APPENDIX I

CASES FOR MOOT COURTS

The materials provided in this appendix include precedent cases and factual situations taken from recent Supreme Court cases. The majority and dissenting opinions of the Supreme Court justices are also included. The opinions have been edited, rather than rewritten, so that students may read the language of the Court.

Two of the freedom of expression limitations laid down by the Court are treated in the moot court materials. These are the *clear and present danger doctrine* and the *time, place and manner doctrine*. However, moot courts involving *pure speech* and *speech plus* could be organized using the background material included in the First Amendment--Freedom of Speech unit and other Supreme Court cases.

BRANDENBURG v. OHIO
395 U.S. 444 (1969)

Facts

Appellant, Grand Dragon of the Klu Klux Klan, was convicted under an Ohio statute that makes it a crime to advocate "...the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and to voluntarily assemble with any society, group or assemblage of persons formed to teach or advocate such unlawful acts."

The prosecution's case rested on several films, one of which showed twelve hooded and robed figures, some of whom carried firearms. They were gathered around a large wooden cross, which they burned. Only the participants and the newsmen, who were invited by the participants and organizers of the meeting and who made the films, were present. Most of the words uttered during the scene were incomprehensible when the film was seen, but scattered phrases could be understood that were derogatory of blacks and Jews. Another scene on the same film showed the appellant, in Klan regalia, making a speech. The speech in full, was as follows:

> This [is] an organizers' meeting. We have had quite a few members here today which are--we have hundreds, hundreds, hundreds of members throughout the State of Ohio. I can quote from a newspaper clipping from the Columbus Ohio Dispatch, five weeks ago Sunday. The Klan has more members in the State of Ohio than does any other organization. We're not a revengent [sic] organization, but if our President, our Congress, our Supreme Court, continues to suppress the white Caucasian race, it's possible that there might have to be some revengence [sic] taken.

> Personally, I believe the nigger should be returned to Africa, the Jew returned to Israel.
>
> We are marching on Congress July the Fourth, four hundred thousand strong. From there we are dividing into groups, one group to march on St. Augustine, Florida, the other group to march into Mississippi. Thank you.

Though some of the figures in the films carried weapons, the speaker did not.

DENNIS v. UNITED STATES
341 U.S. 494 (1951)

Mr. Chief Justice VINSON announced the judgment of the Court and an opinion in which Mr. Justice REED, Mr. Justice BURTON and Mr. Justice MINTON join.

Petitioners were indicted in July, 1948, for violation of the conspiracy provisions of the Smith Act...during the period of April, 1945, to July, 1948. A verdict of guilty as to all the petitioners was returned by the jury on October 14, 1949. The Court of Appeals affirmed the convictions. [The Court's inquiry is] limited to the following two questions: (1) Whether either §2 or §3 of the Smith Act, inherently or as construed and applied in the instant case, violates the First Amendment and other provisions of the Bill of Rights; (2) whether either §2 or §3 of the Act, inherently or as construed and applied in the instant case, violates the First and Fifth Amendments because of indefiniteness.

Sections 2 and 3 of the Smith Act (see present 18 U.S.C. §2385) provide as follows:

"Sec. 2. (a) It shall be unlawful for any person--

"(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of such government;...

"(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction

of any government in the United States by force or violence, or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purpose thereof....

"Sec. 3. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by...this title."

The indictment charged the petitioners with willfully and knowingly conspiring (1) to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, and (2) knowingly and willfully to advocate and teach the duty and necessity of overthrowing and destroying the Government of the United States by force and violence. The indictment further alleged that §2 of the Smith Act proscribes these acts and that any conspiracy to take such action is a violation of §3 of the Act.

The trial of the case extended over nine months, six of which were devoted to the taking of evidence, resulting in a record of 16,000 pages. Our limited [inquiry] has removed from our consideration any question as to the sufficiency of the evidence to support the jury's determination that petitioners are guilty of the offense charged. Whether on this record petitioners did in fact advocate the overthrow of the Government by force and violence is not before us, and we must base any discussion of this point upon the conclusions stated in the opinion of the Court of Appeals, which treated the issue in great detail. [T]he Court of Appeals held that the record supports the following broad conclusions: By virtue of their control over the political apparatus of the Communist Political Association,

petitioners were able to transform that organization into the Communist Party; that the policies of the Association were changed from peaceful cooperation with the United States and its economic and political structure to a policy which had existed before the United States and the Soviet Union were fighting a common enemy, namely, a policy which worked for the overthrow of the Government by force and violence; that the Communist Party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double-meaning language; that the Party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party; that the literature of the Party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the Party was, during the period in question, to achieve a successful overthrow of the existing order by force and violence....

I.

...The structure and purpose of the statute demand the inclusion of intent as an element of the crime. Congress was concerned with those who advocate and organize for the overthrow of the Government. Certainly those who recruit and combine for the purpose of advocating overthrow intend to bring about that overthrow. We hold that the statute requires as an essential element of the crime proof of the intent of those who are charged with its violation to overthrow the Government by force and violence....

II.

The obvious purpose of the statute is to protect existing Government, not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism. That it is within the *power* of the Congress to protect the Government of the United States from armed rebellion is a proposition which requires little discussion. Whatever theoretical merit there may be to the argument that there is a "right" to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence. The question with which we are concerned here is not whether Congress has such *power*, but whether the *means* which it has employed conflict with the First and Fifth Amendments to the Constitution.

One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that by its terms it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press....

The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion. Thus, the trial judge properly charged the jury that they

could not convict if they found that petitioners did "no more than pursue peaceful studies and discussions or teaching and advocacy in the realm of ideas." Congress did not intend to eradicate the free discussion of political theories, to destroy the traditional rights of Americans to discuss and evaluate ideas without fear of governmental sanction. Rather Congress was concerned with the very kind of activity in which the evidence showed these petitioners engaged.

III.

But although the statute is not directed at the hypothetical cases which petitioners have conjured, its application in this case has resulted in convictions for the teaching and advocacy of the overthrow of the Government by force and violence, which, even though coupled with the intent to accomplish that overthrow, contains an element of speech. For this reason, we must pay special heed to the demands of the First Amendment marking out the boundaries of speech.

[T]he basis of the First Amendment is the hypothesis that speech can rebut speech, propaganda will answer propaganda, free debate of ideas will result in the wisest governmental policies.... An analysis of the leading cases in this Court which have involved direct limitations on speech, however, will demonstrate that both the majority of the Court and the dissenters in particular cases have recognized that this is not an unlimited, unqualified right, but that the societal value of speech must, on occasion, be subordinated to other values and considerations....

The rule we deduce [from earlier cases] is that where an offense is

specified by a statute in nonspeech or nonpress terms, a conviction relying upon speech or press as evidence of violation may be sustained only when the speech or publication created a "clear and present danger" of attempting or accomplishing the prohibited crime, e.g., interference with enlistment.

[N]either Justice Holmes nor Justice Brandeis ever envisioned that a shorthand phrase should be crystallized into a rigid rule to be applied inflexibly without regard to the circumstances of each case. Speech is not absolute, above and beyond control by the legislature when its judgment, subject to review here, is that certain kinds of speech are so undesirable as to warrant criminal sanction. Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phrase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature.... To those who would paralyze our Government in the face of impending threat by encasing it in a semantic strait jacket, we must reply that all concepts are relative.

