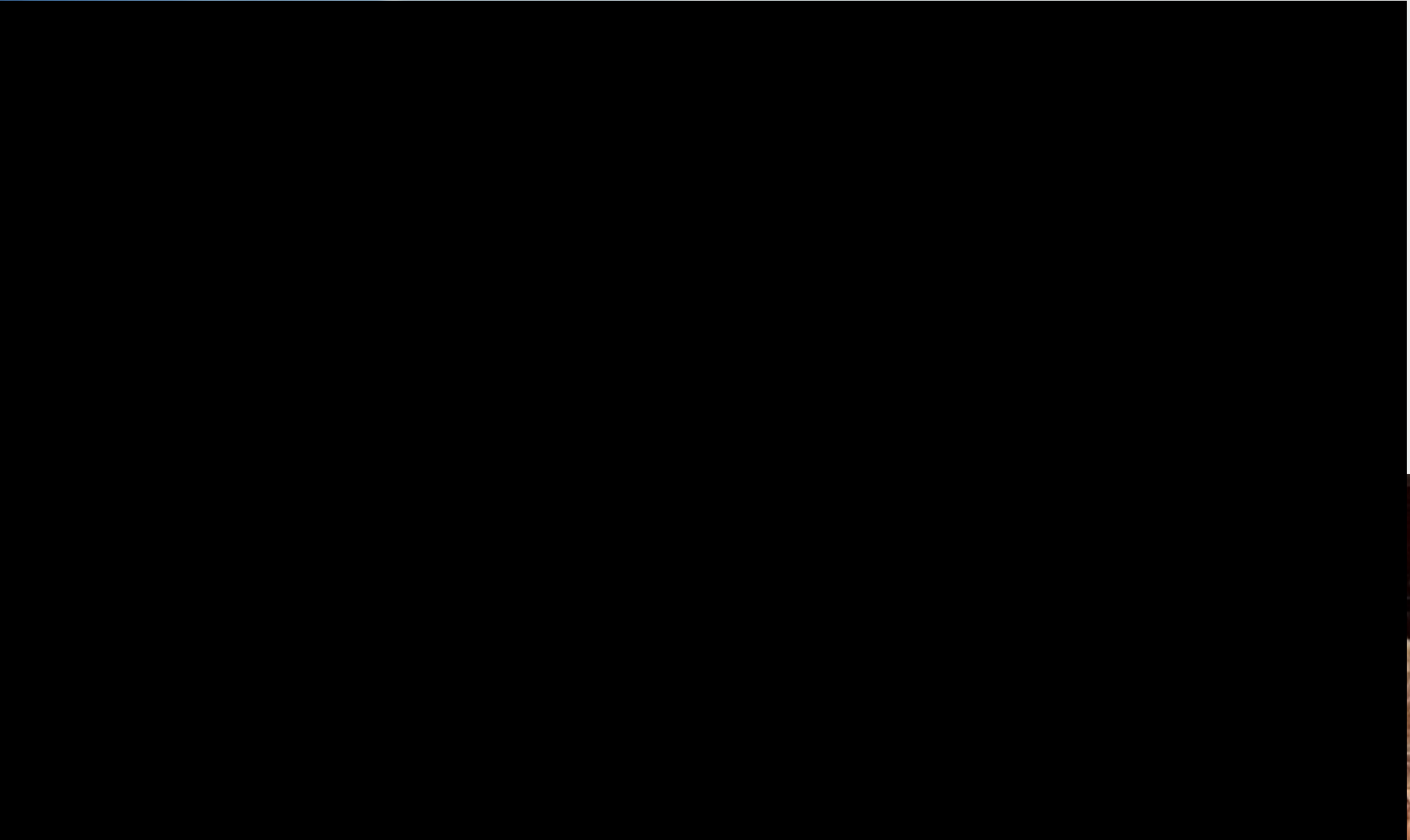


1st AMENDMENT RIGHTS:



1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

Absolute freedom mocks at justice. Absolute justice denies freedom. To be fruitful, the two ideas must find their limits in each other. -Albert Camus

CASE #1

En Loco Parentis

APPLICATION:

