

Nat Hentoff: Our First Amendment protects speech we despise, too

By NAT HENTOFF

Syndicated columnist

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In a historic March 2 decision, the Supreme Court ruled on the range and depth of the First Amendment's protection of the cornerstone of our individual constitutional liberties -- our right to free speech! Before the nine justices was what Tony Mauro of the New York Law Journal described as:

"Some of the most offensive speech (the Supreme Court) had ever had to rule on, delivered in one of the most sensitive settings: the funeral of a military hero."

In *Snyder v. Phelps*, Albert Snyder -- father of 20-year-old Matthew Snyder, a Marine killed in Iraq, an American fighting to protect us all -- filed a lawsuit for invasion of privacy and emotional distress against members of the Westboro Baptist Church in Kansas. At this Marine's funeral, some of the members of that church picketed the grieving mourners while holding such signs as:

"Thank God for Dead Soldiers," "Fags Doom Nations" and "Thank God for 9/11."

These pickets have appeared at other funerals of soldiers to get publicity for sulfurous protests against this country's tolerations of homosexuals. Such utter insensitivity to the feelings of the mourners is, to say the least, disgusting to me and most other Americans.

At the start of this lawsuit, Albert Snyder won a judgment of more than \$10 million (later reduced) in damages from the Westboro Baptist Church, the source of the picketing. The Fourth Circuit Court of Appeals, declaring that the First Amendment, reversed that jury verdict in federal district court, protected this protest by picketing.

As the case of *Snyder v. Phelps* headed for the Supreme Court, there began a fiery national debate on whether the First Amendment can actually protect such language at the funeral of an American who had lost his life fighting for this nation.

Among the organizations on the side of the First Amendment free-speech rights of the picketers were the American Civil Liberties Union; the Reporters Committee for Freedom of the Press (where I am on the Steering Committee); the Thomas Jefferson Center for the Protection of Free Expression; the Foundation for Individual Rights in Education (FIRE), where I am on the Advisory Committee; and of course, this country's ever faithful constitutionalist, John Whitehead, president of the Rutherford Institute.

In view of the final 8-to-1 Supreme Court decision, validating the First Amendment protection of the repugnant language of those picketing the funeral of the dead Marine, I find of special interest the identities of those on the other side, insisting that there is no First Amendment protection of these pickets: U.S. Senate leaders Harry Reid (D) and Mitch McConnell (R) and 40 other members of the U.S. Senate; Veterans of Foreign Wars of the United States; the American Legion; and attorneys general of Kansas and 47 other states and the District of Columbia.

Before I report on how and why all but one member of the Supreme Court (Samuel Alito) ruled for the First Amendment, I strongly recommend that the full context of this case and its result be discussed and debated in our public schools -- that is, those schools still having courses in American history and the Constitution in order to instruct the new generation in why they are Americans.

Writing for the Court majority, Chief Justice John Roberts, taking somber note of the fact that the protesters had added to the "already incalculable grief" of the dead soldier's father, said: "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and -- as it did here -- inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker.

"As a nation," he continued, "we have chosen a different course -- to protect even hurtful speech on public issues (and these certainly are public issues) to ensure that we do not stifle public debate."

Underlying the ruling were the facts that the picketing occurred on public land, and 1,000 feet away from the church, within local rules of distance from the funeral, and done under police supervision.

In strong dissent, Samuel Alito insisted: "Our profound national commitment to free and open debate is not a license for the vicious verbal assault that occurred in this case." He added that public streets should not be "regarded as a free-fire zone in which otherwise actionable verbal attacks are shielded from liability."

Disagreeing with Justice Alito, J. Joshua Wheeler of the Thomas Jefferson Center for Freedom of Expression, valuably emphasized that this "powerful affirmation of First Amendment principles goes beyond the facts of this case."

Were I still teaching in schools why we are Americans, and what it takes to remain free, actively participating citizens, I would

bring into the discussion Floyd Abrams, long a leading Bill of Rights defender before the Supreme Court:
"The ruling today represents another example of American fidelity to the principle of freedom of expression to a degree that is unknown anywhere else in the world."

In this respect -- despite Presidents George W. Bush and Barack Obama -- we remain the global light of freedom.

And I would also quote to my students what the Rutherford Institute's John Whitehead said of this vitally patriotic ruling:
"Robust free speech -- even of the extreme variety -- in the open marketplace of ideas is one of the few hopes we have as citizens." Especially these days.

What a pity that the majority and minority leaders of the U.S. Senate and 40 other members of that august body did not know enough about who we are, and must continue to be, to approve the Supreme Court's decided majority opinion in Snyder v. Phelps -- as they exercise their own First Amendment rights continually.