In this case we are squarely presented with the application of the "clear and present danger" test, and must decide what that phrase imports. We first note that many of the cases in which this Court has reversed convictions by use of this or similar tests have been based on the fact that the interest which the State was attempting to protect was itself too insubstantial to warrant restriction of speech.... Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from

armed internal attack, it must follow that no subordinate value can be protected. If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase "clear and present danger" of the utterances bringing about the evil within the power of Congress to punish.

Obviously, the words cannot mean that before the Government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease, needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt. In the instant case the trial judge charged the jury that they could not convict unless they found that petitioners intended to overthrow the Government "as speedily as circumstances would permit." This does not mean, and could not properly mean, that they would not strike until there was certainty of success. What was meant was that the revolutionists would strike

when they thought the time was ripe. We must therefore reject the contention that success or probability of success is the criterion.

The situation with which Justices Holmes and Brandeis were concerned ...was a comparatively isolated event, bearing little relation in their minds to any substantial threat to the safety of the community.... They were not confronted with any situation comparable to the instant one--the development of an apparatus designed and dedicated to the overthrow of the Government, in the context of world crisis after crisis.

Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows: "In each case [courts] must ask whether the gravity of the 'evil,' discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger." We adopt this statement of the rule. As articulated by Chief Judge Hand, it is as succinct and inclusive as any other we might devise at this time. It takes into consideration those factors which we deem relevant, and relates their significances. More we cannot expect from words.

Likewise, we are in accord with the court below, which affirmed the trial court's finding that the requisite danger existed. The mere fact that from the period 1945 to 1948 petitioners' activities did not result in an attempt to overthrow the Government by force and violence is of course no answer to the fact that there was a group that was ready to make the attempt. The formation by petitioners of such a highly organized conspiracy with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions, similar uprisings in

other countries, and the touch-and-go nature of our relations with countries with whom petitioners were in the very least ideologically attuned, convince us that their convictions were justified on this score. And this analysis disposes of the contention that a conspiracy to advocate, as distinguished from the advocacy itself, cannot be constitutionally restrained, because it comprises only the preparation. It is the existence of the conspiracy which creates the danger.... If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added.

Affirmed.

Mr. Justice DOUGLAS, dissenting.

If this were a case where those who claimed protection under the First Amendment were teaching the techniques of sabotage, the assassination of the President, the filching of documents from public files, the planting of bombs, the art of street warfare, and the like, I would have no doubts. The freedom to speak is not absolute; the teaching methods of terror and other seditious conduct should be beyond the pale along with obscenity and immorality. This case was argued as if those were the facts. The argument imported much seditious conduct into the record. That is easy and it has popular appeal, for the activities of Communists in plotting and scheming against the free world are common knowledge. But the fact is that no such evidence was introduced at the trial. There is a statute which makes a seditious conspiracy unlawful. Petitioners, however, were not charged with a "conspiracy to overthrow" the Government. They were charged

with a conspiracy to form a party and groups and assemblies of people who teach and advocate the overthrow of our Government by force or violence and with a conspiracy to advocate and teach its overthrow by force and violence. It may well be that indoctrination in the techniques of terror to destroy the Government would be indictable under either statute. But the teaching which is condemned here is of a different character.

So far as the present record is concerned, what petitioners did was to organize people to teach and themselves teach the Marxist-Leninist doctrine contained chiefly in four books: Foundations of Leninism by Stalin (1924), The Communist Manifesto by Marx and Engels (1848), State and Revolution by Lenin (1917), History of the Communist Party of the Soviet Union (B) (1939).

Those books are to Soviet Communism what Mein Kampf was to Nazism. If they are understood, the ugliness of Communism is revealed, its deceit and cunning are exposed, the nature of its activities becomes apparent, and the chances of its success less likely. That is not, of course, the reason why petitioners chose these books for their classrooms. They are fervent Communists to whom these volumes are gospel. They preached the creed with the hope that some day it would be acted upon.

The opinion of the Court does not outlaw these texts nor condemn them to the fire, as the Communists do literature offensive to their creed. But if the books themselves are not outlawed, if they can lawfully remain on library shelves, by what reasoning does their use in a classroom become a crime?... The Act, as construed, requires the element of intent--that those who teach the creed believe in it. That is to make freedom of speech

turn not on *what is said,* but on the *intent* with which it is said. Once we start down that road we enter territory dangerous to the liberties of every citizen....

There comes a time when even speech loses its constitutional immunity. Speech innocuous one year may at another time fan such destructive flames that it must be halted in the interests of the safety of the Republic. That is the meaning of the clear and present danger test. When conditions are so critical that there will be no time to avoid the evil that the speech threatens, it is time to call a halt. Otherwise, free speech which is the strength of the Nation will be the cause of its destruction.

Yet free speech is the rule, not the exception. The restraint to be constitutional must be based on more than fear, on more than passionate opposition against the speech, on more than a revolted dislike for its contents. There must be some immediate injury to society that is likely if speech is allowed....

The nature of Communism as a force on the world scene would, of course, be relevant to the issue of clear and present danger of petitioners' advocacy within the United States. But the primary consideration is the strength and tactical position of petitioners and their converts in this country. On that there is no evidence in the record. If we are to take judicial notice of the threat of Communists within the nation, it should not be difficult to conclude that *as a political party* they are of little consequence.... Communism in the world scene is no bogeyman; but Communism as a political faction or party in this country plainly is. Communism has been so thoroughly exposed in this country that it has been crippled

as a political force. Free speech has destroyed it as an effective political party. It is inconceivable that those who went up and down this country preaching the doctrine of revolution which petitioners espouse would have any success....

How it can be said that there is a clear and present danger that this advocacy will succeed is, therefore, a mystery. Some nations less resilient than the United States, where illiteracy is high and where democratic traditions are only budding, might have to take drastic steps and jail these men for merely speaking their creed. But in America they are miserable merchants of unwanted ideas; their wares remain unsold. The fact that their ideas are abhorrent does not make them powerful.

The political impotence of the Communists in this country does not, of course, dispose of the problem. Their numbers; their positions in industry and government; the extent to which they have in fact infiltrated the police, the armed services, transportation, stevedoring, power plants, munitions works, and other critical places--these facts all bear on the likelihood that their advocacy of the Soviet theory of revolution will endanger the Republic. But the record is silent on these facts. If we are to proceed on the basis of judicial notice, it is impossible for me to say that the Communists in this country are so potent or so strategically deployed that they must be suppressed for their speech. I could not so hold unless I were willing to conclude that the activities in recent years of committees of Congress, of the Attorney General, of labor unions, of state legislatures, and of Loyalty Boards were so futile as to leave the country on the edge of grave peril. To believe that petitioners and their

following are placed in such critical positions as to endanger the Nation is to believe the incredible....

This is my view if we are to act on the basis of judicial notice. But the mere statement of the opposing views indicates how important it is that we know the facts before we act. Neither prejudice nor hate nor senseless fear should be the basis of this solemn act. Free speech--the glory of our system of government--should not be sacrificed on anything less than plain and objective proof of danger that the evil advocated is imminent....