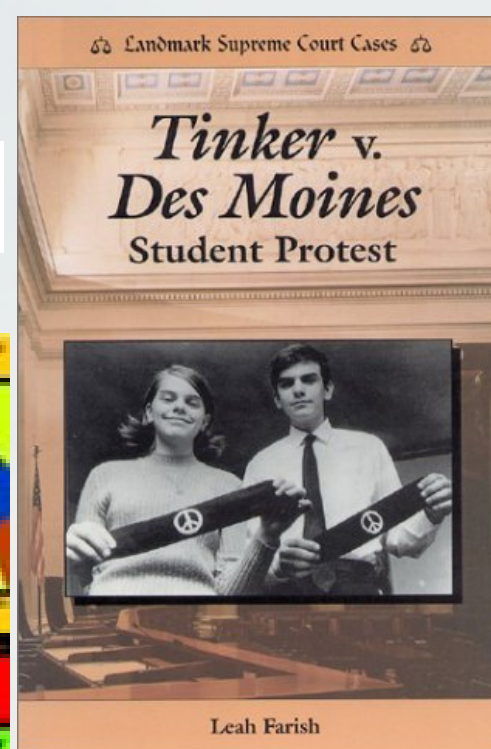
Tinker v. Des Moines 1969

Arguments

For 1st Amendment

Against 1st Amendment

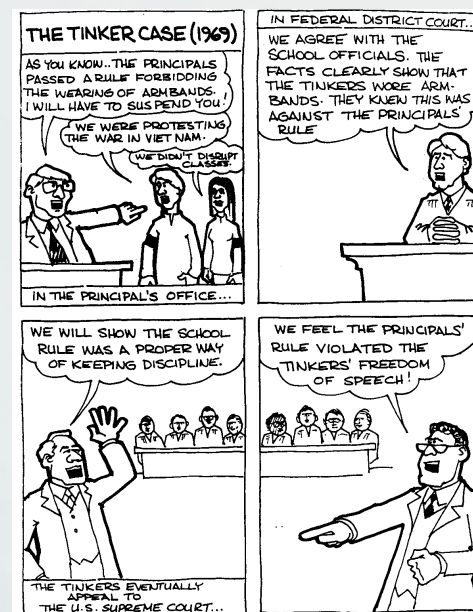
Does it apply to all?



Mary Beth Tinker and Christopher Eckhardt

7-2 Decision: The First Amendment, as applied through the Fourteenth, did not permit a public school to punish a student for wearing a black armband as an anti-war protest, absent any evidence that the rule was necessary to avoid substantial interference with school discipline or the rights of others. “symbolic speech”

Dissent: This case, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students.



1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

2.) LIMITATIONS:

- a.) obscenity?
*Cohen v California: F*** the draft*
- b.) inciteful language
heckler's veto
- c.) slander



Student to pay professor \$3 million for internet libel

Public figures must also show the words were written with “actual malice”—with reckless disregard for the truth or with knowledge that the words were false.

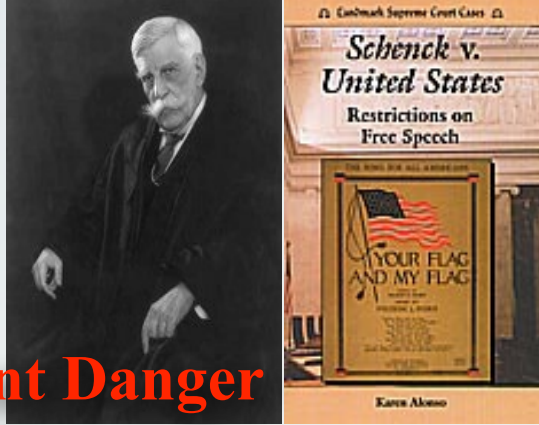
1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

CASE #2 CONSIDERATIONS:

During Wartime can government limit free speech?

Schenck v. United States 1919 **Clear and Present Danger**



Arguments **9-0**
For 1st Amendment
Against 1st Amendment

The choice is not between order and liberty. It is between liberty with order and anarchy without either. There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.
--- (in concurrence) Judge Jackson 1949




What about peacetime?

