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# The First Amendment: Transcripts Of The Oral Arguments Made Before The Supreme Court In Sixteen Key First Amendment Cases (May It Please The Court)





## Synopsis

This sequel to the bestselling *May It Please the Court* focuses on key First Amendment cases illustrating the most controversial debates over issues of free speech, freedom of the press, and the right to assemble, including: *Burnes v. Glen Theater* (nude dancing), *New York Times v. United States* (the Pentagon Papers case), *Texas v. Johnson* (American flag burning), *Brandenburg v. Ohio* (hate speech by Klansmen), and *Hustler Magazine, Inc. v. Falwell* (œemotional distressâ • for parody advertisement). The transcripts of actual oral arguments made before the Supreme Court identify the speakers and put the cases in context. They offer an unrivaled view of the Supreme Court in action that will interest anyone wanting firsthand exposure to American law and history. Cases include: *Abington School District v. Schempp* (school prayer) *County of Allegheny v. ACLU* (nativity crÃche and menorah display) *Barnes v. Glen Theater, Inc.* (nude dancing) *Branzburg v. Hayes* (reportersâ™ sources) *Employment Division v. Smith* (peyote) *New York Times v. Sullivan* (libel) *New York Times v. United States* (Pentagon Papers case) *R.A.V. v. City of St. Paul, Minnesota* (cross burning) *Texas v. Johnson* (American flag burning) *Tinker v. Des Moines* (wearing black armbands in school) *United States v. Oâ™Brien* (draft card burning)

## Book Information

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## Customer Reviews

Irons coedited the two other books of Supreme Court arguments and decisions for the New Press *May It Please the Court* series: the 1993 edited tapes and texts sampled a range of issues; the

1995 set contained 8 reproductive rights and abortion cases. This current set (a book with 4 tapes) covers 16 First Amendment cases. Four of them were in the first set: a 1963 school-prayer case; a 1969 decision in which the Court upheld students' right to wear black armbands to protest the Vietnam War; a 1971 case striking down a state law criminalizing flag burning; and the 1971 Pentagon Papers case. Twelve "new" cases address government display of religious symbols; "public indecency"; reporters' claimed right to protect their sources; religious use of drugs; censorship of school newspapers; discrimination based on sexual preference; draft-card burning and other Vietnam War protests; and libel (including the Larry Flynt<sup>^</sup>-Jerry Falwell and New York Times Co. v. Sullivan cases). Attorney Irons supplies introductions that establish the context and consequences of these seminal decisions. As before, New Press' tapes-and-text combination offers a fascinating history lesson. Mary Carroll --This text refers to the Hardcover edition.

The sequel to Irons's first look inside the Supreme Court offers edited versions of arguments addressing pivotal, controversial issues regarding the First Amendment. Like the first volume, this is based on recordings of oral arguments, often by prominent lawyers such as Lawrence Tribe and William Kunstler, before the Supreme Court. These arguments are made in an atmosphere of high solemnity and drama. Through sophisticated, penetrating questioning, often leading to energetic dialogues with the arguing attorneys, the justices probe the strengths and weaknesses of the contending parties' respective legal arguments. As spoken constitutional history providing unique glimpses into the reasoning process of our highest court, oral arguments are worthy of serious study. Along with tape recordings of 16 First Amendment arguments (four 90-minute cassettes accompany the book, but were not available for previewing), Irons (Brennan vs. Rehnquist: The Battle for the Constitution, 1994, etc.; Political Science/Univ. of Calif., San Diego) provides a text consisting of excerpts from each argument, preceded by a summary of the particular legal issue involved and followed by an edited version of the court's written decision, as well as opinions by dissenting justices. The issues are well selected, covering many fascinating and momentous matters, including burning the American flag, nude dancing, hate speech, prayer in public schools, the meaning of obscenity, and Reverend Jerry Falwell's ultimately unsuccessful suit against Hustler magazine for printing a parody suggesting that Falwell once had intercourse with his mother in an outhouse. The heavily edited arguments make lively and informative reading and should be welcome in the library of any university or law office; but the very brief prologues to each case and the book's three-page introduction provide scant background for laypersons unfamiliar with the perplexing intricacies of First Amendment jurisprudence. -- Copyright ©1997, Kirkus Associates,