FEINER v. NEW YORK
340 U.S. 315 (1951)

Mr. Chief Justice VINSON delivered the opinion of the Court.

Petitioner was convicted of the offense of disorderly conduct, a misdemeanor under the New York penal laws. [Petitioner claims] that the conviction is in violation of his right of free speech under the Fourteenth Amendment.

In the review of state decisions where First Amendment rights are drawn in question, we of course make an examination of the evidence to ascertain independently whether the right has been violated.... Our appraisal of the facts is...based upon the uncontroverted facts and, where controversy exists, upon that testimony which the trial judge did reasonably conclude to be true.

On the evening of March 8, 1949, petitioner Irving Feiner was addressing an open-air meeting at the corner of South McBride and Harrison Streets in the City of Syracuse. At approximately 6:30 p.m., the police received a telephone complaint concerning the meeting, and two officers were detailed to investigate. [Two policemen] found a crowd of about seventy-five or eighty people, both Negro and white, filling the sidewalk and spreading out into the street. Petitioner, standing on a large wooden box on the sidewalk, was addressing the crowd through a loud-speaker system attached to an automobile. Although the purpose of his speech was to urge his listeners to attend a meeting to be held

that night in the Syracuse Hotel, in its course he was making derogatory remarks concerning President Truman, the American Legion, the Mayor of Syracuse, and other local political officials.

The police officers made no effort to interfere with petitioner's speech, but were first concerned with the effect of the crowd on both pedestrian and vehicular traffic. They observed the situation from the opposite side of the street, noting that some pedestrians were forced to walk in the street to avoid the crowd. Since traffic was passing at the time, the officers attempted to get the people listening to petitioner back on the sidewalk. The crowd was restless and there was some pushing, shoving and milling around....

At this time petitioner was speaking in a "loud, high pitched voice." He 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 statements before such a mixed audience "stirred up a little excitement." Some of the onlookers made remarks to the police about their inability to handle the crowd and at least one threatened violence if the police did not act. There were others who appeared to be favoring petitioner's arguments. Because of the feeling that existed in the crowd both for and against the speaker, the officers finally "stepped in to prevent it from resulting in a fight. "...Although the officer...twice requested petitioner to stop over the course of several minutes, petitioner not only ignored him but continued talking. During all this time, the crowd

was pressing closer around petitioner and the officer. Finally, the officer told petitioner he was under arrest and ordered him to get down from the box, reaching up to grab him. Petitioner stepped down.... In all, the officer had asked petitioner to get down off the box three times over a space of four or five minutes. Petitioner had been speaking for over a half hour.

...The bill of particulars...gave in detail the facts upon which the prosecution relied to support the charge of disorderly conduct. Paragraph C is particularly pertinent here: "By ignoring and refusing to heed and obey reasonable police orders issued...to regulate and control said crowd and to prevent a breach or breaches of the peace and to prevent injury to pedestrians attempting to use said walk, ...and prevent injury to the public generally."

We are not faced here with blind condonation by a state court of arbitrary police action. Petitioner was accorded a full, fair trial.... The exercise of the police officers' proper discretionary power to prevent a breach of the peace was...approved by the trial court and later by two courts on review. The courts below...found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare, and that there was no evidence which could lend color to a claim that the acts of the police were a cover for suppression of petitioner's views and opinions. Petitioner was thus neither arrested nor convicted for the making or the content of his speech. Rather, it was the reaction which it actually engendered.

The language of *Cantwell v. Connecticut*...is appropriate here. "...When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious." The findings of the New York courts as to the condition of the crowd and the refusal of petitioner to obey the police requests, supported as they are by the record of this case, are persuasive that the conviction of petitioner for violation of public peace, order and authority does not exceed the bounds of proper state police action. This Court respects, as it must, the interests of the community in maintaining peace and order on its streets.... We cannot say that the preservation of that interest here encroaches on the constitutional rights of this petitioner.

We are well aware that the ordinary murmurings and objections of a hostile audience cannot be allowed to silence a speaker, and are also mindful of the possible danger of giving overzealous police officials complete discretion to break up otherwise lawful public meetings.... But we are not faced here with such a situation. It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace. Nor in this case can we condemn the considered judgment of three New York courts approving the means which the police, faced with a crisis, used in the exercise of their power and duty to preserve peace and order. The findings of the state courts as to

the existing situation and the imminence of greater disorder coupled with petitioner's deliberate defiance of the police officers convince us that we should not reverse this conviction in the name of free speech. Affirmed.

Mr. Justice BLACK, dissenting.

The record before us convinces me that petitioner, a young college student, has been sentenced to the penitentiary for the unpopular views he expressed on matters of public interest while lawfully making a street-corner speech in Syracuse, New York. Today's decision, however, indicates that we must blind ourselves to this fact because the trial judge fully accepted the testimony of the prosecution witnesses on all important points....

But still more has been lost today. Even accepting every "finding of fact" below, I think this conviction makes a mockery of the free speech guaranties of the First and Fourteenth Amendments. The end result of the affirmance here is to approve a simple and readily available technique by which cities and states can with impunity subject all speeches, political or otherwise, on streets or elsewhere, to the supervision and censorship of the local police. I will have no part or parcel in this holding which I view as a long step toward totalitarian authority....

...As to the existence of a dangerous situation on the street corner, it seems far-fetched to suggest that the "facts" show any imminent threat of riot or uncontrollable disorder. It is neither unusual nor unexpected that some people at public street meetings mutter, mill about, push, shove,

or disagree, even violently, with the speaker.... Nor does one isolated threat to assault the speaker forebode disorder. Especially should the danger be discounted where, as here, the person threatening was a man whose wife and two small children accompanied him and who, so far as the record shows, was never close enough to petitioner to carry out the threat.

Moreover, assuming that the "facts" did indicate a critical situation, I reject the implication of the Court's opinion that the police had no obligation to protect petitioner's constitutional right to talk. The police of course had power to prevent breaches of the peace. But if, in the name of preserving order, they ever can interfere with a lawful public speaker, they first must make all reasonable efforts to protect him. Here the policemen did not even pretend to try to protect petitioner. According to the officers' testimony, the crowd was restless but there is no showing of any attempt to quiet it; pedestrians were forced to walk into the street, but there was no effort to clear a path on the sidewalk; one person threatened to assault petitioner but the officers did nothing to discourage this when even a word might have sufficed. Their duty was to protect petitioner's right to talk, even to the extent of arresting the man who threatened to interfere. Instead, they shirked that duty and acted only to suppress the right to speak.

Finally, I cannot agree with the Court's statement that petitioner's disregard of the policeman's unexplained request amounted to such "deliberate defiance" as would justify an arrest or conviction for disorderly conduct. On the contrary, I think that the policeman's action was a "defiance" of ordinary official duty as well as of the constitutional right

of free speech. For at least where time allows, courtesy and explanation of commands are basic elements of good official conduct in a democratic society. Here petitioner was "asked" then "told" then "commanded" to stop speaking, but a man making a lawful address is certainly not required to be silent merely because an officer directs it. Petitioner was entitled to know why he should cease doing a lawful act. Not once was he told. I understand that people in authoritarian countries must obey arbitrary orders. I had hoped that there was no such duty in the United States.