Dennis v. United States 1951 6-2 Decision on Smith Act

Majority:
In each case [courts] must ask whether the gravity of the "evil," discounted by its improbability, justifies such invasion of free speech as necessary to avoid the danger.

Dissent:
"in calmer times [not during war], when pressures, passions and fears subside, this or some later Court must restore the First Amendment liberties to the high preferred place where they belong in a free society." -Justice Black

 **The FIRST AMENDMENT to the U.S. Constitution**
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.
[ABOUT THE FIRST AMENDMENT>](#)

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

No matter how it is worded, this is a virulent form of prior censorship of speech and press, which I believe the First Amendment forbids.

Brandenburg v. Ohio: government cannot punish inflammatory speech unless it is directed to inciting and likely to incite imminent lawless action.

1st AMENDMENT RIGHTS

A.) FREE SPEECH (EXPRESSION PART 1)

CASE #3 Considerations:

Can government limit speech which opposes patriotism and national symbols?

Texas v. Johnson 1984

Arguments

For 1st Amendment

Against 1st Amendment



Robert Justin Goldstein

Flag Burning & Free Speech



The Case of *Texas v. Johnson*



"Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?"

What was the supreme court verdict?

- A. It is up to the states to decide
- B. It is unconstitutional to burn the flag
- C. It is part of the first amendment freedom of expression.

"Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment?"

"Under the circumstances, Johnson's burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment... Occurring as it did at the end of a demonstration coinciding with the Republican National Convention, the expressive, overtly political nature of the conduct was both intentional and overwhelmingly apparent."

The American flag, then, throughout more than 200 years of our history, has come to be the visible symbol embodying our Nation. Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the Act of Congress, and the laws of 48 of the 50 States, which make criminal the public burning of the flag.

Considerations



What is included in *clear and present danger*?

- **Gitlow v. New York 7-2 Decision:** Gitlow, a Socialist, had been convicted of criminal anarchy after publishing a "Left Wing Manifesto." The Court upheld his conviction on the basis that the government may suppress or punish speech when it directly advocates the unlawful overthrow of the government.
- **Majority Opinion:** Though the Fourteenth Amendment prohibits states from infringing free speech, the defendant was properly convicted under New York's criminal anarchy law for advocating the violent overthrow of the government, through the dissemination of Communist pamphlets.
- **Dissent:** Holmes, glad it nationalized the Bill of Rights, but thought that Gitlow posed no *clear and present danger* because only a small minority of people shared the views presented in the manifesto and because it directed an uprising at some "indefinite time in the future."



Recent Case Before the Court



■ Arguments

For 1st Amendment

Against 1st Amendment

Your Verdict?

Morse v. Frederick, 2007



4-4-1 Thomas (students have no 1st Amendment rights at all)

"To promote drugs is utterly inconsistent with the educational mission of the school. The "school speech" doctrine should apply because Frederick's speech occurred "at a school event"; The speech was "reasonably viewed as promoting illegal drug use."



The school's interest in protecting its students from exposure to speech "reasonably regarded as promoting illegal drug use" ... cannot justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience simply because it contained an oblique reference to drugs. The First Amendment demands more, indeed, much more. Admittedly, some high school students (including those who use drugs) are dumb. Most students, however, do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible

B.) FREE PRESS (EXPRESSION PART 2)

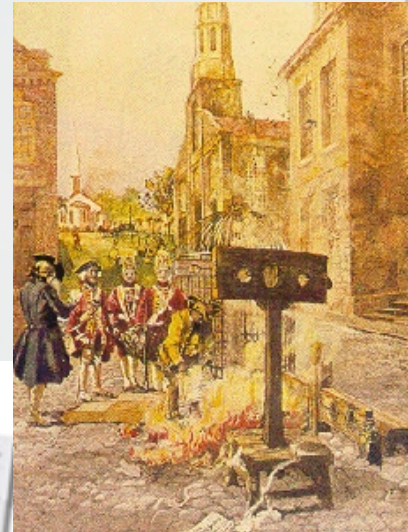
A free press can, of course, be good or bad, but, most certainly without freedom, the press will never be anything but bad.
-Albert Camus

1.) APPLICATION:

2.) LIMITATIONS: *Memoirs v. Mass*

a.) pornography- *Roth Miller Test*

- 1.) cont. community standards
- 2.) appeals to the prurient interest in sex
- 3.) portrays offensive sexual conduct
- 4.) the work lacks redeeming literary, scientific, political or artistic merit



b.) TV & Radio

c.) Movies

d.) Libel

e.) Actual Malice

f.) Internet

John Peter Zenger: Libel Must be believable



3.) NO PRIOR RESTRAINT!

a.)