Which 2012 presidential candidates will cite this decision when emphasizing our values?

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.

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Comments (23)

Mike Morrison

21 hours ago

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We must hold freedom of speech inviolate, no matter how disgusting it becomes.

My generation was spat upon and called murderers and baby killers by people like Jane Fonda and John Kerry. This one is assaulted and reviled by Fred Phelps and the Westboro Baptist Church.

"I may disagree with what you have to say, but I will defend to the death your right to say it."

Have a nice day.

LA Woman

20 hours ago

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Well, Mike I'm called a 'baby-killer' because I believe in a woman's right to choose. Also John Kerry served his country in combat and you are using the same vile right-wing tactic of smearing him that the GOP slime machine did. How unbecoming that you would attack somehow who also served his country. I thought you veterans stuck together. I also was shouted at in the early days of Bush's fiasco because I had an anti-war sticker on my car. A hooligan shouted at me 'I must love the terrorists'. That happened right on the streets of Burbank and I was coming home from my daughter's house in Redlands one night when a truck full of drunks pulled up next to me and yelled obscenities at me. Imagine, the courage it took four beefy young men in a big SUV and scream at a lone grandmother. I didn't let these jerks intimidate me one bit. It's a two way street and we on the left have certainly taken our fair share of abuse. I do agree that we all have a right to speech, even the anti-gay haters.

As for Jane Fonda, she has apologized repeatedly for her actions. Did Johnson and Nixon apologize for theirs?

LA Woman

20 hours ago

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Here's another fact that conservatives won't admit. Some of our soldiers in Vietnam were, in fact, baby-killers. Think of the infamous Lt. Calley, for instance. Also, a returning marine vet friend of mine told me that a soldier couldn't always tell who the enemy was. If they came across a hamlet, they had no way of knowing if a woman holding a baby or an old grandpa might be concealing a weapon. The Viet Cong were very insidious in their tactics. So, of course, in the interest of self-preservation, they killed non-combatants. We dropped napalm on many innocents, including children. This fellow married a classmate of mine, was a big, gentle giant of a man, but he ended up dying very early (in his 40's) of agent orange related cancer. He was haunted and scarred by what he has seen in that dreadful war. So let's get past the idea of pretending that Vietnam was a noble cause. It was a huge mistake and a tragedy. Soldiers are asked in every war to do horrible things--that's the reality of war.

William Anderson

19 hours ago

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Ah, Viet Nam...another pointless conflict built on lies, fear, faulty/trumped up military intelligence, and misguided principles. You would think we would have learned something from that debacle.

What was it Santayana said?

<sigh>

But, back to the topic, Hentoff sums up the Westboro Baptist case in clear terms.

'Robust free speech' doesn't necessarily have to be insightful, accurate or even rational.

Check these pages for confirmation.

And the omnipresent Ms Palin couldn't help but way in on the SCOTUS ruling, tweeting this to her fan club:

'Common sense & decency absent as wacko 'church' allowed hate msgs spewed@ soldiers' funerals but we can't invoke God's name in public square'

Yep, she knows her audience.

At least she's got _that_ going for her.

LA Woman

19 hours ago

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Yeah, Palin's got a 'tweet' for everything. However, her Presidential ambitions or sinking as fast as a lead Zeppelin. As for 'wacko churches', Sarah should know. The one she attended up Wassilla way was certainly on the fringe.

As for the war, it brings back all sorts of memories for me because mine was the Vietnam Generation. It damaged my generation in ways that still reverberate today. I find it appalling that Mike Morrison attacks John Kerry when Kerry (who was also a child of privilege) actually volunteered, while Bush got that coveted spot in the Texas Guard and Cheney got numerous deferments for grad school. Likewise, Mitt Romney said he regrets not serving, but he had to fulfill his Mormon mission in that awful country of France--what a sacrifice for Willard! Why are these armchair patriots the first ones to support war? I pray God our country never gets conned into such a conflict again.

