting a position in the campus rights advocacy group.

Jason Raia:

Okay, so we should stop and say that that FIRE's original name was the Foundation for Individual Rights in Education.

Aaron Terr:

That's right.

Jason Raia:

And it is recently that, the acronym has remained the same, but its changed to Expression, which we'll get to, and we'll talk about how that has changed things fundamentally. But originally, it was all about the First Amendment at schools, whether mostly colleges, but then there was this, occasionally there were things that might happen in high school or other things, but it was really around education. And of course, that's important because all public schools are a government entity, and therefore, the Constitution holds in the Bill of Rights specifically prohibit First Amendment infringement. And then there are private schools. Tell us about how those two differ a little bit. And, then we'll get into the change.

Aaron Terr:

Sure. Private schools aren't bound by the First Amendment because they're not government actors, but many private colleges and universities make promises of free expression and academic freedom because they wanna be seen as bastions of free thought. Right? And they understand that that is critical to the mission of, of a college university, in producing human knowledge. You need to give wide, wide latitude to your faculty to explore and discuss different ideas.

Jason Raia:

Including things that might be found offensive by some people, including things that maybe, a different set of beliefs. I remember I went to a Catholic school, but there was a World Religions Court. You know, when some people might have found that odd, but it was this idea that we weren't just going to talk about all things Catholic because there was this idea that we are in order to be educated, you to know a wide range of things. And therefore, that idea of freedom to explore, was paramount.

Aaron Terr:

Right. And the truth isn't dependent on whether or not something makes somebody uncomfortable or causes them offense.

Jason Raia:

Right.

Aaron Terr:

Right. and so these private institutions make these promises. They make these commitments. They, unfortunately, often betray them. And so our argument with those institutions is you should uphold the commitments that you make. You create this expectation for students and faculty that you're gonna uphold these principles. And so you may not have to do that under the First Amendment, but you should stick to the principles that you're espousing and, and in a way that will make you stay faithful to your mission.

Jason Raia:

So tell us how FIRE works, if how does someone comes to you and if you decide if you know, the organization decides this is a case worth pursuing. What does that mean and what can happen?

Aaron Terr:

Right. Yeah. So we solicit case submissions, from well, now from everywhere, we'll get to that with the expansion. Right? But for 20 years, yes, we were just focused on higher education. So soliciting case submissions from student faculty who believe that they're free speech or due process, rights, or free association rights or student press rights were violated in some way. We still defend that whole suite of rights in a higher education context. And so when we get a case submission, we review it. We review the facts and any evidence that they provide. And we look at whether or not this is the speech if it involves speech, right, as opposed to conduct. You know, sometimes you get submissions that really don't involve So we're not getting involved there. But if it involves speech, the question is really just, is this speech protected either by the First Amendment at a public institution or under First Amendment standards voluntarily adopted at a private institution. And if so, we defend it, and and we can do that in in a variety of different ways. We have a litigation team that takes, a a certain number of cases that case submissions that we received to court. And there are various factors that go into deciding whether or not a case is a good candidate for litigation. If we think that it isn't or or, you know, we can only litigate so many cases with the amount of resources we have. Then we have what I mentioned before, the team I worked on for two years, the Campus Rights Advocacy Team formerly known as the Individual Rights Defense Program. And that group engages in non-litigation advocacy. So writing a letter to the institution explaining the violation of the student or faculty member's rights and calling on them to reverse course, publicizing these rights violations by writing them on our website, on, blasting it out on social media, talking to the the the media, traditional media, and putting pressure on the institution, to do what's right.

Jason Raia:

So I've noticed since and, is about a year now that the name change –

Aaron Terr:

Yeah.

Jason Raia:

-- has been in effect. And I've noticed that, you know, so couple of things that came with that. Number one, I'm sure it was an absolute explosion of cases now because you've gone from this very narrow we're doing things in an educational setting to we'll do the same things anywhere in any setting. But also, at the same time, I notice FIRE's name referenced all over the place in the media. There's been an advertising campaign here in Philadelphia. I don't know if that's nationwide as well, but there has really been this decision by FIRE to step up and do a whole lot more, it seems like.