4.) CONSIDERATIONS:

a.)

b.)



Freedom of Speech (press) example

John Peter Zenger: Libel Must be believable

▪ *Hustler Magazine v. Falwell*

▪ In some areas of the law, the specific intent to inflict emotional harm enjoys no protection. But with respect to speech concerning public figures, penalizing the intent to inflict emotional harm, without also requiring that the speech that inflicts that harm to be false, would subject political cartoonists and other satirists to large damage awards. "The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events – an exploitation often calculated to injure the feelings of the subject of the portrayal". This was certainly true of the cartoons of Thomas Nast, who skewered Boss Tweed in the pages of *Harper's Weekly*. From a historical perspective, political discourse would have been considerably poorer without such cartoons.

▪ <http://articles.latimes.com/2007/may/20/opinion/op-flynt20>

Jerry Falwell talks about his first time.



INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Looks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we've drunk off our God-bearing asses on Campari, ginger ale and soda—Mom's called a Fie and Brimstone—at the time. And Mom looked better than a Baptist whose with a \$100 donation.

INTERVIEWER: Wasn't it a little cramped?

FALWELL: Not after I kicked the girl out.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell!"

INTERVIEWER: Campari is the cheaper with Mom... how interesting will it be for us?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: Did you ever try it again?

FALWELL: Sure...

Campari. Use all night with more to live for. It's a high, all-night, interesting spirit, just not enough to make you feel like before you know you're exhausted. For your first time, this is all you need. Or maybe you want more. Then you can come back and try the exciting Campari. The ultimate first event.



CAMPARI You'll never forget your first time.



1st AMENDMENT RIGHTS

C.) FREEDOM OF RELIGION

1.) APPLICATION:

Establishment Clause

Free Exercise Clause

2.) LIMITATIONS:

a.) People must follow valid laws

▪ 3.) CONSIDERATIONS

▪ Establishment:

- *Engel v. Vitale, 6-1 (1962)*: unconstitutional for state officials to compose an official school prayer and require its recitation in public schools.

Abington School Dist. v. Schempp, 8-1(1963) declared sanctioned organized Bible reading in public schools in the United States to be unconstitutional

a.) School Prayer/Football/ Intercom

"God thank you for this evening. Thank you for all the prayers that were lifted up this week for me. I pray that you'll bless each and every person here tonight... In Jesus' name, I pray. Amen." --*public prayer said by Texas student before game* (Santa Fe Independent School District v. Doe)

The Supreme Court has ruled (6 judges to 3 judges) that students can't lead prayers over the public-address system before public school football games.



Students in this country should not have to choose between attending a high school football game, which is a large and significant event in the life of many high school students, and being subjected to a religious practice and ritual that they may not share.



We pray that the Supreme Court changes its mind and lets the school force our classmates to pray with us.

STEVEN SHAPIRO,
American Civil
Liberties Union

Freedom of Religion

Considerations

- 3.) CONSIDERATIONS
 - Establishment:

a1.) Moment of silence?

b.) Pledge

c.) Evolution

1. "intelligent design" *Kitzmiller v. Dover 2005*

d.) Ten Commandments

e.) *Lemon Test*



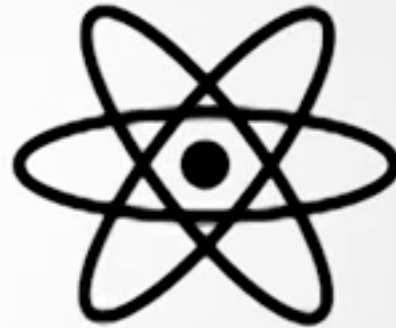
Epperson v. Arkansas
Edwards v. Aguillard



Dover v. Kitzmiller



VS.