Slimmerson

17 hours ago

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LA Woman, do you have a doll of Sarah Palin and Bristol that you toss darts and spit balls at? Your hatred and jealousy of them two women must keep you from sleeping some nights. You have Sarah losing a race she hasn't even entered as yet and let me fill you in on something, Sarah is far prettier than you ever was or ever will be and her intelligence and ambition makes you look like the grasshopper in the ant story. You have every right to feel neglected but you are the sole person

making you look so very small.
LA Woman
16 hours ago
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Gee. Slim I doubt you have ever seen a picture of me so how would you know? Also, have you ever learned proper grammar? Slim, I'm sure I could have told Katie Couric that I was familiar with several Supreme Court decisions, foreign policy questions and much more. Madame Palin responded with a deer in the headlights stare and said 'Katie, I'll have to get back to ya.' Yeah, the lady was so very well-informed. Can you imagine running for President when you could name only one Supreme Court decision and hadn't a clue what the Bush Doctrine was. Poor little Sarah, crying all the way to the bank. The one thing she is pretty accomplished at is raking in a lot of cash in exchange for no discernible talent. I'll certainly give her credit for having a certain genius at self-promotion. Of course a lot of pole dancers and high priced call girls have similar abilities.

LA Woman
16 hours ago
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I might add that Madame Palin, has stated she intends to run 'if circumstances are right.' But she's seen the handwriting on the wall and realizes Obama would trounce her in a landslide.

Slimmerson
16 hours ago
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So does any of that justify your relentless attacks on another American woman not to mention her child? And no I ain't none too good at da english language!

LA Woman
15 hours ago
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Bristol Palin is not a child, she is a young woman and I only asked you if you thought she would have made money for a magazine cover shot and been invited to be on Dancing with the Stars if she had not gained fame as Sarah Palin's pregnant teenager? Of course you would have to be honest and admit that Bristol had done nothing of merit herself--she was just riding her mother's coattails. You responded with the inane statement that maybe because Bristol was 'pretty and nice' she got these offers. Now there are many pretty and many nice teenagers out there, some of whom are pregnant. How many of them could have made thousands of dollars simply for those reasons?

I am also very critical of Madame Palin because she continues to pretend that she is qualified to be President when she was a disaster as McCain's running mate and she couldn't even manage to fulfill her obligations to the people of Alaska for a full-term. Now she's even picking fights with other Republicans because she is envious that they are polling higher than her.

LA Woman
15 hours ago
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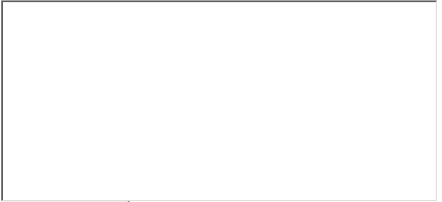
correction: 'for those reasons.' I omitted an 's.'

LA Woman

13 hours ago

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Madame Palin chose to put herself in the spotlight, as well as her family and Bristol, a young woman (no longer a child) chose to take the money and make herself a celebrity. When you crave celebrity and take money for it, you got to accept the consequences, the good and the bad. You might call it 'personal responsibility.' If you can't stand the glare of the public eye, then stay out of it.

galesburger88

13 hours ago

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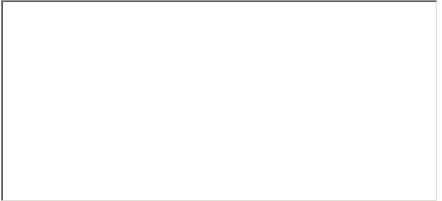
Good call by the Supreme Court .

Slimmerson

12 hours ago

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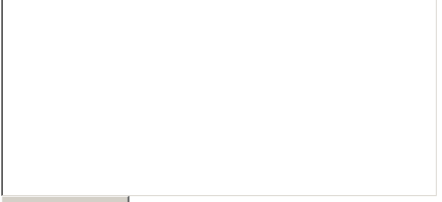
So L.A according to you, your girls are not children any more so I suppose it will be okay with you if I call them a few names and tell you how stupid I think they are. Now I am not saying they are stupid yet but if you continue to attack Bristol and declare her an adult, maybe I can do the same thing with your daughters, so what do you say, are they fair game or not?????

LA Woman

12 hours ago

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Slim, my girls have not put themselves into the public spotlight to make money. They were never unwed moms nor was I running for Vice-President, so there is no comparison. Bristol and Sarah chose to cash in on their fame, can't even you see the difference? Once one is a celebrity (which my children and I are not) one has to take on those consequences. Don't you understand that? My girls have never appeared on the cover of a magazine, displaying their babies nor have they pranced around the stage on 'Dancing with the Stars.' When they achieve that dubious fame, then you are free to criticize. How old is Bristol now? I think she is now an adult and makes her own choices. Are you too dim to understand that consenting to appear on a magazine cover and appear on national television requires signing a consent form? Those photographers didn't sneak up on Bristol and she received a pretty good chunk of change just for displaying her status as American's most famous unwed mom. How many other young women can make such a profit simply by getting pregnant? Making her a victim of circumstance, when she profited from all of these actions, is truly absurd. It reminds me of poor little Sarah whining about people snooping into her family life when she chose to push them on to the public stage. Sarah even put them on display in her inane reality show, for crying out loud! If you want a private life, don't put all your family's dirty laundry on the public clothesline and then rake in a lot of dough from such a display.

