First Amendment v. Patriotism
U.S. Court of Appeals for the First Circuit in 1974

Unsatisfied with the District Court's holding in the case, Joseph Smith and Massachusetts decided to appeal to the U.S. Court of Appeals for the First Circuit.

Appellant's Arguments

JOSEPH SMITH:

- **First Amendment**
  - Goguen's display of the flag on his backside is not an example of symbolic speech. His actions were not an attempt to convey an opinion. Without trying to convey something, his freedom of speech cannot be violated.
  - Goguen could have conveyed his hypothetical speech in a number of ways that would have been more effective.
  - According to *U.S. v. Raines*, federal courts cannot rule a law unconstitutional based on a hypothetical scenario. Rather, they must decide constitutionality based on the rights of the actual people within the case presented to them.
- **Fourteenth Amendment**
  - The Massachusetts Flag Law clearly states: *"Mutilate, Trample upon, Deface, Treat contemptuously."* All of these actions involve the flag's physical integrity, focus on intentional disrespect, and could disrupt peace.
  - Congress considers the First Amendment when drafting the language of federal flag laws to avoid potential constitutional violations. The language between the federal and Massachusetts Flag Law is extremely similar. The federal law states: "Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it..."

Appellee's Arguments

VALARIE GOGUEN:

Goguen filed a Petition for a Writ of Habeas Corpus, arguing that his First and Fourteenth Amendment rights were violated.

- **First Amendment**
  - The Massachusetts flag law regulates actions that may constitute symbolic speech. For example, burning the flag, which is illegal under the flag law, could be a form of political resistance expressing discontent with the government. Essentially, the flag law regulates political criticism and expression, rights guaranteed by the freedom of speech clause.
- **Fourteenth Amendment**
  - The phrasing of the Massachusetts Flag Law that Goguen was prosecuted under, which is "treats contemptuously," is vague. It violates the **Due Process Clause because a reasonable citizen couldn't have known which** actions violated or didn't violate the law. For example, the first officer who stopped him issued a warning, whereas the second officer, unaware of the prior warning, arrested him, demonstrating a disparity in interpretation.
  - *U.S. v. O'Brien* establishes that, for governments to regulate symbolic speech, they must prove that it's a critical government interest, and the action taken to do so is as confined as possible.
  - Goguen, however, never disrupted the peace, yet he was prosecuted and imprisoned in violation of his rights.

ISSUE: **Is the Massachusetts Flag Statute unconstitutionally vague in violation of Goguen's Fourteenth Amendment rights and overbroad in violation of his First Amendment rights?**

THE CIRCUIT JUDGES' DECISION

The judges ruled 3-0 in favor of Valerie Goguen. They held that the Massachusetts flag law, which made it a crime to 'treat contemptuously' the American flag, was unconstitutionally vague. The statute failed to make clear what was illegal, allowing police to enforce the law arbitrarily and violating the 14th Amendment's protection of due process. The judges also stated that the breadth of this statute would create a chilling effect, in which citizens would be afraid to express themselves for fear of violating it.

The Panel of U.S. Court of Appeals Judges

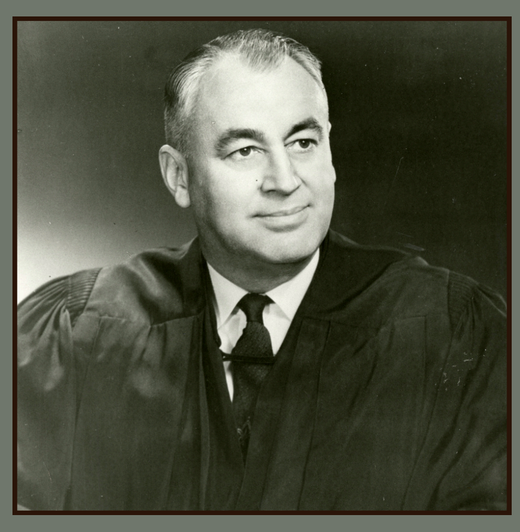


Chief Judge
Frank Morey Coffin



Judge
Edward Matthew McEntee

All portraits provided by the Federal Judicial Center.



Judge
Frederick George Hamley*

*** visiting from the U.S. Court of Appeals for the Ninth Circuit**

Key Quotes from the First Circuit Decision

On the First Amendment Right to Freedom of Speech

"There is a greater solicitude that courts have, and ought to have, about the fear-inducing effect of any law which, by its very scope, constitutes a broad-gauged potential sanction against many who would seek to express themselves."

