**Constitutional Law I**

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**Spring 2024**

Free Speech Hypotheticals: Part 2, Hostile Audiences

Discuss the arguments likely to be advanced by both sides in the following situations. Consider what additional facts might be important.

(1) Mr. Cantwell, a Jehovah’s Witness, plays a recording on a street corner in a predominately Catholic neighborhood in New Haven, Connecticut. The recording is sharply critical of the Catholic Church, stating among other things that the Church is a “fraud” and an “instrument of Satan.” A small number of listeners hear the recording and are highly offended. One says he feels like hitting Cantwell and another tells Cantwell he had better get off the street before something happens to him. Cantwell leaves the area but is later arrested for disturbing the peace; he defends on First Amendment grounds.

(Adapted from *Cantwell v. Connecticut*, 310 U.S. 296 (1940), in which the Court unanimously held for Cantwell.)

(2) Mr. Terminiello gives a speech at an auditorium in Chicago in which he says the nation must be saved from communists and Jews. An angry crowd gathers outside to protest. Terminiello calls the crowd “snakes,” “bedbugs” and “slimy scum.” The crowd throws bottles and stink bombs, breaking windows. Later, Terminiello is arrested under a statute that prohibits speech that “stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance.” He defends on First Amendment grounds.

(Adapted from *Terminiello v. Chicago*, 337 U.S. 1 (1949), in which a divided Court held for Terminiello, over a dissent by Justice Jackson that relied on *Chaplinsky*.)

(3) Mr. Feiner gives a speech on a street corner in Syracuse, NY, in which he is sharply critical of various government officials and says that “Negroes don’t have equal rights – they should rise up and fight for them.” An angry crowd gathers, along with several policemen. One of the onlookers tells the police that if the police won’t silence Feiner, then “I will go over and get him off there myself.” The police twice tell Feiner to stop speaking; when he refuses, he is arrested and prosecuted. He defends on First Amendment grounds.

(Adapted from *Feiner v. New York*, 340 U.S. 315 (1951), in which a divided Court, per Chief Justice Vinson, affirmed Feiner’s conviction, relying on “the imminence of greater disorder”; Justice Black dissented, arguing that the police’s first duty was to protect Feiner: “[I]f, in the name of preserving order, [the police] can ever interfere with a lawful public speaker, they first must make all reasonable efforts to protect him.”).

(4) Mr. Edwards leads a protest march by black students in Columbia, South Carolina, carrying signs protesting segregation. A large crowd of hostile white residents gathers. The police direct Edwards to stop the march. Edwards refuses, and is arrested and prosecuted; he defends on First Amendment grounds.

(Adapted from *Edwards v. South Carolina*, 372 U.S. 229 (1963), in which the Court, by an 8-1 vote, held for Edwards, citing *Terminiello* and distinguishing *Feiner*; Justice Clark dissented, finding “much greater danger of riot and disorder” than in *Feiner* based on the tense situation in the 1960s South.).

(5) A student group at the University of California Berkeley invites a controversial speaker to campus. In a recent previous incident, the same student group had invited a speaker whose speech was disrupted by violent protests that caused some injuries and extensive property damage. The planned speaker has had recent speeches at other campuses disrupted violently. One of the protest groups involved in the previous disruptions declares that the upcoming event at Berkeley will be “shut down by whatever means necessary.” The University refuses to allow the planned event on the grounds of public safety.

(Based on actual events, but the case was resolved without litigation. Suppose the student group sues the University: what arguments would each side make, and what facts and cases would be important?)