

# Dissent protected—and right to gloss over history

By Anthony D'Amato

**T**he four dissenting Supreme Court justices, not the majority of five, spoke for the American people in *Texas vs. Johnson*, the case that invalidated the flag-desecration law of Texas. The public is overwhelmingly in favor of venerating and protecting the flag. This popular sentiment is reflected in the fact that the federal government, and 48 out of 50 states, have flag anti-desecration

statues. All those laws are now legally in jeopardy as the result of the court's ruling.

The court's ruling also corroborates what we knew all along: that our Bill of Rights protects minorities. Legislative majorities never need protection; they can do what they want. The framers of the Constitution adopted the Bill of Rights to protect minority groups against legislative majorities.

Speaking for popular sentiment, the four dissenters on the Su-

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preme Court invoked high school civics lessons and poetry in a rousing tribute to Old Glory. If I had the right to add some footnotes to the opinions of the dissenting justices, here is approximately what I would say:

**DISSENTING OPINION:** During the War of 1812, Francis Scott Key, watching the British fleet

firing on Fort McHenry, saw by daybreak that the attack had failed. He scribbled on the back of an envelope the poem that became our national anthem. He wrote of "the rockets' red glare, the bombs bursting in air."

**MY FOOTNOTE:** The music of our national anthem was the tune of a British beer-hall drinking song, a waltz, titled "When Bebo Went Down to the Regions Below." Maybe if we had been more willing to negotiate with the British we could have spared the lives of many innocent people and still achieved our goals. The bombs that were bursting in air were not fireworks; they were deadly weapons, and human beings were maimed, disfigured and killed.

**DISSENTING OPINION:** During the Civil War, the Union troops marched to the sound of "Yes We'll Rally 'Round the Flag Boys."

**MY FOOTNOTE:** Contemporary with the Civil War, American soldiers and citizens were heading West, massacring thousands of Native Americans along the route and stealing their land.

**DISSENTING OPINION:** Impetus for the enactment of the Flag Desecration Statute in 1967 came from the impact of flag burnings in the United States on troop morale in Vietnam. Rep. Rivera testified that "the burning of the flag has caused my mail to increase 100 percent from the boys in Vietnam, writing me and

asking me what is going on in America."

**MY FOOTNOTE:** The boys in Vietnam also should have been told what was going on in Vietnam. In the late 1960s, American air forces conducted 39 separate bombing attacks on the internationally renowned leper sanatorium in Wuyah Lap, North Vietnam. They dropped bombs on roofs that were painted with the Red Cross. The idea was either to kill the unfortunate lepers or to scatter them back into the population. Other American bombing raids targeted school buildings during class sessions and hospitals in the cities and towns of North Vietnam.

I find the four dissenting justices to be glorifying war and the martial arts, to be ardent national-chauvinists, the "my country right or wrong" type who cannot tolerate real dissent. The one thing they don't seem to understand about the First Amendment is that it encourages *both sides of the story*. It stands not for an expurgated view of American history, but a realistic view—warts and all. The First Amendment really says to artists like Scott Tyler: Go ahead and express your views. We're a big enough country. We can stand it. Maybe you can even teach us something.

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