Establishment: Marathon



Freedom of Religion

Considerations II



Free Exercise:

- **Reynolds v. U.S. (1879)** religious belief vs. religious conduct or action

- 5 Cases:

- **Flag as a graven image**, Jehovah Witnesses, *WV v. Barnette* (Right **not** to do something against religion?)

6-3 The Free Speech clause of the First Amendment prohibits public schools from forcing students to salute the American flag and say the Pledge of Allegiance.

- **Conscientious Objector**, *Welsh v. U.S.*

In a **5-3** decision, the Court allowed Welsh to be declared a conscientious objector even though he declared that his opposition to war was not based on religious convictions.

- **School?** *Wisconsin v. Yoder*

7-0 The Wisconsin Compulsory School Attendance Law violated the Free Exercise Clause of the First Amendment because required attendance past the eighth grade interfered with the right of Amish parents to direct the religious upbringing of their children.

Free Exercise



- **Drugs?**
- *Peyote Oregon Employment Division v. Smith (1990)*

6-3 Oregon's ban on the possession of peyote is not a law specifically aimed at a physical act engaged in for a religious reason. Rather, it is a law that applies to everyone who might possess peyote, for whatever reason -- a "neutral law of general applicability,"

- **Animal Cruelty?** *Lukumi Babalu v. Hialeah* santeria (believe in spiritual forces called Orishas, whose survival depends on blood sacrifices.)



Massachusetts v. David and Ginger Twitchell (1990, Mass.)

Does this apply? **Prince v.**

Massachusetts (1944), Parents are free to become martyrs themselves. But it does not follow that they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full and legal discretion when they can make that choice for themselves.

Recent Considerations

- **Title VII of Civil Rights Act of 1964**
 - Cab Drivers
 - Abercrombie
 - **Work?**



D.) FREEDOM OF ASSEMBLY

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or 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.

1.) APPLICATION:

“petition,” “redress” and “grievances.”

Edwards v South Carolina 1961

<http://www.c-spanclassroom.org/Lesson/1981/Bell+Ringer+Edwards+v+South+Carolina.aspx>

2.) LIMITATIONS:

Cox v. New Hampshire *“The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties” protected in the first amendment.*

a.) Time

b.) Place

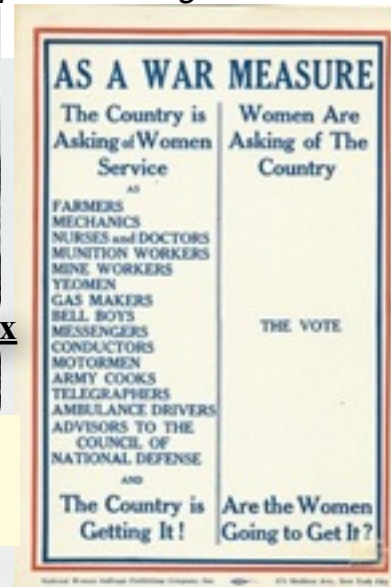
c.) Manner

3.) CONSIDERATIONS:

a.) Hate groups rights?

b.) Protest during wartime?

