

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

THE UNPOPULAR SPEAKER AND THE DANGER OF DISORDER

The Facts

Feiner began making a speech on a city street to publicize a political meeting that evening. A crowd of about 80 people had gathered along with two police officers. In the speech, Feiner referred to the President as a “bum,” and he called the mayor “a champagne-sipping bum.” Then he said that “Minorities don’t have equal rights; they should rise up in arms and fight for them.”

After Feiner continued for 30 minutes, there was some pushing and shoving in the crowd. One listener told the police that if they did not get Feiner “off the box,” he would do it. Because of the feelings in the crowd both for and against the speaker, the officers “stepped in to prevent a fight.” The police officers told Feiner to stop, but Feiner continued anyway. Therefore, Feiner was arrested for disorderly conduct. But Feiner argued that the police should have restrained the crowd and not interfered with his right to speak.

Issues for Discussion

1. Does Feiner have a right to insult public officials on the street and stir people to anger?
2. When can police stop a public speech? To protect a speaker? To prevent disorder?
3. Who should have been arrested — Feiner or the listener who made the threat?

Decision of the United States Supreme Court

Law enforcement authorities may require a speaker to stop making a speech on a public street when the authorities determine that the speech is a clear danger to preserving order.

Reasoning of the Court

The Court noted that Feiner had a constitutional right to hold a street meeting, to use loud-speakers to make his speech, “and to make derogatory remarks concerning public officials.” Furthermore, it recognized that “objections of a hostile audience cannot be allowed to silence a speaker,” and “police cannot be used for the suppression of unpopular views.” On the other hand, “when, as here, the speaker passes the bounds of argument or persuasion and undertakes incitement to riot,” the police are not powerless to prevent a breach of the peace. Rather, when there is “clear and present danger of riot, disorder, or interference with traffic upon the public street... the power of the states to prevent or punish is obvious.”

In a dissenting opinion, Justice Black wrote that there was no incitement to riot in this case, only an unsympathetic audience and a threat from one man to haul the speaker away from the stage. Under these circumstances, he wrote that it was the duty of the police to protect Feiner’s First Amendment right, “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.”