***[Virginia Prescott] I'm Virginia Prescott and this is Civics 101, the podcast refresher course on some of the basics that you may have forgotten or slept through in school. Not long after the framers signed the U.S. Constitution they made a few critical additions in the form of the Bill of Rights. Today an overview of the First Amendment to the Constitution which covers the freedom of speech and religion freedom of the press and freedom of assembly. Our guest is Lata Nott. She is executive director of the Newseum Institute's First Amendment Center, and Lata, thank you for being with us.***

**[Lata Nott]** Thank you for having me.

***[VP] Before we start we do have the U.S. Constitution and then we have these critical additions as we said in the form of the Bill of Rights. What were the founders thinking in introducing those amendments to the Constitution.***

**[LN]** Well once they got the constitution ratified they wanted to make sure that there was some insurance for the rights of the people because you know the Constitution kind of sets the division between the different bodies of the government. You know Congress and the judiciary and the president. But the Bill of Rights is really for the people it's the rights that Americans have. Citizens and non-citizens alike have to express themselves to bear arms against search and seizure even against quartering British soldiers although that comes up a little less often these days. Basically the Bill of Rights is there to establish the rights that the individual has in relation to the government.

***[VP] So from there we have the First Amendment and the Bill of Rights What does the text of the First Amendment say.***

**[LN]** Well it's just 45 words and she paraphrase it says that Congress shall make no law that will put limits on the freedom of religion the freedom to press the freedom of speech and the right of the people to peacefully assemble or petition the government.

***[VP] Well some of our most important and most frequently cited freedoms are rolled into that amendment. Is there a reason that the framers put all of these ideas into the First Amendment rather than to address them separately.***

**[LN]** You know when you look at drafts of the Bill of Rights the first amendment has been through a few different iterations but I think the reason that the framers decided to put those five freedoms together in that amendment is that there are all freedoms of expression and also the founders saw all of these things all of these forms of expression as necessary for good governance for being good citizens in a functioning democracy.

***[VP] Well what kind of things were they trying to prevent or address at that time.***

**[LN]** Well if you keep in mind that when they were drafting this this is just coming off of the Revolutionary War and forming like an independent nation they were looking back to what the governmental system was like in in Britain. And one of the things that they wanted to make sure was that people like the press could serve as an effective watchdog on the government even if they were critical on the government. That was something that they were very cognizant of of being extremely important to have a government led by the people for the people to actually know what their government was doing. And also like the right of petition which you know people don't really know about that freedom that much they don't think about it that much. But there is evidence that it was like the first freedom in the first draft of the First Amendment to be mentioned because it was so important to the colonists this idea that you could ask for the laws that you want that you could petition the government and say you need to redress this because you mess this up. That was that was extremely important to them and they wanted to ensure that that was that was included in the new nation.

***[VP] So bundling them all together under this umbrella of expression as you put it. Does that make them stronger in some way rather than just stripping one out or focusing on one.***

**[LN]** That's a good question. I think it does make them stronger to have them altogether because you know in a certain way they kind of play off each other. The press will tell you what the government's doing. And if you feel that they are doing something wrong you can assemble with your fellow citizens you can petition and ask for a change. You can speak about it and voice your criticisms. And of course freedom of religion means that just means that the government can't establish a religion and can't impact your free exercise of your religion and keeping in mind that you know the early American columnist's religion was often like a huge part of their identity a part that the government was often trying to suppress. That was important to their expression as well to the thoughts that they were expressing to the criticisms they are voicing against the government.

***[VP] So we're not in this podcast going to be able to dig into all of those freedoms that are protected by the First Amendment so establishing free exercise of religion assembly right to petition government. We're going to concentrate on one which is freedom of speech. Now the amendment says that the government can make no laws abridging the freedom of speech. So what does abridging mean and what exactly is the government not allowed to do?***

**[LN]** Essentially when we say abridging her the Bill of Rights is abridging that means that the government can't make laws or take actions that punish people for their speech or censor their speech. So the government can't pass a law that will forbid people from talking about I don't know rabbets but it also means that they can't arrest someone for talking about rabbits. It also means that a public university which is considered a government actor can't make it a school code violation to talk about rabbits. It means that if you sue your neighbor for talking about rabbits. The court can't hear that case and then impose a penalty on you because all of these are examples of the government abridging your speech punishing your speech censoring your speech.