In my judgment, today's holding means that as a practical matter, minority speakers can be silenced in any city. Hereafter, despite the First and Fourteenth Amendments, the policeman's club can take heavy toll of a current administration's public critics. Criticism of public officials will be too dangerous for all but the most courageous. This is true regardless of the fact that in two other cases decided this day, a majority, in obedience to past decisions of this Court, provides a theoretical safeguard for freedom of speech. For whatever is thought to be guaranteed in [those cases] is taken away by what is done here. The three cases read together mean that while previous restraints probably cannot be imposed on an unpopular speaker, the police have discretion to silence him as soon as the customary hostility to his views develops....

Mr. Justice DOUGLAS, with whom Mr. Justice MINTON concurs, dissenting.

A speaker may not, of course, incite a riot.... But this record shows no such extremes. It shows an unsympathetic audience and the threat of one man to haul the speaker from the stage. It is against that kind of

threat that speakers need police protection. If they do not receive it and instead the police throw their weight on the side of those who would break up the meetings, the police become the new censors of speech. Police censorship has all the vices of the censorship from city halls which we have repeatedly struck down....

Mr. Justice FRANKFURTER, concurring in the result.

It is pertinent...to note that all members of the New York Court accepted the finding that Feiner was stopped not because the listeners or police officers disagreed with his views but because these officers were honestly concerned with preventing a breach of the peace....

Where conduct is within the allowable limits of free speech, the police are peace officers for the speaker as well as for his hearers. But the power effectively to preserve order cannot be displaced by giving a speaker complete immunity. Here, there were two police officers present for 20 minutes. They interfered only when they apprehended imminence of violence. It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker.

It is true that breach-of-peace statutes, like most tools of government, may be misused.... But the possibility of misuse is not alone a sufficient reason to deny New York the power here asserted or so limit it by constitutional construction as to deny its practical exercise.

BRANDENBURG v. OHIO
395 U.S. 44 (1969)

Decision of the Supreme Court

...The Ohio Criminal Syndicalism Statute was enacted in 1919. From 1917 to 1920, identical or quite similar laws were adopted by 20 States and two territories.... In 1927, this Court sustained the constitutionality of California's Criminal Syndicalism Act, the text of which is quite similar to that of the laws of Ohio. *Whitney v. California.* The Court upheld the statute on the ground that, without more, "advocating" violent means to effect political and economic change involves such danger to the security of the State that the State may outlaw it.... But *Whitney* has been thoroughly discredited by later decisions. See *Dennis v. United States.* These later decisions have fashioned the principle that the constitutional guaranties of free speech and free press do not permit a State to forbid or proscribe acvocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing "imminent" lawless action and is likely to incite or produce such action. As we said in *Noto v. United States...,* "the mere abstract teaching...of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action." ...A statute which fails to draw this distinction impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments. It sweeps within its condemnation speech which our Constitution has immunized from governmental control....

Measured by this test, Ohio's Criminal Syndicalism Act cannot be sustained. The Act punishes persons who "advocate or teach the duty, necessity, or propriety" of violence "as a means of accomplishing industrial or political reform"; or who publish or circulate or display any book or paper containing such advocacy; or who "justify" the commission of violent acts "with intent to exemplify, spread or advocate the propriety of the doctrines of criminal syndicalism"; or who "voluntarily assemble" with a group formed "to teach or advocate the doctrines of criminal syndicalism." Neither the indictment nor the trial judge's instructions to the jury in any way refined the statute's bald definition of the crime in terms of mere advocacy not distinguished from incitement to imminent lawless action.

Accordingly, we are here confronted with a statute which, by its own words and as applied, purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action. Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of *Whitney v. California, supra,* cannot be supported, and that decision is therefore overruled.

Reversed.

Mr. Justice BLACK, concurring.

I agree with the views expressed by Mr. Justice Douglas in his concurring opinion in this case that the "clear and present danger" doctrine should have no place in the interpretation of the First Amendment. I join the Court's opinion, which, as I understand it, simply cites *Dennis v.*

United States..., but does not indicate any agreement on the Court's part with the "clear and present danger" doctrine on which *Dennis* purported to rely.

Mr. Justice DOUGLAS, concurring.

While I join the opinion of the Court, I desire to enter a *caveat.*

The "clear and present danger" test was adumbrated by Mr. Justice Holmes in a case arising during World War I.... The dissents [in early cases] show how easily "clear and present danger" is manipulated to crush what Brandeis called "[t]he fundamental right of free men to strive for better conditions through new legislation and new institutions" by argument and discourse even in time of war. Though I doubt if the "clear and present danger" test is congenial to the First Amendment in time of a declared war, I am certain it is not reconcilable with the First Amendment in days of peace.

The Court quite properly overrules [*Whitney*], which involved advocacy of ideas which the majority of the Court deemed unsound and dangerous....

The Court in *Herndon v. Lowry* overturned a conviction for exercising First Amendment rights to incite insurrection because of lack of evidence of incitement. In *Bridges v. California,* we approved the "clear and present danger" test in an elaborate dictum that tightened it and confined it to a narrow category. But in *Dennis v. United States,* we opened wide the door, distorting the "clear and present danger" test beyond recognition....

I see no place in the regime of the First Amendment for any "clear

and present danger" test whether strict and tight as some would make it or free-wheeling, as the Court in *Dennis* rephrased it.

When one reads the opinions closely and sees when and how the "clear and present danger" test has been applied, great misgivings are aroused. First, the threats were often loud but always puny and made serious only by judges so wedded to the status quo that critical analysis made them nervous. Second, the test was so twisted and perverted in *Dennis* as to make the trial of those teachers of Marxism an all-out political trial which was part and parcel of the cold war that has eroded substantial parts of the First Amendment.

Action is often a method of expression and within the protection of the First Amendment. Suppose one tears up his own copy of the Constitution in eloquent protest to a decision of this Court. May he be indicted? Suppose one rips his own Bible to shreds to celebrate his departure from one "faith" and his embrace of atheism. May he be indicted?

Last Term, the Court held in *United States v. O'Brien...*, that a registrant under the Selective Service who burned his draft card in protest of the war in Vietnam could be prosecuted. The First Amendment was tendered as a defense and rejected....

But O'Brien was not prosecuted for not having his draft card available when asked for by a federal agent. He was indicted, tried, and convicted for burning the card. And this Court's affirmance of that conviction was not, with all respect, consistent with the First Amendment....

The line between what is permissible and not subject to control and what may be made impermissible and subject to regulation is the line

between ideas and overt acts.

The example usually given by those who would punish speech is the case of one who falsely shouts fire in a crowded theater. This is, however, a classic case where speech is brigaded with action.... They are indeed inseparable and a prosecution can be launched for the overt acts actually caused. Apart from rare instances of that kind, speech is, I think, immune from prosecution. Certainly there is no constitutional line between advocacy of abstract ideas...and advocacy of political action.... The quality of advocacy turns on the depth of the conviction; and government has no power to invade that sanctuary of belief and conscience.