Aaron Terr:

That's right. So we, the expansion has been about one year now. And, yeah, we realized that we had we had been doing this work on campus for, for a little over 20 years. and we had a lot of success in that arena. When we back in 2006, when we started tracking the number of, speech codes, on the we started tracking speech codes at different colleges and universities. And at that time, something like 70% of the schools we surveyed had a policy that clearly and substantially restricted speech protected by the First Amendment. That number is down to about 19% now. In large part, thanks to the efforts of our Policy Reform Team, our lit our litigation team, our legislative team. We've notched about 500 advocacy victories on behalf of students and faculty whose rights were violated. But we were witnessing this growing threat to free expression off campus too, over the past several years. And, you know, we realize that there's

really a need for a big, big tent free speech movement that reminds Americans of the importance of not just the First Amendment, but free speech has a cultural value.

Jason Raia:

Right.

Aaron Terr:

That's something that we actually internalize and believe is important, and we wanna see it reflected in our institutions and in our daily lives. And we saw a need for an organization that is exclusively dedicated to defending free speech and both as a Constitutional right and as a cultural value. And we'll do so in a completely non-partisan way and without apology. And we thought that after all the success we had on campus, that we were well situated to take on that role and to be that organization.

Jason Raia:

Yeah. And that's and that's one of the things that I have been most impressed by is you know, that it really is non-partisan. So let's dig into the kinds of cases that you all have been looking at. Now and then I wanna start with political speech in schools with, you know, sort of your origin. And, particularly, there seems to be this growing trend of political speech on t-shirts. There are two that you guys have handled recently. One of them is a "Let's Go Brandon" t-shirt. And then the other is just very recent in, it's actually ongoing in Massachusetts where a middle school student wore a sheer shirt that said there are only two genders and was, you know, told to take it off. He refused. He was sent home, you know, it is in the courts, but I believe FIRE is representing that case. But regardless,

Aaron Terr:

Not the two genders.

Jason Raia:

Not the two genders. Okay. But so then I'm conflating the two, but they're both of the same idea that this is political speech on a t- shirt. There is a landmark case Tinker based on Mary Beth Tinker who actually spoke to teachers last summer here at Freedoms Foundation which is a Vietnam War era case. Tell us about Tinker. Tell us about this issue and you know, why FIRE would, would, get involved with this.

Aaron Terr:

Sure. Tinker involved students who wore black armbands just playing black armbands to school, in the 1960's to protest the Vietnam war, and they were sent home for that. And they challenged that school's decision to discipline them, on raising a First Amendment argument ultimately went all the way up to the Supreme Court. And this is really the landmark, first major case involving, k through 12 student speeches at the Supreme Court. And the Supreme Court ultimately decided that the school had violated the students' First Amendment rights, because they were simply gauged in a silent, peaceful protest that wasn't disruptive to school activities. And so the standard that the court set in that case is that unless the school authorities can show that the expression at issue, would materially and substantially disrupt the school activities or curriculum, then they do not have the authority to suppress that speech. The mere, the and the court made it clear that an undifferentiated fear or apprehension that some disturbance will occur is not enough to suppress speech, the mere fact that some other students might be offended by that speech or be made uncomfortable by the sight of it. And you know, it might be difficult for people today. to imagine how people could maybe care so much about a black armband protecting the Vietnam War. But at the time, right, it was a very contentious issue. And so it's not it's not hard to imagine that students might have been made very upset with it the same way. Today, they might become upset by seeing someone wearing a shirt about how many genders there are.

Jason Raia:

Right?

Aaron Terr:

But that's just not enough. That's not enough to justify censoring the speech. and if you apply that same principle to, the case involving the student wearing a "Let's Go Brandon" shirt, or a shirt that says there are only two genders, it really should come out the same way. This is a student engaged in each case in core political speech. They're commenting on the most important, in one case, the most important public figure in the United States and maybe the world. Right? And, sure, maybe it's not the most, let's say, refined message that they're sending, but that's never mattered –

Jason Raia:

Right.