On the Fourteenth Amendment Right to Due Process

"We have a law which forbids 'the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application....This violates the underlying principle that 'no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'"

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Caitlin Donahey, Jerry Li, Zoe Tendler, and Fiona Youmell

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First Amendment v. Patriotism
U.S. Court of Appeals for the First Circuit in 1974

Appellant's Arguments:

JOSEPH SMITH:

- 1st Amendment
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  - Goguen could have conveyed his hypothetical speech in a number of ways that would have been more effective.
  - According to *U.S. v. Raines*, federal courts cannot rule a law unconstitutional based on a hypothetical scenario. Rather, they must decide constitutionality based on the rights of the actual people within the case presented to them.
- 14th Amendment
  - The Massachusetts Flag Law clearly states: *"Mutilate, Trample upon, Deface, Treat contemptuously."* All of these actions involve the flag's physical integrity, focus on intentional disrespect, and could disrupt peace.
  - Congress considers the First Amendment when drafting the language of federal flag laws to avoid potential constitutional violations. The language between the federal and Massachusetts Flag Law is extremely similar. The federal law states: "Whoever knowingly casts contempt upon any flag of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it..."

Appellee's Arguments:

VALARIE GOGUEN:
Goguen filed a Petition for a Writ of Habeas Corpus, arguing that his First and Fourteenth Amendment rights were violated.

- 1st Amendment
  - The Massachusetts flag law regulates actions that can be considered as symbolic speech. For example, burning the flag, which is illegal under the flag law, could be a form of political resistance expressing discontent with the government. Essentially, the flag law regulates political criticism and expression, rights guaranteed by the freedom of speech clause.
- 14th Amendment
  - The phrasing of the Massachusetts Flag Law that Goguen was prosecuted under, which is "treats contemptuously," is vague. It violates the **Due Process Clause because a reasonable citizen couldn't have known which** actions violated or didn't violate the law. For example, the first officer who stopped him issued a warning, whereas the second officer arrested him, unaware of the prior warning, demonstrating a disparity in interpretation.
  - *U.S. v. O'Brien* establishes that, for governments to regulate symbolic speech, they must prove that it's a critical government interest, and the action taken to do so is as confined as possible.
  - Goguen, however, never caused a disruption of peace, yet he was prosecuted and imprisoned in violation of his rights.

THE CIRCUIT JUDGES' DECISION

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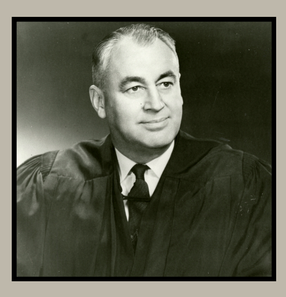
The Panel of Judges



Judge
Edward Matthew
McEntee



Chief Judge
Frank Morey
Coffin



Judge
Frederick George
Hamley

All portraits provided by the Federal Judicial Center.

Quotes from the Decision

On the First Amendment and Freedom of Speech:
"There is a greater solicitude that courts have, and ought to have, about the fear-inducing effect of any law which, by its very scope, constitutes a broad-gauged potential sanction against many who would seek to express themselves."

On the Fourteenth Amendment and Due Process:
"We have a law which forbids 'the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application....This violates the underlying principle that 'no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.'"

IMPACT OF SMITH

- *Texas v. Johnson* (1989)
  - The question in Johnson concerned the constitutionality of a Texas flag law that specifically banned the burning of the U.S. flag.
- *Spence v. Washington*
  - *This case further establishes that individuals have the right to use the flag as a form of symbolic expression, provided it does not harm or disrupt public order.*
- *Renforces symbolic speech portions.*
  - *Goguen helped solidify the principle that symbolic acts, such as wearing the patch on his jeans, are protected by the First Amendment, even when used to convey a political message. Additionally, it expanded a broader message about what counts as expressive conduct.*
- *Limited 'Vague Statutes"*
  - *The decision warned states that flag-misuse laws must be specific and narrowly written. Laws using vague terms such as "contemptuous treatment" risk violating due process because they allow police to enforce them based on personal judgments*

OTHER FACTS

1. Joseph Goguen was only 19 years old when he was arrested for wearing a flag patch on his jeans, just after high school.
2. This case influenced later decisions, including Texas v. Johnson (1989), where the Supreme Court ruled that burning the American flag is protected speech.
3. The flag on Goguen's jeans was very small—about 4 inches by 6 inches, the size of a postcard.
4. The case showed that laws protecting the flag cannot use vague terms like "contemptuous treatment," because that could violate First Amendment rights.
5. The law gave authorities the power to punish people based on personal judgments of disrespect, not clear actions, which was a major concern.

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