APPENDIX

ADDERLEY v. FLORIDA
385 U.S. 39 (1966)

Facts

Petitioners, Harriett Adderley and 31 other students of Florida A & M University, were convicted by a jury in the County Court of Leon County, Florida, on a charge of trespass with malicious and mischievous intent upon the premises of the county jail. They were found guilty of violating the Florida law which states:

> Every trespass upon the property of another, committed with a malicious intent, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by a fine not exceeding one hundred dollars.

The students were a part of a group of about 200 who had gone from the university to the jail about a mile away. Their purpose was to demonstrate and protest the arrests of students protesting the day before, and perhaps to protest more generally against state and local policies and practices of racial segregation, including segregation of the jail. The students blocked the jail driveway and engaged in singing, clapping, and dancing. This particular jail entrance and driveway were not normally used by the public, but by the sheriff's department for transporting prisoners to and from the courts several blocks away and by commercial concerns which serviced the jail. The sheriff told the demonstrators to leave the jail property within 10 minutes or he would arrest them. The leaders did nothing to disperse the crowd. After about 10 minutes, the sheriff told the demonstrators that he was the legal custodian of the

of the jail and its premises, and that they were trespassing on county property in violation of the law. Some of the students left, but others, including petitioners, remained and were arrested.

On appeal, the convictions were affirmed by the Florida Circuit Court and later by the Florida District Court of Appeal, the highest state court to which the students could appeal. Petitioners then appealed to the United States Supreme Court contending that, in view of their purpose to protest against jail and other segregation policies, their conviction denies them "right of free speech, assembly, petition, due process of law, and equal protection of the laws as guaranteed by the Fourteenth Amendment."

COX v. LOUISIANA
[COX I--No. 24, 1964 Term]
379 U.S. 536 (1965)

Mr. Justice GOLDBERG delivered the opinion of the Court.

Appellant, the Reverent Mr. B. Elton Cox, the leader of a civil rights demonstration, was arrested and charged with four offenses under Louisiana law--criminal conspiracy, disturbing the peace, obstructing public passages, and picketing before a courthouse. In a consolidated trial before a judge without a jury, and on the same set of facts, he was acquitted of criminal conspiracy but convicted of the other three offenses. He was sentenced to serve four months in jail and pay a $200 fine for disturbing the peace, to serve five months in jail and pay a $500 fine for obstructing public passages, and to serve one year in jail and pay a $5,000 fine for picketing before a courthouse. The sentences were cumulative.

Facts

On December 14, 1961, 23 students from Southern University, a Negro college, were arrested in downtown Baton Rouge, Louisiana, for picketing stores that maintained segregated lunch counters. This picketing, urging a boycott of those stores, was part of a general protest movement against racial segregation, directed by the local chapter of the Congress of Racial Equality. The appellant, an ordained Congregational minister, the Reverend Mr. B. Elton Cox, a Field Secretary of CORE, was an advisor to this movement. On the evening of December 14, [he] spoke at a meeting at the college. The students resolved to demonstrate the next day in front of the courthouse in protest

of segregation and the arrest and imprisonment of the picketers who were being held in the parish jail located on the upper floor of the courthouse building.

The next morning about 2,000 students left the campus, which was located approximately five miles from downtown Baton Rouge.... Because [the student leaders were in jail], Cox felt it his duty to take over the demonstration and see that it was carried out as planned....

As Cox, at the head of the group, approached the vicinity of the courthouse, he was stopped...and brought to Police Chief Wingate White.... The Chief then inquired as to the purpose of the demonstration. Cox, reading from a prepared paper, outlined his program to White, stating that it would include a singing of the Star Spangled Banner and a "freedom song," recitation of the Lord's Prayer and the Pledge of Allegiance, and a short speech. White testified that he told Cox that "he must confine" the demonstration "to the west side of the street." White added, "This, of course, was not--I didn't mean it in the import that I was giving him any permission to do it, but I was presented with a situation that was accomplished, and I had to make a decision." Cox testified that the officials agreed to permit the meeting....

The students were then directed by Cox to the west sidewalk, across the street from the courthouse, 101 feet from its steps. They were lined up on this sidewalk about five deep and spread almost the entire length of the block. The group did not obstruct the street. It was close to noon and, being lunch time, a small crowd of 100 to 300 curious white people...

gathered on the east sidewalk and courthouse steps, about 100 feet from the demonstrators. Seventy-five to eighty policemen, including city and state patrolmen and members of the Sheriff's staff, as well as members of the fire department and a fire truck were stationed in the street between the two groups....

[The students] sang "God Bless America," pledged allegiance to the flag, prayed briefly, and sang one or two hymns, including "We Shall Overcome." The 23 students, who were locked in jail cells in the courthouse building out of the sight of the demonstrators, responded by themselves singing; this in turn was greeted with cheers and applause by the demonstrators. Appellant gave a speech, described by a State's witness as follows:

> "He said that in effect that it was a protest against the illegal arrest of some of their members and that other people were allowed to picket...and he said that they were not going to commit any violence, that if anyone spit on them, they would not spit back on the person that did it."

Cox then said:

> "All right. It's lunch time. Let's go eat. There are twelve stores we are protesting. A number of these stores have twenty counters; they accept your money from nineteen. They won't accept it from the twentieth counter. This is an act of racial discrimination. These stores are open to the public. You are members of the public. We pay taxes to the Federal Government and you who live here pay taxes to the State."

In apparent reaction to these last remarks, there was what State witnesses described as "muttering" and "grumbling" by the white onlookers.

The Sheriff, deeming, as he testified, Cox's appeal to the students to sit in at the lunch counters to be "inflammatory," then took a power microphone

and said, "Now you have been allowed to demonstrate. Up until now your demonstration has been more or less peaceful, but what you are doing now is a direct violation of the law, a disturbance of the peace, and it has got to be broken up immediately." The testimony as to what then happened is disputed. Some of the State's witnesses testified that Cox said, "don't move"; others stated that he made a "gesture of defiance." It is clear from the record, however, that Cox and the demonstrators did not then and there break up the demonstration....

Almost immediately thereafter--within a time estimated variously at two to five minutes--one of the policemen exploded a tear gas shell at the crowd. This was followed by several other shells. The demonstrators quickly dispersed, running back towards the State Capitol and the downtown area.... No Negroes participating in the demonstration were arrested on that day.... The next day appellant was arrested and charged with the four offenses above described.

The Breach of the Peace Conviction

Appellant was convicted of violating a Louisiana "disturbing the peace" statute, which provides:

> "Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby...crowds or congregates with others...in or upon...a public street or public highway, or upon a public sidewalk, or any other public place or building...and who fails or refuses to disperse and move on,...when ordered so to do by any other authorized person... shall be guilty of disturbing the peace."

It is clear to us that on the facts of this case, which are strikingly

similar to those present in *Edwards v. South Carolina* and *Fields v. South Carolina,* Louisiana infringed appellant's rights of free speech and free assembly by convicting him under this statute.... We hold that Louisiana may not constitutionally punish appellant under this statute for engaging in the type of conduct which this record reveals, and also that the statute as authoritatively interpreted by the Louisiana Supreme Court is unconstitutionally broad in scope.

[O]ur independent examination of the record, which we are required to make, shows no conduct which the State had a right to prohibit as a breach of the peace....