Aaron Terr:

--for purposes of whether or not the First Amendment applies. We don't give the government the discretion to decide which messages are sufficiently important.

Jason Raia:

And with the "Let's Go Brandon" it's not obscene. So it's not like they said f-u-Biden And at which point, the school officials have every right in the world because that's that would be that even matches the definition of you'll know it when you see it obscenity that the Supreme Court lays out that, yes, that there is one that seems pretty easy to say, not his is not acceptable. But the "Let's Go Brandon" is not that.

Aaron Terr:

Right. That's right. And, yes, I should mention that there were decisions subsequent to Tinker by the Supreme Court that placed other restrictions on cases of student speech, and one of them is the ability to, you know, regulate lewd or vulgar speech. But like you say, "Let's Go Brandon" it might be I mean, it's like a euphemism.

Jason Raia:

Sure. Absolutely.

Aaron Terr:

It's a way of saying a vulgar message that isn't vulgar. I mean, to punish that would be like, punishing somebody for saying, you know, fricking.

Jason Raia:

Right, right.

Aaron Terr:

Instead of –

Jason Raia:

Right.

Aaron Terr:

Instead of the other half for it.

Jason Raia:

Right. Right. Or h-e-double hockey stick as they used to say when I was a kid, you know?

Aaron Terr:

The whole idea is that you're not saying --

Jason Raia:

Right.

Aaron Terr:

a vulgar – you're not using vulgar language. And so that's why there's no justification there. And then, of course, there are only two genders. I mean, that's just pure expression on a contentious political issue. And there's a real danger here. If we say that the school is allowed to step in, and silence one side of this ongoing political debate.

Jason Raia:

So let's unpack that a little bit. The harassment standard is persistent, repeated, what am I missing?

Aaron Terr:

So –

Jason Raia:

There's a formula.

Aaron Terr:

Severe, persistent, and objectively offensive.

Jason Raia:

There we go.

Aaron Terr:

Yeah. And it actually, you know, deprives you of your ability to receive the education that you're trying to obtain when you go to school.

Jason Raia:

Right, and so what that means is it's not simply a matter of saying I feel where I feel unsafe. I feel that I can't. It needs to be repeated. It needs to be directed at you, not just a general statement, but directed at the individual needs to be persistent and severe. So there's all of these things. And again, it's always a judgment call, but it seems the shirt message doesn't fall under that.

Aaron Terr:

Yeah. And the idea is that we just don't want -- we wanna keep that line far out there so that we don't end up over--

Jason Raia:

And that was and that was one of the things that one of the arguments that an a number of people have made in the the two genders t shirt case was, by making the student take it off, you lose the opportunity for people who think differently to confront it and in some ways potentially engage in a conversation where the people of different opposing views can talk to one another.

Aaron Terr:

Sure. That's very important. I think in a lot of these high schools, or k through 12 speech cases, one thing to keep in mind is what kind of lesson are we teaching to kids? you know, about the importance of free expression and engaging in dialogue with each other. We don't want them to graduate from high school thinking that you know, the, the government controlling what type of speech we can engage in or, or putting its thumb on one side of the scale or the other to try and artificially tilt these political debates in one direction or another is is a legitimate thing. And to be discouraged, we don't want them to be discouraged from seeking out each other and talking across differences and not always going to reach a consensus or an agreement necessarily, right, but maybe at least gain a better understanding of the other side.

Jason Raia:

Absolutely. Which is a perfect segue to the next sort of set of cases that I'm very interested in, which is the heckler's veto. So, I'm sure some of our listeners will know others will not. Talk to us about what happened at Stanford last year? They had a judge who came and spoke.

Aaron Terr:

Yeah. It was earlier this year.

Jason Raia:

Or was it this year?