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Like its predecessor, "May it Please The Court", "The First Amendment" contains cassettes with edited oral arguments before the Supreme Court. The highlights of the arguments are held together by commentary from Peter Irons, who also introduces each case with a brief history and a review of the legal questions involved. It also finishes with another short talk by Irons, indicating how the Court ruled and talking a bit about the opinions. The companion book has transcripts of the cassettes, as well as highlights from the opinions in the case. Whereas the previous book contained 23 cases and one introduction to the court, this one has only 16 cases. Moreover, four cases are in fact repeats from the previous book. The cases in this one are, with the issue involved in parenthesis: *R.A.V. v. City of St. Paul* (cross burning); *Texas v. Johnson* (flag burning, included in the previous book); *Tinker v. Des Moines* (Vietnam protest by high school students, also in the previous book); *U.S. vs. O'Brien* (draft card burning as protest), *Abbington v. Schempp* (school prayer, included in the previous book); *Barnes v. Glen Theater* (nude dancing); *Branzburg v. Hayes* (disclosure of a reporter's sources); *Cohen v. California* (vulgar speech); *Employment Division v. Smith* (religious use of peyote); *Hazelwood v. Kuhlmeier* (censorship of school papers); *Hustler Magazine v. Falwell* (suing for emotional distress from a parody); *Hurley v. Irish-American Gays, Lesbian and Bisexual Group of Boston* (gays marching on St. Patrick's Parade); *Miller v. California* (obscenity), *New York Times v. Sullivan* (libel); and *New York Times v. United States* (prior restraint and the Pentagon Papers, included in the previous book). One difference in this book from the previous one is also the period represented by the cases. Whereas the 23 cases in "May it Please the Court" were loaded towards the Warren and early Burger period (11 cases were from the Warren Court, 9 from the Burger Court, most in the early 70's, and only 3 from the Rehnquist Court), in this one most cases are much more recent. 8 cases are from the Rehnquist court, only one of which had been included in the previous book; 4 are from the Burger court, with one previously included, and 4 are from the Warren court, only two of which are published here for the first time. As I said in my review of "May it Please The Court", it is unfortunate that the full opinions are not included in the companion book. In addition to this, whereas in "May it Please the Court" the companion book listed the cases in the same order as they appeared on the cassettes, this is not the case in "The First Amendment" which, while not tragic, is certainly somewhat annoying. There are also a number of careless mistakes that could easily have been corrected. In one case, Irons talks about the "Reagan Administration" for a case argued in 1972 (it was the Nixon administration). In that same case, in the final summary, in the cassette Irons makes a mistake, talks to the recorder

operator and they agree to edit it, and he retakes the paragraph from the top; this could easily have been fixed if a bit of care had been given to check the final product. It is unfortunate that such carelessness, easily corrected, should creep into an otherwise excellent book. It is also unfortunate that there are repeats from the previous book. Although the cases in question are certainly both important and relevant, perhaps they could have been added in addition to new cases. Four cases is the content of one full cassette, so even though the four repeats are spread through the four tapes, it means the book contains only three tapes worth of new cases. Listening to the arguments is very instructive. It gives us a glimpse into how the Supreme Court works. Listening to tough hypotheticals and skeptical questions from Scalia, Hugo Black, O'Connor, or Rehnquist, and imagining the lawyers squirming under the glares of the justices can be quite an amusing and instructive lesson. Irons does a good job of putting the case in perspective and joining together the segments of arguments selected, even if he does let his personal liberal slant (to which I have no personal objection, it should be said) interfere every now and then. Although I am not a lawyer, I came out knowing a lot more about the constitution and about the Supreme Court than I did when I came in, and I shall listen to the cassettes and the arguments many times in the future. I recommend the book, and I hope the publisher will correct the few mistakes that appear in it when they prepare the next edition.

I teach political science at local junior colleges. As a result, I am always on the lookout for material that will be both interesting and useful in the classroom. I recently presented the recording of "Tinker v. Des Moines" (symbolic speech; Vietnam) to one of my classes. The entire class was focused on the voices so well that we discussed specific exchanges after the twenty-odd minute recorded session concluded with a degree of recall I have not often experienced with audio-video material, which can sometimes distract and inform in equal parts. Having a text with a transcript of the tape program, including the narrator's comments, was very helpful in going over and clarifying these exchanges. The text also contains edited versions of the majority decision written by Justice Fortas, as well as nearly two pages of Justice Black's dissent. The latter is a significant dissent that was subsequently cited in another case, "Hazelwood School District v. Kuhlmeier," which is also included in this volume. My only complaint is that the material is on cassette and not on compact disk. I find this a minor inconvenience, in that it requires that I remember to "queue up" the cassette prior to beginning the class on those cases, such as "Tinker", that are in the "middle" of a side of a cassette. But if you're curious to get a "feeling" as to how the Supreme Court "sounds", this book-and-cassettes combination is for you. If you teach this material, save your money and buy it.

For those unable to wait through the 5-minute spectator line at the Supreme Court, these tapes provide a unique opportunity to participate in some of the most fascinating legal arguments of the last half-century. Creches, student newspapers, prior restraint -- all find their way up through the judicial system for oral argument in front of the nine justices. Advocates from the government, big firms, the ACLU all meet their destiny in a withering crossfire of tough hypotheticals from Brennan and Scalia. A nice change of pace from Raffi tapes for the kids.

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