The State argues...that while the demonstrators started out to be orderly, the loud cheering and clapping by the students in response to the singing from the jail converted the peaceful assembly into a riotous one. The record, however, does not support this assertion.... Our conclusion that the entire meeting from the beginning until its dispersal by tear gas was orderly and not riotous is confirmed by a film of the events taken by a televison news photographer, which was offered in evidence as a state exhibit. We have viewed the film, and it reveals that the students, though they undoubtedly cheered and clapped, were well-behaved throughout....

Finally, the State contends that the conviction should be sustained because of fear expressed by some of the state witnesses that "violence was about to erupt" because of the demonstration. It is virtually undisputed, however, that the students themselves were not violent and threatened no violence. The fear of violence seems to have been based upon the reaction

of the group of white citizens looking on from across the street.... There is no indication, however, that any member of the white group threatened violence. And this small crowd estimated at between 100 and 300 were separated from the students by "seventy-five to eighty" armed policemen.... As Inspector Trigg testified, they could have handled the crowd.

This situation, like that in *Edwards*, is "a far cry from the situation in *Feiner v. New York*."

There is an additional reason why this conviction cannot be sustained. The statute at issue in this case, as authoritatively interpreted by the Louisiana statutory crime consists of two elements: (1) congregating with others "with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned," and (2) a refusal to move on after having been ordered to do so by a law enforcement officer. While the second part of this offense is narrow and specific, the first element is not. [It] would allow persons to be punished merely for peacefully expressing unpopular views.

The Obstructing Public Passages Conviction

We now turn to the issue of the validity of appellant's conviction for violating the Louisiana statute, which provides:

Obstructing Public Passages

> "No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street,...highway, bridge, alley, road, or other passageway, or the entrance, corridor

> or passage of any public building,...by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.
>
> "Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing...."

Appellant was convicted under this statute...for leading the meeting on the sidewalk across the street from the courthouse.... In upholding appellant's conviction under this statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic. There is no doubt from the record in this case that this far sidewalk was obstructed, and thus, as so construed, appellant violated the statute....

The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guaranty of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to ensure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was

thought to be a means of social protest. Nor could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly. Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.

We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech.... We reaffirm the statement of the Court in *Giboney v. Empire Storage & Ice Co.*, 336 U.S. at 502, that "it has never been deemed an abridgment of freedom or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed."

We have no occasion in this case to consider the constitutionality of the uniform, consistent, and nondiscriminatory application of a statute forbidding all access to streets and other public facilities for parades and meetings. Although the statute here involved on its face precludes all street assemblies and parades, it has not been so applied and enforced by the Baton Rouge authorities. City officials who testified for the State clearly indicated that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior approval is obtained.... The statute itself provides no standards for the determination

of local officials as to which assemblies to permit or which to prohibit. From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion.

The situation is thus the same as if the statute itself expressly provided that there could only be peaceful parades or demonstrations in the unbridled discretion of the local officials. The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement.

This Court has recognized that the lodging of such broad discretion in a public official allows him to determine which expressions of view will be permitted and which will not. This thus sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor.... Also inherent in such a system allowing parades or meetings only with the prior permission of an official is the obvious danger to the right of a person or group not to be denied equal protection of the laws.... It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute.... It is, of course, undisputed that appropriate, limited discretion, under properly drawn statutes or ordinances, concerning the time, place, duration, or manner of use of the streets for public assemblies may be vested in administrative officials. Reversed.

BROWN v. LOUISIANA
383 U.S. 131 (1966)

Mr. Justice FORTAS announced the judgment of the Court and an opinion in which the Chief Justice and Mr. Justice DOUGLAS join.

This is the fourth time in little more than four years that this Court has reviewed convictions by the Louisiana courts for alleged violations, in a civil rights context, of that State's breach of the peace statute. In the three preceding cases the convictions were reversed. Since the present case was decided under precisely the statute involved in *Cox* but before our decision in that case was announced, it might well be supposed that, without further ado, we would vacate and remand in light of *Cox*. But because the incident leading to the present convictions occurred in a public library and might be thought to raise materially different questions, we have heard argument and have considered the case *in extenso*.

The focus of the events was the Audubon Regional Library in the town of Clinton, Louisiana. The Audubon Regional Library [has] three branches and two bookmobiles. [Negroes were restricted to use of only one of the bookmobiles.]

This tidy plan was challenged on Saturday, March 7, 1964, at about 11:30 a.m. Five young Negro males, all residents of East or West Feliciana Parishes, went into the adult reading or service room of the Audubon Regional Library at Clinton. The branch assistant, Mrs. Katie Reeves, was alone in the room.... Petitioner Brown requested a book.... Mrs. Reeves checked the card catalogue, ascertained that the Branch did not have the book, so advised Mr. Brown, and told him that she would request the book from the State Library, that he would be notified upon its receipt and that "he could either pick it

up or it would be mailed to him." Mrs. Reeves testified that she expected that the men would then leave; they did not, and she asked them to leave. They did not. Petitioner Brown sat down and the others stood near him. They said nothing; there was no noise or boisterous talking.

[I]n "10 to 15 minutes" from the time of the arrival of the men at the library, the sheriff and deputies arrived. The sheriff asked the Negroes to leave. They said they would not. The sheriff then arrested them....

On March 25, 1964, Mr. Brown and his four companions were tried and found guilty.... The charge was that they had congregated together in the public library of Clinton, Louisiana, "with the intent to provoke a breach of the peace and under circumstances such that a breach of the peace might be occasioned thereby" and had failed and refused "to leave said premises when ordered to do so" by the librarian and by the sheriff.

The Louisiana breach of peace statute under which they were accused reads as follows: "Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby: (1) crowds or congregates with others...in...a public place or building...and who fails or refuses to disperse or move on, or disperse or move on, when ordered so to do by any law enforcement officer...or any other authorized person...shall be guilty of disturbing the peace."

We come, then, to the barebones of the problem. Petitioners, five adult Negro men, remained in the library room for a total of ten or fifteen minutes. The first few moments were occupied by a ritualistic request for service and response. We may assume that the response constituted service, and we need not consider whether it was merely a gambit in the ritual. This

ceremony being out of the way, the Negroes proceeded to the business at hand. They sat and stood in the room, quietly as monuments of protest against the segregation of the library. They were arrested and charged and convicted of breach of the peace under a specific statute.

[T]here is not the slightest evidence which would or could sustain the application of the statute to petitioners.... Nor were the circumstances such that a breach of the peace might be "occasioned" by their actions, as the statute alternatively provides. The issue, asserts the State, is simply, that petitioners were using the library room "as a place in which to loaf or make a nuisance of themselves." The State argues that the "test"--the permissible civil rights demonstration--was concluded when petitioners entered the library, asked for service and were served. Having satisfied themselves, the argument runs, that they could get service, they should have departed. Instead, they simply sat there, "staring vacantly," and this was "enough to unnerve a woman in the situation Mrs. Reeves was in."