Aaron Terr:

Yeah. I think it was in March.

Jason Raia:

Okay.

Aaron Terr:

It can feel like --

Jason Raia:

It feels like it was forever ago. Was it really just March? I guess it was. I think you're right. But tell us what happened and tell us why it's a problem.

Aaron Terr:

Right. So the Federalist Society had had invited 5th Circuit Judge Kyle Duncan to come speak at an event

Jason Raia:

At Stanford Law School.

Aaron Terr:

At Stanford Law School. That's right. And a lot of students showed up, to protest and what, you know, might have might what might have just been a protest turned into outright heckling and disruption that didn't allow Judge Duncan to, to get his prepared remarks out.

Jason Raia:

Right. The goal was to basically stop him from speaking.

Aaron Terr:

Right. And you can see a video of this online and how disruptive it was. And this is and what was unique about this case was at one point, when Judge Duncan is standing up there and there's all this commotion going on, an administrator with Stanford Law steps up to give her own interestingly prepared remarks where she infamously, looked at judge Duncan and asked, is the juice worth the squeeze? Is it worth it for you to come here?

Jason Raia:

And cause this disruption?

Aaron Terr:

And talk about these issues that make these students so upset?

Jason Raia:

Right.

Aaron Terr:

Is it worth it? And the way I would put it is, is it worth it for a sitting federal judge to come to a law school?

Jason Raia:

Right.

Aaron Terr:

And talk about the cases and decisions.

Jason Raia:

I think there is.

Aaron Terr:

I think that's always worth it.

Jason Raia:

Quite frankly, I think there's another way to interpret those comments. Is it worth it to hold these opinions that are so upsetting? You know, I take it a step further. I got the sense from what I heard and read and saw is that, you know, this was you know, very much questioning his right to hold opinions that were so anathema to students of Stanford Law.

Aaron Terr:

Yeah. Well, I think she had also said something she had made references to invalidating the student's existence and things like that. That definitely --

Jason Raia:

-- by holding a different opinion.

Aaron Terr:

Right. That definitely suggested that his views maybe are not worthy of being aired at all.

Jason Raia:

Right.

Aaron Terr:

But one of the things that's just crazy about that that I was that I was just saying is this is a sitting federal judge. Right? No matter what his views are, we should want to know what those views are and he's coming to Stanford Law. And, he's coming to your law school. To give you this, quite frankly, very rare opportunity to tell him to his face why you think he's wrong.

Jason Raia:

Right.

Aaron Terr:

If you think his views are so terrible and so evil, here's your chance. to tell him to his face why you think that's the case. And maybe you won't persuade judge Duncan to change his mind, but it's not always about persuading the person you're talking to when you have a public audience. Right? It's also about speaking to those people who are maybe undecided or they're not sure how they feel one way or the other, or maybe they do you know, feel one way or the other, but they're open to having their minds change. And you're not gonna change anyone's mind by screaming at somebody, screaming profanity at them and not allowing them to speak. That's not

pee that's not persuasive. Right? That's not persuasive to anybody who doesn't already agree with what you think. So, you know, if you're if you really want to change the narrative, you know, if you want your views to be adopted more widely. And these views that you disagree with, you wanna you wanna push them to the wayside, then you have to, you know, you have to engage in dialogue or you have to address them on the merits. You know, you have to do it in a way that people are actually gonna find persuasive. But, you know, I will say, you know, it's important to point out that there's plenty of students in the protest, of course, who are protected, right? So there's plenty that students can do.

Jason Raia:

Sure. And that was the difference. Oh quiet, you know, the silent protest where, you know, students are lining a hallway, maybe holding signs or what have you, but keeping their hands to themselves. That's a perfectly legitimate form of protest and using one's free expression rights to engage, in its own way, that is very different from trying to shout someone down.

Aaron Terr:

Exactly. Yeah. If you're holding signs, handing out pamphlets, or, you know, you wait till the Q&A session of the person's talk, or Judge Duncan's talk. And then --

Jason Raia:

-- Ask really hard questions.