LA Woman
11 hours ago
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Report Abuse

Hey, Slim, remember when your boy Rushbo said Chelsea Clinton looked like a dog. Bet that make you jumped to your Chelsea's defense. I also remember you saying you thought Michelle Obama looked scary! I don't think Michelle would allow her daughters to cash in on 'fame' the way Sarah has. Michelle has too much class to allow her daughters to exploit themselves in such a way.

not shocked
11 hours ago
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Report Abuse

I agree

I have been a big proponent of free speech even when its annoying even when its hurtful

even when its secretly done by bloggers...who drive so many to madness...yet those who would silence the secret bloggers... are on here reading away ...and trying to figure who we all are...so they can get angry and say we shouldn't be allowed to blog...and have their own voices published in newspaper articles trying to get us to submit to their wills ...and to think and feel the way they do...

Free speech is good...especially when it encourages debate and holds our politicians accountable

when it gives liberals and conservatives both a right to present their arguments

when its meddles into our lives to try and change our neighborhoods...and encourages action for our city instead of being satisfied with the status quo

even if it goes on and on from out of towners (o: (just kidding guys...blog on...blog on...))

it is after all free speech

and though I find these protests to be abhorrent

free speech is a basic American right

and if we take one right away...we will end up like Lybia

with Qaddafi...killing innocent people...all with the goal of silenceing protesters who disagree with government... and dare to say so

We must allow people to have differing opinions...even when they drive us crazy

to have their voice...even if they choose to do so under pseudonyms...

or whether they decide to lay it out on the table

We are Americans. ,, our founders felt it necessary to protect our voices...having experienced the abuse of freedom of speech prior to settling in America

and even this sad...diplorable group has the right to say what they feel

Protect the soldiers using the laws provided...and let the whako's rave on...the best way win with a group like this is to

use our own voices...to scream very loudly just how nasty we find these protests to be

and even though we agree with free speech

we do not agree with or support the message of these

vile people who dishonor those who gave their lives

so they can have that freedom

God Bless America

LA Woman

11 hours ago

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One should never be satisfied with the status quo, that's why I call myself a Progressive. All of the positive changes in this country have come when people have stood up and spoken out against an injustice--the civil rights movement, rights for workers, protesting the Vietnam War and Bush's criminal invasion of Iraq, full equality for women and gays, the list goes on. Just heard that the vile Governor of Wisconsin has done his best to steal away the hard earned rights of working people. My progressive friends and I will be speaking out loudly, donating money and joining forces with those who will not let this abomination stand.

RussKilby

9 hours ago

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Mike Morrison stated, 'We must hold freedom of speech inviolate, no matter how disgusting it becomes. My generation was spat upon and called murderers and baby killers by people like Jane Fonda and John Kerry. This one is assaulted and reviled by Fred Phelps and the Westboro Baptist Church. I may disagree with what you have to say, but I will defend to the death your right to say it.'

Then LA Woman stated, 'Well, Mike I'm called a 'baby-killer' because I believe in a woman's right to choose. Also John Kerry served his country in combat and you are using the same vile right-wing tactic of smearing him that the GOP slime machine did.'

La Woman couldn't help herself and chimed in again with, 'Here's another fact that conservatives won't admit. Some of our soldiers in Vietnam were, in fact, baby-killers.'

Mike Morrison posted a very nice and respectable response on this subject. La Woman couldn't just comment with her opinion. No, she has this unbelievable urge to feel like she has won something. She has to take a good post like Mike's and turn it into a political debate on the Viet Nam war. This from a woman who most likely has never done anything to support this Country. She has no idea about service to anyone or anything but her own agenda. She speaks about things that she has only read about. I am proud of our military. Like every other profession, there are the few who may go wrong. In fact LA Woman, I am sure you have read about the many school teachers who have been arrested for having sex with their students. Yes, both male and female teachers caught abusing their positions and violating the trust students give them. But I am sure you don't want to speak ill of teachers do you?

I have always said that nobody has a right to judge me unless they have walked in my shoes. I am not saying Lt. Calley was right by any means. What he was accused of was horrible. But what do we know about what being in a war zone does to a persons mind or heart. The Viet Nam war was very much like the one being fought today. Our soldiers could not tell who the good people were and who the enemy was. You have no knowledge of what a soldier felt like being in the bush for one to two years, sometimes walking past rice paddies not knowing if one of the workers in the field would take a shot at them, or fire a grenade in their direction. You don't even have it in you to try to imagine such fear, not knowing if you would ever return to your family. So, LA Woman, why not give your high and mighty self serving attitude a rest once in awhile. Not every story or every post here has to turn into a fight or argument.

