



Lesson Plan: Freedom of Expression

Student Handout 1:

Facts: Feiner v New York

On the evening of March 8, 1949, Irving Feiner was arrested after making an inflammatory speech to a mixed crowd of 75 or 80 [African Americans](#) and [white people](#) at the corner of South McBride and Harrison Streets in [Syracuse, New York](#). Feiner, a college student,^[1] had been standing on a large wooden box on the sidewalk, addressing a crowd through a loud-speaker system attached to an automobile. He made derogatory remarks about President [Harry S. Truman](#), the [American Legion](#), the Mayor of Syracuse and other local political officials. Chief Justice Vinson said that Feiner "gave the impression that he was endeavoring to arouse the Negro people against the whites, urging that they rise up in arms and fight for equal rights." The crowd, which blocked the sidewalk and overflowed into the street in which there was oncoming traffic, became restless, with some in the crowd voicing both opposition and support for Feiner. An onlooker threatened violence if the police did not act. After having observed the situation for some time without interference, police officers, in order to prevent a fight, requested the petitioner to get off the box and stop speaking. After his third refusal, they arrested him, and he was convicted of violating 722 of the Penal Code of New York, which, in effect, forbids incitement of a breach of the peace.^[2] Feiner claimed that his conviction violated his right of free speech under the [First](#) and [Fourteenth Amendments](#) to the [United States Constitution](#).

Student Handout 2:

The decision of the court

In a 6–3 decision delivered by [Chief Justice Fred Vinson](#), the Supreme Court upheld Feiner's arrest.

Focusing on the "rise up in arms and fight for their rights" part of Feiner's speech, the court found that Feiner's [First Amendment](#) rights were not violated, because his arrest came when the police thought that a riot might occur. The court found that the police did not attempt to suppress Feiner's message based on its content, but rather on the reaction of the crowd. The



court reaffirmed the fact that a speaker cannot be arrested for the content of his speech. The court also reaffirmed that the police must not be used as an instrument to silence unpopular views, but must be used to silence a speaker who is trying to incite a riot.

New York won, the Chief Justice wrote, because by law, what Feiner did was an imminent threat: the police arrested him because the police wanted to protect the city government and the people of New York.

[edit] The dissent

Justice Black wrote a foresighted dissent, saying that the evidence did not show that the crowd was about to riot. He also pointed out that the police, instead of arresting Feiner, should have probably protected him from hostile members of the crowd. The police "did not even pretend to try to protect" Feiner. Police testimony showed that, although the crowd was restless, "there [was] no showing of any attempt to quiet it . . . one person threatened to assault [Feiner] but the officers did nothing to discourage this when even a word might have sufficed."

Justice Douglas, joined by Justice Minton, additionally did not believe the situation constituted a disturbance of the peace, and questioned the fairness of the trial Feiner received.

[edit] Aftermath

As a result of his conviction, [Syracuse University](#) expelled Mr. Feiner. He finally completed his degree from Syracuse when they readmitted him, and was invited back to the school to speak at the opening of the Tully Center for Free Speech in October 2006. ^[citation needed] He continued to fight for tuition reimbursement, as his original schooling had been covered under the [GI Bill](#). ^[citation needed] Following the court ruling, Feiner tried to work on a local newspaper but was fired after the [Federal Bureau of Investigation](#) (FBI) sent agents to the small town office and informed the editor of Feiner's "criminal" past. ^[citation needed] The FBI continued to haunt Feiner's life; he enjoyed telling his family and friends of an incident in which agents would not get off his property, so his wife, Trudy, sprayed them with a garden hose. ^[citation needed]

Irving Feiner lived in [Nyack, New York](#) where he had been a small business owner. He continued to fight and write about freedom of speech and progressive issues, including squaring off, on First Amendment grounds, against [Stephen Baldwin](#), who fought to keep an [adult bookstore](#) from opening in the village. ^[citation needed] He had two adult daughters, Susan and Emily, and five grandchildren: Lisa, Dana, and Laurie Roberts, and Rebecca and Jeremy Feiner Blair. ^[citation needed]



Born in 1924, Mr. Feiner was 84 years old and was involved in school/property tax reform and fighting a planned village parking garage when he died on January 23, 2009.^[3]

[edit] Lectures at Rutgers University

At the invitation of renowned Professor of Political Science, [Milton Heumann](#), Feiner gave several surprise guest lectures to students of Professor Heumann's Civil Liberties class at [Rutgers University](#) in New Brunswick, NJ. Those lectures took place on February 14, 2006 and February 12, 2008. Feiner explained his side of the case, contending that some of the facts found in the Supreme Court's decision were mistaken or that some facts were omitted. For example, the only witnesses that the prosecution called were the two arresting officers. The infamous "S.O.B." man was never called as a witness. Feiner also explained that shortly after [V-E day](#) he was in Paris where he saw a V-E parade in which marchers marched with locked arms. Feiner claims that in his speech the night he was arrested he said "the Negroes of this town should march with locked arms down to the mayor's office and demand their rights." As a result of this case, the [University of Iowa College of Law](#) retracted its offer of admission.^[citation needed]

In this instance, the Supreme Court only dealt with matters of law and not with matters of fact.^[citation needed] Matters of fact are usually established in lower trial courts, and the Supreme Court generally makes its decisions based on the lower courts' findings.