Aaron Terr:

Really hard-hitting questions. Again, you know, you really use your own rights of free speech. That's really the difference. Right? And, and it's important to make that distinction, especially, on a college campus. Right? It's a place where we're where you're supposed to have these, these free willing discussions of all sorts of different ideas And and, and also just think of the

precedent that would be set, right, if what the stew the student's conduct was deemed acceptable and legitimate, then you you're risking a situation where no student group can ever, right, successfully host a speaker, because then what happens if the Federalist Society starts deciding that they're gonna go -- That they're gonna play against the -- Right? And they're gonna shout down the and then --

Jason Raia:

Right.

Aaron Terr:

-- You just shut down all discussions.

Jason Raia:

Oh, there was one more I wanted to ask about.

Aaron Terr:

Yeah.

Jason Raia:

And that's the Hamline University because I have not heard whether that has come to a resolution, but tell us what happened at Hamline.

Aaron Terr:

Yeah. This Hamline University in Minnesota where an art history teacher showed a medieval portrait of the Prophet Muhammad to her class. She actually gave a warning to the class before she showed it that if this will bother you in any way to see this painting, feel free to look away. You don't have to look at it. Nevertheless--

Jason Raia:

And and and and a piece of art done by a Muslim artist.

Aaron Terr:

That's right.

Jason Raia:

This is not this is not Charlie Hebdo, which, again, you and I would defend.

Aaron Terr:

Still protected. Right.

Jason Raia:

You know, still protected. But a different thing entirely. This is a Muslim artist from the 13th Century?

Aaron Terr:

I want -- something like that.

Jason Raia:

Yeah.

Aaron Terr:

Around that time. Yeah. It's supposed to be reverential.

Jason Raia:

Yes.

Aaron Terr:

It's no way intended to insult the Prophet. There's different -- and this is an important point-- there's different schools of thought within Islam about whether it's acceptable.

Jason Raia:

And that was part of the lecture, the pre-lecture.

Aaron Terr:

Mhmm.

Jason Raia:

That's why she was showing it was to say Islam is not a monolith. There are different interpretations. And here is one painting that was done of the prophet Muhammad, even though most Muslims today would say you would never, you know, capture an image of, you know, the

Prophet.

Aaron Terr:

Right. I believe it's Shia Muslims that are generally okay with it. If you go to Iran, where they're in the majority apparently, you can find --

Jason Raia:

-- Right. Por--

Aaron Terr:

and so.

Jason Raia:

-- historically. In

Aaron Terr:

people's homes, you'll find, yeah, the portraits. So a Muslim student in the class did complain, though, and said that it was offensive, that the professor shouldn't have shown this image. And Hamline actually sided with the student, and the quote from the university president, I believe, was that, academic freedom should have been superseded by the concern for Muslim students' feelings.

Jason Raia:

Yeah.

Aaron Terr:

Something like that.

Jason Raia:

Yeah. Yeah. Well-being.

Aaron Terr:

Yeah and they ended up not renewing the professor's contract. So we made a big stink about this. We actually started a petition of faculty from around the country that I think got more signatures than any such petition that we had done before.

Jason Raia:

Mhmm.

Aaron Terr:

Because everyone, you know, almost everyone just saw this as an outrageous attack on academic freedom to not be able to show a painting that's important to the history of art in an art history class. And just, again, the precedent that that this would set for the future if we were always to just automatically defer any time a student complained that something that they some type of, curriculum material that they had to be exposed to in class made them feel uncomfortable--

Jason Raia:

Right.

Aaron Terr:

--or offended them.

Jason Raia:

Right.

Aaron Terr:

What happens when, you know, again, you just can dream up the hypotheticals easily. An Evangelical Christian student is in a biology class, and they don't wanna hear about the theory of evolution. That goes against their maybe they're a creationist in the goes against their beliefs. So they believe in intelligent design. So again, we can't have a real learning environment where anything that you teach is subject to this veto, by any student in the class who's offended by it.