c.) Curfews



National Socialist Party of America v. Village of Skokie

Snyder v. Phelps

Westboro Baptist Church

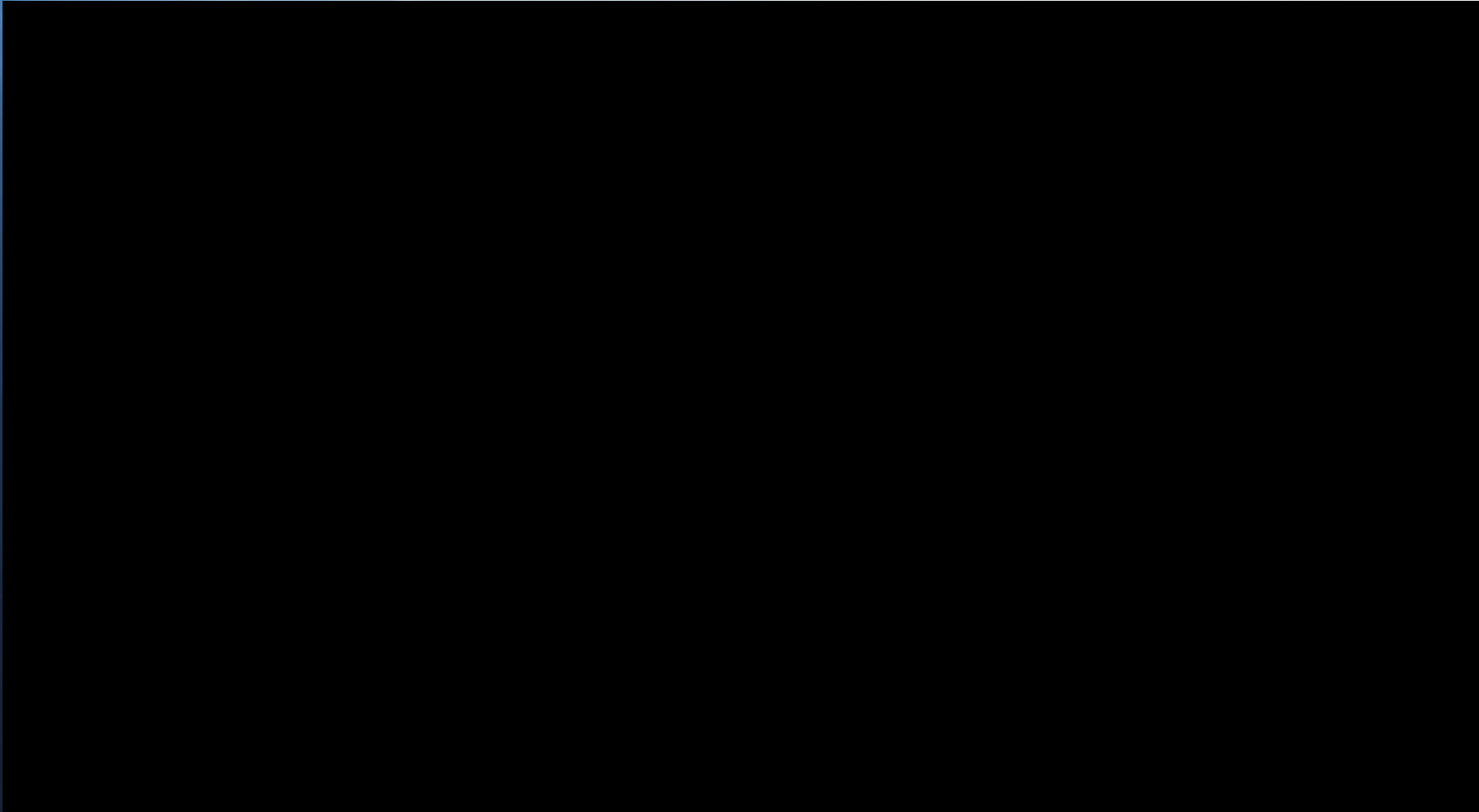


- **8-1 Decision Majority:** *“Speech on a public sidewalk, about a public issue, cannot be liable for a tort of emotional distress, even if the speech is found to be “outrageous”.”*

Dissent: *“Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case.” - Samuel Alito*

Don't Hate People

"I hate people." - Davis Robertson



First Amendment Quiz

- *Case #1a: Jane Doe v. Saratoga High School*
- Paul Robinson, principal of Saratoga High School invited members of the clergy to give invocations and benedictions at the school's graduation ceremonies. Rabbi Weissman, a respected community member offered to give prayers at the graduation ceremony for the senior class. Mr. Robinson gave the rabbi a pamphlet containing guidelines for the composition of public prayers at civic ceremonies, and advised him that the prayers should be nonsectarian. Is this a violation of the first amendment? Why or why not?

- *Case #1b Martin v. Saratoga High School*
- A senior name George Martin took an old American flag he had, and sewed a piece of it into the seat of his jean pants. The high school expelled him for disgracing the American flag. He sued the school claiming that this was a violation of his first amendment rights? Is it? Why or why not?

1st Amendment Quiz Cases

