

# Final Appeal & Impact



**The Supreme Court as composed, 1973.** Collection of the Supreme Court of the United States  
Front Row (left to right): Associate Justice Potter Stewart, Associate Justice William O. Douglas, Chief Justice Warren Burger, Associate Justice William Brennan, and Associate Justice Byron White.  
Back Row (left to right): Associate Justice Lewis F. Powell, Associate Justice Thurgood Marshall, Associate Justice Harry Blackmun, and Associate Justice William Rehnquist.

## SUPREME COURT DECISION

Gregory Hess' attorneys filed an appeal to challenge the constitutionality of the Indiana statute. They believed the Indiana lower court rulings were wrong. In their written appeal, they argued that Hess' words were not of a 'fighting' nature, offensive, or obscene (*Cohen v. California*), or likely to produce further violence (*Brandenburg v. Ohio*). The attorneys expected the Supreme Court to accept the appeal and hear oral arguments. The Court, however, **summarily reversed** the case, meaning they issued their decision without further briefs or oral arguments.

## MAJORITY OPINION

The majority reasoned that the phrase Hess uttered "*did not appear to be exhorting the crowd to go back into the street...and that his tone, although loud, was no louder than that of the other people in the area.*" They also thought his use of the word "later" did not imply a motive to incite further imminent lawless action. "*There was no evidence...that his words were intended...and likely to produce, imminent disorder, those words could not be punished by the State on the ground that they had 'a tendency to lead to violence.'*" Ultimately, six Justices held that Hess' actions did not violate the **Brandenburg Test** and were protected under the **First Amendment**.

Decision  
**6:3**  
Per Curiam

## DISSENTING OPINION

Three justices disagreed with the majority's opinion. Specifically, they reasoned that the protest "*could reasonably be construed as an attempt to intimidate and impede the arresting officers.*" They also called into question the reliability of the two defense witnesses. Another argument they proposed was that Hess' use of the word "**later**" could potentially be interpreted as imminent, and thus a violation of Indiana statute. "*The simple explanation for the result in this case is that the majority has interpreted the evidence differently from the courts below. In doing so, however, I believe the Court has exceeded the proper scope of our review.*"



Gregory Hess in front of Bryan Hall, 2004  
Jerome Hall Law Library

## IMPACT

*Hess v. Indiana* is one of the most relevant Supreme Court cases today. The decision clarified protections for the right to free speech under the First Amendment, allowing for future student demonstrations and protests. *Hess v. Indiana* allows citizens to advocate for their beliefs without fear of being punished. This case's precedent reinforces the fundamental right to expression guaranteed for every American, strengthening our nation's democracy and freedoms.



IU Archives, 1967 and *The Indiana Daily Student*, 2022

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