Jason Raia:

Right. And, and, and what I guess what I found a little bit shocking, was that this professor had tried very hard to lay the groundwork to warn students what was coming, you know, to, you know, had a purpose in showing it. It was a historically and artistically appropriate image for, again, this is not, you know, a political cartoon you know, from Denmark. This is not the *South Park* guys doing their episode, you know, after the Charlie-- you know, like, this is you know, that, like, it just felt like this professor tried to be sensitive at every step of the way. And still, that was not enough. And that is the insidiousness of this anti-First Amendment thought process.

Aaron Terr:

Right. There was really no defense, there was no way to describe this other than we have a universe nominally committed to academic freedom enforcing blasphemy norms. And by the way, blasphemy norms within one part of a religion. So essentially taking sides in an active theological debate on top of it.

Jason Raia:

Right. Right. Right. Right. Exactly. And then on top of that, part of the American experiment is to protect minorities and, and, and not become majoritarian, but we are still talking about what was essentially, as I understand it, one student --

Aaron Terr:

Mhmm.

Jason Raia:

-- in the whole classroom. And again, it's it seems that it is a parallel to that heckler's veto that says, because I find this offensive, you cannot see or hear it.

Aaron Terr:

Exactly.

Jason Raia:

Yeah. Okay. Back to any interesting cases we should be on the lookout for?

Aaron Terr:

So, I'm just thinking of some other trends that we've seen emerging. You know, and it's interesting. We talked about heckler's veto, but there have actually been some disturbing infringements on the right to protest, in other contexts off campus. I actually just wrote an op-ed about a new law that was passed in Mississippi that requires you to get written permission from

the police commissioner to protest on public streets and sidewalks next to a state government building.

Jason Raia:

What?

Aaron Terr:

Yeah.

Jason Raia:

Where else would you protest? I mean, unless you're protesting the Phillies --

Aaron Terr:

Exactly. Right? It's not really an accident that many people stage protests outside government buildings, which are often the targets of the protests. And so, there's been a lot of protest activity in Jackson, Mississippi, over the past, I think, even a couple of years over a variety of different issues, the city's clean water crisis, issues, racial issues, and other things. And so the law has passed under the guise of, say, ensuring safety, because I think there's also been a rise in crime in Jackson. But it is really just right now, they're supposed to pass regulations to try and give it some more content for when they're gonna, but the idea that you just have to ask permission to protest on a public sidewalk even.

Jason Raia:

Yeah, right.

Aaron Terr:

Where you're not a sidewalk, you're not gonna be blocking traffic or anything like that, it just flies right in the face of the First Amendment. Now there is a coalition of groups that are suing so there's a lawsuit ongoing in that case. The one other thing that I'll mention recently is this, a really bad decision by the Fifth Circuit Court of Appeals, that upheld the arrest of the leader of a protest. I believe it was Black Black Lives Matter protest, where there was a protest outside a police station. And it got a little hectic. And at one point, somebody in the crowd threw an object at a police officer. And it was really, I mean, it was bad, which severely injured him.

Jason Raia:

Arrest that person. Per prosecute that person but instead, they went after the organizer of the day.

Aaron Terr:

Right. He's - because I think they couldn't identify who actually threw it, they said, okay. We're gonna go after the organizers and hold them negligent.

Jason Raia:

Right.

Aaron Terr:

Because he was kind of leading this protest. And, therefore, he becomes responsible for the actions of the other people. I mean, that's just a really chilling precedent.

Jason Raia:

Right.

Aaron Terr:

And obviously going to make people reluctant to hold protests that--

Jason Raia:

Right.

Aaron Terr:

-- that they could get and, and also you know, as many people have mentioned, it it incentivizes people to, I'm forgetting the term now when you kind of, infiltrate a group --

Jason Raia:

Oh, right. Right. Right.

Aaron Terr:

So someone could just infiltrate a group that they agree with, and then commit some sort of violence. And then the people that let it happen will be held responsible.