This is a piquant version of the affair, but the matter is hardly to be decided on points. It was not a game. It could not be won so handily by the gesture of service to this particular request. There is no dispute that the library system was segregated, and no possible doubt that these petitioners were there to protest this fact. But even if we were to agree with the State's ingenuous characterization of the events, we would have to reverse. There was no violation of the statute which petitioners are accused of breaching; no disorder, no intent to provoke a breach of the peace and no circumstances indicating that a breach might be occasioned by petitioners' actions. The

sole statutory provision invoked by the State contains not a word about occupying the reading room of a public library for more than 15 minutes....

But there is another and sharper answer which is called for. We are here dealing with an aspect of a basic constitutional right--the right under the First and Fourteenth Amendments guaranteeing freedom of speech and of assembly, and freedom to petition the Government for a redress of grievances. As this Court has repeatedly stated, these rights are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be, the unconstitutional segregation of public facilities. Accordingly, even if the accused action were within the scope of the statutory instrument, we would be required to assess the constitutional impact of its application, and we would have to hold that the statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case. See *Edwards v. South Carolina.* The statute was deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the right to protest the unconstitutional segregation of a public facility. Interference with this right, so exercised, by state action is intolerable under our Constitution....

It is an unhappy circumstance that the locus of these events was a public library--a place dedicated to quiet, to knowledge, and to beauty. It is a sad commentary that this hallowed place in the Parish of East Feliciana bore the ugly stamp of racism. It is sad, too, that it was a public library which, reasonably enough in the circumstances, was the stage for a confrontation

between those discriminated against and the representatives of the offending parishes. Fortunately, the circumstances here were such that no claim can be made that use of the library by others was disturbed by the demonstration. Perhaps the time and method were carefully chosen with this in mind. Were it otherwise, a factor not present in this case would have to be considered. Here, there was no disturbance of others, no disruption of library activities, and no violation of any library regulations.

A State or its instrumentality may, of course, regulate the use of its libraries or other public facilities. But it must do so in a reasonable and non-discriminatory manner, equally applicable to all and administered with equality to all. It may not do so as to some and not as to all. It may not provide certain facilities for whites and others for Negroes. And it may not invoke regulations as to use--whether they are *ad hoc* or general--as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights....

Reversed.

Mr. Justice BRENNAN, concurring in the judgment.

Since the overbreadth of §14:103.1 as construed clearly requires the reversal of these convictions, it is wholly unnecessary to reach, let alone rest reversal, as the prevailing opinion seems to do, on the proposition that even a narrowly drawn "statute cannot constitutionally be applied to punish petitioners' actions in the circumstances of this case."

Mr. Justice WHITE, concurring in the result.

[I]t is difficult to believe that if this group had been white its members would have been asked to leave on such short notice, much less asked to leave by the sheriff and arrested, rather than merely escorted from the building, when reluctance to leave was demonstrated.... In my view, the behavior of these petitioners and their use of the library building, even though it was for the purposes of a demonstration, did not depart significantly from what normal library use would contemplate. The conclusion that petitioners were making only a normal and authorized use of this public library requires the reversal of their convictions.... On this record, it is difficult to avoid the conclusion that petitioners were asked to leave the library because they were Negroes. If they were, their convictions deny them equal protection of the laws.

Mr. Justice BLACK, with whom Mr. Justice CLARK, Mr. Justice HARLAN, and Mr. Justice STEWART join, dissenting.

...The case relied on most heavily by the prevailing opinion and my Brother Brennan is [*Cox v. Louisiana.*] That case, unlike this one, involved picketing and patrolling in the streets, and correspondingly that part of the Louisiana breach of the peace statute which prohibited certain kinds of street activity. The language of the phase of the statute under consideration here, relating to congregating in public buildings and refusing to move on when ordered to do so by an authorized person, was in no way involved or discussed in *Cox*. The problems of state regulation of the streets on the one hand, and public buildings on the other, are quite obviously separate and distinct.

Public buildings such as libraries, schoolhouses, fire departments, courthouses, and executive mansions are maintained to perform certain specific and vital functions. Order and tranquillity of a sort entirely unknown to the public streets are essential to their normal operation. Contrary to the implications in the prevailing opinion it is incomprehensible to me that a State must measure disturbances in its libraries and on the streets with identical standards....

[T]here simply was no racial discrimination practiced in this case. These petitioners...asked for a book, perhaps as the prevailing opinion suggests more as a ritualistic ceremonial than anything else. The lady in charge nevertheless hunted for the book, found she did not have it, sent for it, and later obtained it from the state library for petitioners' use....

...The only factual question which can possibly arise regarding the application of the statute here is whether under Louisiana law petitioners either intended to breach the peace or created circumstances under which a breach might have been occasioned.... A tiny parish branch library, staffed by two women, is not a department store as in *Garner v. Lousiana* nor as a bus terminal as in *Taylor v. Louisiana,* nor a public thoroughfare as in *Edwards v. South Carolina* and *Cox.* Short of physical violence, petitioners could not have more completely upset the normal, quiet functioning of the Clinton branch of the Audubon Regional Library. The state courts below thought the disturbance created by petitioners constituted a violation of the statute. So far as the reversal here rests on a holding that the Louisiana statute was not violated, the Court simply substitutes its judgment for that of the Louisiana courts as to what conduct satisfies the requirements of that state

statute....

...Apparently unsatisfied with or unsure of the "no evidence" ground for reversing the convictions, the prevailing opinion goes on to state that the statute was used constitutionally in the circumstances of this case because it was "deliberately and purposefully applied solely to terminate the reasonable, orderly, and limited exercise of the rights to protest the unconstitutional segregation of a public facility." First, I am constrained to say that this statement is wholly unsupported by the record in this case. Moreover, the conclusion...establishes a completely new constitutional doctrine. In this case, this new constitutional principle means that even though these petitioners did not want to use the Louisiana public library for library purposes, they had a constitutional right nevertheless to stay there over the protest of the librarians who had lawful authority to keep the library orderly for the use of people who wanted to use its books, its magazines, and its papers. But the principle espoused also has a far broader meaning. It means that the Constitution, the First and Fourteenth Amendments, requires the custodians and supervisors of the public libraries in this country to stand helplessly by while protesting groups advocating one cause or another, stage "sit-ins" or "stand-ups" to dramatize their particular views on particular issues. And it should be remembered that if one group can take over libraries for one cause, other groups will assert the right to do so for causes which, while wholly legal, may not be so appealing to this Court. The States are thus paralyzed with reference to control of their libraries for library purposes, and I suppose that inevitably the next step will be to paralyze the schools. Efforts to this effect have already been

made all over the country....

[The First Amendment] does not guarantee to any person the right to use someone else's property, even that owned by the government and dedicated to other purposes, as a stage to express dissident ideas. The novel constitutional doctrine of the prevailing opinion nevertheless exalts the power of private non-governmental groups to determine what use shall be made of governmental property over the power of the elected State and Federal governmental officials.