***[VP] Help us define the other crucial word here what counts as speech in the eyes of the law.***

**[LN]** Now that is definitely something that's developed in the past 200 years because speech does not just refer to the words that come out of your mouth. Courts through a lot of court cases we've seen that speech applies to written works. It applies to online posts movies television theater art video games. One day when we're all living in cities on Mars it'll encompass our virtual reality simulations it really does grow with the times. It applies to political yard signs handing out flyers clothing symbolic speech like burning a flag or wearing a black armband that's considered speech as well. It also interestingly covers the right not to speak, like refusing to say the Pledge of Allegiance. And you know somewhat controversially it covers the donations of money to political campaigns money is consider reform speech a couple of years ago there was at least one case where a court found that liking something on Facebook kind of speech. Right now it's still an open question whether computer code can count as speech. But my point of all this is that speech covers a pretty wide range of expression

***[VP] And you can still get fired for or fined for or sued for saying or posting certain things. So then what are the limitations of free speech?***

**[LN]** Here are the major limits that have been defined by the courts over the years. First there's the obvious ones the ones that you know kind of make you go. All right. Yeah. That makes sense. That's not going to be protected by the First Amendment. The First Amendment isn't protect blackmail. It doesn't protect child pornography or lying under oath or soliciting someone to commit a crime. Those are all crimes and you're not going to be able to claim that hiring a hitman was you using your freedom of speech. That's not going to work. It also doesn't protect as I said making true threats against someone. It doesn't protect saying something that will incite imminent lawless action like, like starting a violent mob. It doesn't protect obscenity. But you've got to keep in mind that obscenity is a higher standard than most people think. Nudity isn't considered obscene in most pornography isn't hence why we have a thriving and legal porn industry. It's got to be something that violates current community morality standards and has no redeeming value whatsoever. Otherwise the First Amendment will protect it. And finally there are copyright laws in place and they're not considered to be violations the First Amendment. So you can be sued for plagiarizing someone else's work. So those are all of the limits on free speech that I know of.

***[VP] So it's interesting you're talking about people can be held accountable for speech so it's speech is free but the consequences still come.***

**[LN]** That's true.

***[VP] So what are some of the challenges, court cases that have changed our interpretation or set different precedent for First Amendment rights?***

**[LN]** So as the law of all of you know it's just basically the First Amendment says that Congress can't make laws that will abridge these freedoms. OK but you know as the courts started taking cases there are questions of like well OK what about if this speech incites imminent lawless action you know what are the limits there. And if we have freedom of the press what does that mean in terms of balancing that would say national security. And what does that mean in terms of stopping the press for publishing something. Can you ever do it. Is there ever an opportunity to do that. And you know when it comes to like every freedom when you really look at it there's always a question of what the outer limits are. Watts the United States was the case that defined what he defined what a true threat is which is not protected by the First Amendment. But then of course you come to the question like well what makes something a true threat like what makes it what makes it a credible threat. And in Watts that featured a man who is making a speech at a rally against the Vietnam War. And at that rally he said that if he was drafted his first bullet would be headed straight towards LBJ. And you know he was arrested for making a threat on the president's life and when he said a violation of his free speech rights the case eventually ended up in the Supreme Court and the court found like you have to take a lot of these things into context the fact that he was nowhere near LBJ when he said that he was at a rally that he was making a political speech. The people treated his statement as a joke and they laughed. The fact that this man was unlikely to ever meet LBJ, the court considered all of these things when they were like No this is not a true threat. I like that case as an example because it really shows you how much context matters when it comes to defining First Amendment freedoms.

***[VP] So who's covered by this protection of freedom of speech? Are companies for example?***

**[LN]** They are. Yeah. A few years ago there was a case called Citizens United. The FEC, pretty controversial but it basically said that companies or people corporations or people that have free speech rights just like individuals do. And that's why campaign finance donations couldn't be regulated.

***[VP] What do you think Lata are the greatest misconceptions the public in general has about the freedom of speech.***

**[LN]** Well I'd say the most common misconception is that if anyone tries to censor your speech that it's a First Amendment violation. Which isn't true. The First Amendment applies to government regulation. Government punishment or censorship of your speech. If you're living in a privately owned building and your landlord won't let you post a flyer in the lobby that's not government regulation. That's your landlord a private citizen saying that you can't put your flyer in the lobby not covered by the First Amendment. Your landlord may be a jerk but that's not a free speech violation. Similarly if you work for a private corporation that fires you for your speech that's not a First Amendment issue either. And this is these things are important because obviously private actions have an impact on the kind of public conversations we have. But they're just not First Amendment issues. The other big misconception I see a lot is that people often think that the First Amendment doesn't protect hate speech but it actually does not because we as a society or our founding fathers just loved hate speech so much but because of the difficulty of defining what hate speech is. That's a power that we don't really want to put with the government.

***[VP] I mean this is something that people are talking about a lot right now and especially in relation to old Rights Nazi protests or counter-protests; it’s a pretty complicated package. So how do First Amendment rights relate to those conversations that are happening right now?***

**[LN]** As I said the reason that the First Amendment protects hate speech is is not because we necessarily…I don't think the founding fathers would have said like what we put great value in basically yelling hateful slurs at someone that's not quite it. It's more that our rights are indivisible. They all tie into each other. So if you try to get the government to limit the rights of say neo-Nazis to assemble or speak and I can definitely understand the impetus behind that. But if you try to do that then those laws those regulations can eventually be used against you because your rights are my rights and my rights are your rights. And when we when we give the government the power to regulate speech that affects all of us.

***[VP] Lata, Thank you so much for bringing us through the First Amendment.***

**[LN]** It was my pleasure.