LA Woman and Jane Fonda are probably like two peas in a pod. Fonda had no problem going to Viet Nam, sitting next to a gun that possibly killed American soldiers, just for a photo shoot of her with that crap eating grin of hers.

I found my line of work just as unforgivable by the public. After being involved in an officer involved shooting, to have the media second guess my actions. To sit in front of a shooting review board who try to pick apart every step you took. They sit safely behind desks and pass judgement on something they know nothing about, and have never experienced. LA Woman does the same. Sit in your armchair, all safe a cosy, and play your Monday morning quarterback game. I doubt you know anything about sacrifice, dedication or giving of yourself to make others safe. I find that the biggest critics are the ones that give the least to the world they live in.

I find it pathetic that you feel the need to argue every point and every post that you believe was posted by a conservative. To prove my point, there are 19 posts here so far. LA Woman has posted 11 of them. I think she just likes to see her name in print.

Anyway, Mike, I have said it before and I will say it again. Thank you and all the military personnel for you dedication, service and sacrifice. I am positive you don't hear it enough. I sure you don't hear it often from liberals. Liberals seem to think military personnel get to pick and choose when and where they have to go to war. Whether you believe in a war or not, our military has the duty to fight where their boss tells them to do so. Do you realize that there were people in the United States that didn't think we should have fought World War II.

LA Woman
8 hours ago
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Being in a war zone obviously does horrible things to people, but Lt. Calley's behavior was despicable and there was no excuse for it. Morrison made nasty references to 'people like John Kerry'. This was much like the GOP tactic of disrespecting Kerry's service to his country when many of them did not serve. The Vietnam War was a horrible waste of life, and yes. many non-combatants were killed, including children. Bombing civilians with napalm does not have 'pretty results.'

World War II is generally agreed upon as 'the Good War' that Americans, one we essentially had no choice but to fight. My late husband never go to know his father because his dad gave his life fighting the Japanese in that war. However, Vietnam and Iraq were not wars that needed to be fought and all the denial in the world will not change the fact that they were tragedies of the first magnitude. Those who do not learn from history are doomed to repeat it. And telling me to 'give it rest' only demonstrates your lack of respect for freedom of speech.

LA Woman
8 hours ago
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'My late husband never 'got' to know his father was what I intended to write, and I'm glad I got a chance to repeat that point, as it shows that our family certainly respects military service and sacrifice, but there is a big difference between World War II and the needless conflicts in Vietnam and Iraq. How sad that conservatives never want to admit that our government has made some horrible mistakes when it comes to war. I guess it's soothing to some to pretend that these conflicts were righteous and necessary and the thousands of lives lost were somehow 'noble' sacrifices. Who wants to admit that the deaths of so many were caused by a politician's mistake? Hang on to your delusions if they bring you some comfort. The truth is sometimes a bitter pill to swallow and doesn't make one feel all warm and fuzzy inside.
Slimmerson

1 hour ago
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L A I don't care about any of the cheap excuses and other tripe you are peddling, Sarah's kids mean as much to her as yours do to you. So once again I ask, would it bother you if I launch a nasty attack on your children? Look, I know your children almost as well as you know Bristol after reading you brag on them for 8 years. So what is the answer, shall I fire my next shot???

not shocked

1 hour ago
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Russ

sadly enough again

I am old enough to remember the horrible aftermath of Vietnam

people were vile to the soldiers

for following commands of their leaders

they took the brunt...for really bad governmental choices of that time..

it was awful

and I think that is why so many of our generation...send out pleas to respect the soldiers and what they do...because we remember Vietnam...soldiers follow

orders...even when they seem horrific...and fight

basically for the ideals of other men...they are brave...and honorable...and keep all of us safe

but freedom of speech is one of the rights they fight for

yes words are powerful...beautiful...inspiring...motivating...sometimes wounding...sometimes they create such enormous responses in us that we want to stop them

but words can create change

change for the injustices in this world...and if we look back in history at the men and women who stood up and spoke out for change..they were brave...some of

them lost their lives...but they were convinced their message needed to be heard...and change needed to come to pass

There are abuses of many of our American rights...but those abuses must be tolerated in order to guarantee the rights that have been hard fought forstay in

place

and we stay free

God Bless America....

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