...I am deeply troubled with the fear that powerful private groups throughout the National will read the Court's action, as I do--that is, as granting them a license to invade the tranquillity and beauty of our libraries whenever they have quarrel with some state policy which may or may not exist. It is an unhappy circumstance in my judgment that the group, which more than any other has needed a government of equal laws and equal justice, is now encouraged to believe that the best way for it to advance its cause, which is a worthy one, is by taking the law into its own hands from place to place and from time to time. Governments like ours were formed to substitute the rule of law for the rule of force. Illustrations may be given where crowds have gathered together peaceably by reason of extraordinarily good discipline reinforced by vigilant officers. "Demonstrations" have taken place without any manifestations of force at the time. But I say once more that the crowd moved by noble ideals today can become the mob ruled by hate and passion and greed and violence tomorrow. If we ever doubted that, we know it now. The peaceful songs of love can become as stirring and provocative as the Marseillaise did in the days when a noble revolution gave way to rule by successive mobs until chaos set in. The holding in this case today makes it more necessary than ever that we stop and look more closely at where we are going....

ADDERLEY v. FLORIDA
385 U.S. 39 (1966)

Petitioners have insisted from the beginning of these cases that they are controlled and must be reversed because of our prior cases of *Edwards v. South Carolina* and *Cox v. Louisiana*. We cannot agree.... In *Edwards*, the demonstrators went to South Carolina State Capitol grounds to protest. In this case they went to jail. Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not. The demonstrators at the South Carolina Capitol went in through a public driveway and as they entered they were told by state officials there that they had a right as citizens to go through the State House grounds as long as they were peaceful. Here the demonstrators entered the jail grounds through a driveway used only for jail purposes and without warning to or permission from the sheriff. More importantly, [t]he South Carolina breach-of-the-peace statute was...struck down as being so broad and all-embracing as to jeopardize speech, press, assembly and petition.... And it was on this same ground of vagueness that...the Louisiana breach-of-the-peace law used to protect *Cox* was invalidated.

The Florida trespass statute under which these petitioners were charged cannot be challenged on this ground. It is aimed at conduct of one limited kind, that is for one person or persons to trespass upon the property of another with a malicious and mischievous intent. There is no lack of notice in this law, nothing to entrap or fool the unwary....

That [leaves] only the question of whether conviction of the state

offense, thus defined, unconstitutionally deprived petitioners of their rights to freedom of speech, press, assembly or petition. We hold it does not. The sheriff, as jail custodian, had power, as the state courts have held, to direct that this large crowd of people get off the grounds. There is not a shred of evidence in this record that this power was exercised...because the sheriff objected to what was being sung or said by the demonstrators or because he disagreed with the objectives of their protest. The record reveals that he objected only to their presence on that part of the jail grounds reserved for jail uses. There is no evidence at all that on any other occasion had similarly large groups of the public been permitted to gather on this portion of the jail grounds for any purpose. Nothing in the Constitution of the United States prevents Florida from even-handed enforcement of its general trespass statute against those refusing to obey the sheriff's order to remove themselves from what amounted to the curtilage of the jailhouse. The State, no less than a private owner of property, has power to preserve the property under its control for the use of which it is lawfully dedicated. For this reason, there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this "area chosen for the peaceful civil rights demonstration was not only 'reasonable' but also particularly appropriate...." Such an argument has as its major unarticulated premises the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightfully rejected in two of the cases petitioners rely on. *Cox*

v. Louisiana.... We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose.

Affirmed.

Mr. Justice DOUGLAS, with whom The Chief Justice, Mr. Justice BRENNAN, and Mr. Justice FORTAS concur, dissenting.

[T]he Court errs in treating this case as if it were an ordinary trespass case or an ordinary picketing case.

The jailhouse, like an executive mansion, a legislative chamber, a courthouse, or the statehouse itself,...is one of the seats of government whether it be the Tower of London, the Bastille, or a small county jail. And when it houses political prisoners of those whom many think are unjustly held, it is an obvious center for protest. The right to petition for the redress of grievances has an ancient history and is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to the President or Governor or Mayor. See *N.A.A.C.P. v. Button*. Conventional methods of petitioning may be, and often have been, shut off to large groups of our citizens. Legislators may turn deaf ears; formal complaints may be routed endlessly through a bureaucratic maze; courts may let the wheels of justice grind very slowly. Those who do not control television and radio, those who cannot afford to advertise in newspapers or circulate elaborate pamphlets may have only a more limited type of access to public officials. Their methods should not be condemned as tactics of obstruction and harassment as

long as the assembly and petition are peaceable, as they were.

There is no question that petitioners had as their purpose a protest against the arrest of Florida A & M students for trying to integrate public theaters. The petitioners...stated that the group was protesting the arrests, and state and local policies of segregation, including segregation of the jail.... The fact that no one gave a formal speech, that no elaborate handbills were distributed, and that the group was not laden with signs would seem to be immaterial. Such methods are not the *sine qua non* of petitioning for the redress of grievances. The group did sing "freedom" songs. And history shows that a song can be a powerful tool of protest.... There was no violence; no threats of violence; no attempted jail break; no storming of a prison; no plan or plot to do anything but protest. The evidence is uncontradicted that the petitioners' conduct did not upset the jailhouse routine.... There was no shoving, no pushing, no disorder or threat of riot. It is said that some of the group blocked part of the driveway leading to the jail entrance.... If there was congestion, the solution was a further request to move to lawns or parking areas, not complete ejection and arrest. Finally the fact that some of the protestants may have felt their cause so just that they were willing to be arrested for making their protest outside the jail seems wholly irrelevant. A petition is nonetheless a petition, though its futility may make martyrdom attractive.

We do violence to the First Amendment when we permit this "petition for redress of grievances" to be turned into a trespass action. It does not help to analogize this problem to the problem of picketing. Picketing

is a form of protest usually directed against private interests.... The Court forgets that prior to this day our decisions have drastically limited the application of state statutes inhibiting the right to go peacefully on public property to exercise First Amendment rights.... When we allow Florida to construe her "malicious trespass" statute to bar a person from going on property knowing it is not his own and to apply that prohibition to public property, we discard *Cox* and *Edwards*. Would the case be different if, as is common, the demonstration took place outside a building which housed both the jail and the legislative body? I think not.

There may be some public places which are so clearly committed to other purposes that their use for the airing of grievances is anomalous. There may be some instances in which assemblies and petitions for redress of grievances are not consistent with other necessary purposes of public property. A noisy meeting may be out of keeping with the serenity of the statehouse or the quiet of the courthouse. No one, for example, would suggest that the Senate gallery is the proper place for a vociferous protest rally. And, in other cases it may be necessary to adjust the right to petition for redress of grievances to the other interests inhering in the uses to which the public property is normally put. But this is quite different than saying that all public places are off-limits to people with grievances.... And it is farther yet from saying that the "custodian" of the public property in his discretion can decide when public places shall be used for the communication of ideas, especially the constitutional right to assemble and petition for redress of grievances....

Today a trespass law is used to penalize people for exercising a constitutional right. Tomorrow a disorderly conduct statute, a breach of the peace statute, a vagrancy statute will be put to the same end. It is said that the sheriff did not make the arrests because of the views which petitioners espoused. That excuse is usually given, as we know from many cases involving arrests of minority groups for breaches of the peace, unlawful assemblies, and parading without a permit. [S]uch arrests are usually sought to be justified by some legitimate function of government. Yet by allowing these orderly and civilized protests against injustice to be suppressed, we only increase the forces of frustration which the conditions of second-class citizenship are generating amongst us.