Jason Raia:

That's absolutely an incentive to be a bad actor and try and set up somebody who's organized a protest that you disagree with.

Aaron Terr:

Yeah.

Jason Raia:

Well, Aaron, that's all of those, and I appreciate your warning that we are talking about what feels like a lot of dire stuff, and that is not always the case. But it certainly is of concern. And the First Amendment, we are lucky to have FIRE, get us back to something because it has been so dark and dreary talking about First Amendment rights being endangered. So just a few questions. No homework necessary. Excluding Washington and Lincoln, who's your favorite president?

Aaron Terr:

Alright. So excluding my two favorites.

Jason Raia:

Yes. We had to make this hard.

Aaron Terr:

I would say I would. I don't think -- I would say Thomas Jefferson.

Jason Raia:

Okay. Jefferson?

Aaron Terr:

But kinda considering his whole career, you know, not not just his presidency.

Jason Raia:

Not just the presidency.

Aaron Terr:

But, I mean, you know, of course, a big advocate of free expression.

Jason Raia:

Yes.

Aaron Terr:

So I think, yeah, I think I'd probably go with Jefferson after after..

Jason Raia:

I would have thought maybe Madison since he did write --

Aaron Terr:

You know what?

Jason Raia:

--the First Amendment.

Aaron Terr:

Yeah I feel like I am giving Madison a short shift here.

Jason Raia:

Everyone does. Yeah. He needs his own Broadway. He needs the next Broadway musical.

Aaron Terr:

I think it's also good broad, probably in answering that way because I went to UVA.

Jason Raia:

Oh there, well, I was gonna yes. We didn't bring that up but, you did go to UVA, and that is, Jefferson country. So, what's one, what's one thing you want every American to learn more about?

Aaron Terr:

Oh, just just in general?

Jason Raia:

Yeah. Anything. What should people learn more about?

Aaron Terr:

So I won't say free speech because I feel like that's the predictable answer. We've and we're trying to talk about something else for a minute. Meditation.

Jason Raia:

Oh, interesting.

Aaron Terr:

And benefits of mindfulness, meditation, and other forms of meditation. I got into it a few years ago, and I think it's truly life changing. I think it's just a way to ensure that you don't go through your life without examining any part of it. And it sort of takes you off autopilot, and gives and can really if you really get into it, you can arrive, but I think great insights about the nature of your mind and just your existence.

Jason Raia:

Oh, that's great.

Aaron Terr:

And I and for people who think it's just kind of like spiritual nonsense. I mean, I thought that for many years.

Jason Raia:

Yeah.

Aaron Terr:

Until I actually start doing it. You don't need any of the kind of weird spiritual baggage that might--

Jason Raia:

No crystals?

Aaron Terr:

You don't need crystals. Yeah. You don't need to fully accept all the tenets of zen Buddhism to just start meditating and to kind of observe your mind and, get a better understanding of how it works.

Jason Raia:

Well, and it does make sense that, you know, in that, you know, there are these great both western and eastern traditions of meditation, and mysticism, that are, are connected to, you know, this what is this modern idea of, of the practice of mindfulness that it's like there's gotta be something there. And so, thank you. Thank you for sharing that. If you had not become a lawyer, what do you think you would have done?

Aaron Terr:

A scientist?

Jason Raia:

I was gonna say, would you still be in Manitoba? That's the question.

Aaron Terr:

So, I think so, but I would have gone a somewhat different direction where I wasn't in Northern Manitoba taking soil cores out of frozen ground. I think I would have tried to do something more that's just studying the evolution of some species or, you know, something along those lines.

Jason Raia:

Okay.

Aaron Terr:

I mean, if I had the career that I would want to do that I don't think I would ever have the talent ability to, it would be to be a musician, professional musician, but, it's just something that's just a hobby for me.

Jason Raia:

Yeah. What pet peeve annoys you the most?

Aaron Terr:

Too many questions at the end of a no-- I'm gonna say Philadelphia drivers.

Jason Raia:

Oh, excellent.

Aaron Terr:

I don't know if that's really a pet peeve.

Jason Raia:

Well, I'll do add to that. I'll say yes and, as they say in comedy. Out of town drivers driving in a city like Philadelphia. You know, every time I get cut off by some with Jersey plates. It's like you should not be allowed to drive in the city. Like, you just, you know, shouldn't. Some people should just park an Uber into the city and that'll be fine.

Aaron Terr:

Yeah. And by the way, it's not it's not just when you're in a car, but I find even just nobody when you're cross, you're a pedestrian, and the light turns green, the cars just start turning in front of you. They're like, that doesn't even happen in New York City. They always let you walk across before they just --

Jason Raia:

That's true. Our Philly drivers have their own rules.

Aaron Terr:

Yeah.

Jason Raia:

Absolutely. But, yes, lots of driving pet peeve. Absolutely. What's your favorite movie?

Aaron Terr:

Goodfellas.

Jason Raia:

Okay. What one thing about you would most people be surprised to learn?

Aaron Terr:

I performed in my law school's sketch comedy show and wrote for my, I wrote and performed in my law school's cut sketch comedy show.

Jason Raia:

Okay.

Aaron Terr:

Just another –

Jason Raia:

I like that.

Aaron Terr:

Yeah.

Jason Raia:

That's great.

Aaron Terr:

That was fun.

Jason Raia:

If you could meet one historical person, who would it be?

Aaron Terr:

I think I would like to meet -- I actually think I would wanna meet Jesus.

Jason Raia:

Okay.

Aaron Terr:

And it's I'm not a religious person, actually, but I want or, or, or maybe a, or any really, you can insert any religious prophet because I just wanna see what they're like. They must have such incredibly charismatic--

Jason Raia:

Right. We've got these handful of historic persons, whether it's, you know, it's Muhammad Jesus, it's Buddha, you know, who we know lived, and yet everybody, you know, knows who they are. They've had this effect that has been centuries long. And and, yeah, like, what is it about that human person? That the whole world was changed.

Aaron Terr:

Right. Because I feel like I would meet them. And it would almost be impossible not to be disappointed, though?

Jason Raia:

Yeah.

Aaron Terr:

Because you would expect them to just have this aura around them that's just indescribable. But really, I mean, on some level, they were really human beings. Right? Well, I mean, some people believe they are.

Jason Raia:

Well, sure. They might have been more, but for in for each of those religions, they were humans. They might get more than manifested. But they were, yes.

Aaron Terr:

On earth, they were manifested as kind of flawed human beings. Right?

Jason Raia:

Right.

Aaron Terr:

so it would be interesting to see and just see, and what is it about then that's so magnetic and that is able to have this influence that spans thousands of years. It's just that it's incredible even to think that that's possible.

Jason Raia:

Fascinating. Last question, bourbon or scotch?

Aaron Terr:

Bourbon. Excellent.

Jason Raia:

Excellent.

Aaron Terr:

I like both.

Jason Raia:

Yes. I do too. I'm one of those weirdos who likes both, but is winning. And, and for a podcast about American liberty, that's a good thing.

Aaron Terr:

That's right.

Jason Raia:

Aaron, thank you so much for being on the show today.

Aaron Terr:

Thanks so much for having me.

Jason Raia:

So thank you to our guest Aaron. Thank you to our listeners, to our producers, Lara Kennedy and Sarah Rasmussen, a special thanks Also, to friend of the pod, Bill Franz for his art design. Special thanks to longtime Freedoms Foundation historic interpreter, Bob Gleason, for his contributions to the intro and most of all, thank you to our listeners. Please subscribe, follow, rate, and review *George Washington Slept here* wherever you listen to podcasts and tell your friends. Learn more about Freedoms Foundation at Valley Forge by checking out our website, www.freedomsfoundation.org and follow us on social media or email us at gwshpodcast@gmail.com with your comments, questions, or suggestions. And we'll talk to you next time.