Constitutional Law Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
*Elonis v. United States:* Argued: December 1, 2014/Decided: June 1, 2015Mr. Faulhaber

Directions: Read and highlight the following background information on this page regarding Elonis v. United States.

Background: The First Amendment protects individuals’ freedom of speech. Free speech is one of the most essential rights in our society because the discussion of ideas is essential to a democracy. Generally, the government cannot punish or censor a person’s speech. However there are some types of speech that are excluded from the First Amendment’s protection. The classic example of unprotected speech is shouting “fire,” when there is not one, in a crowded place, because people will panic and stampede. Other exceptions to the protections of the First Amendment include things like obscenity, fighting words, and true threats. The government can make it a crime to threaten to injure or kill someone, but only if it is a “true threat.” While the Supreme Court has identified true threats as an exception to free speech, it has never defined exactly what a “true threat” is.

The federal government has made it illegal to transmit any communication threatening to injure another person. Under this law, the recipient of a threat does not have to be the target of the threat. Courts have disagreed about whether a “true threat” requires an intent to threaten by the speaker. This case is about whether posting violent rap lyrics with threatening language on the internet was a true threat and therefore illegal.
 **Facts:** After his wife left him and he was fired from his job, Anthony Elonis began posting rap lyrics to his Facebook page. Some of the rap lyrics contained language that terrified his ex-wife. The lyrics were extremely graphic and detailed specific ways that Elonis could kill her. His wife received a protection from abuse order which prevented Elonis from coming near her. At the hearing for that order, she testified that she felt like her husband was stalking her. After the protection order was issued, he continued to post inflammatory lyrics, including posts about shooting a local kindergarten class. This prompted the FBI to send an agent to talk with Elonis. After the FBI visit, Elonis posted rap lyrics that explained how he thought about killing the FBI agent and her family and if he was arrested he would strap a bomb to his chest. The FBI arrested him after this threat and he was charged with a felony under the law that banned interstate threats.

At his trial, the judge gave the jury instructions about how to determine whether Elonis’s posts were “true threats.” The jury was told that it did not matter whether Elonis intended the posts to be threats, but whether a reasonable person would foresee that his words would be interpreted as threats. The jury convicted Elonis, and he appealed that decision to the Court of Appeals for the Third Circuit. Elonis argued that the judge’s instructions during the trial were wrong. He said that under the First Amendment, it is only a true threat if the speaker intended to threaten someone. After losing his appeal, he appealed to the Supreme Court.

**Issue:** Does the First Amendment require proof of the defendant’s subjective intent to threaten in order to convict him of threatening another person? Or is it enough to show that a “reasonable person” would regard the statement as threatening?

**Constitutional Amendment, Regulation, and Precedents**

First Amendment: **“Congress shall make no law … abridging the freedom of speech….”**

Federal law criminalizing threats: 18 U.S.C. § 875(c). : **It is a federal crime to “transmit in interstate or foreign commerce any communication containing any threat to injure the person of another.”**

*Watts v. United States* (1969): During a protest about the Vietnam War, Watts made the following statement, “I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is [President] L.B.J.” There was a statute that banned any threat to the life of the President. The Supreme Court said that Watts’ speech was not a threat within the meaning of statute. Political speech can often be “vituperative, abusive, and inexact,” and the statement was obviously not a sincere threat on the President’s life. This means that the threat was not a “true threat” and the First Amendment protected his speech. After Watts, the state can only ban those threats which are “true threats.”

*Virginia v. Black* (2002): Virginia had a statute that banned burning a cross with intent to intimidate others. Several people convicted under this law argued that it was unconstitutional. The Supreme Court ruled that the First Amendment did permit such a law. However, the Virginia law also said simply burning a cross proved “intent to intimidate.” The Supreme Court decided that part of the law violated the First Amendment, because the state could not assume that everyone who burned a cross intended to intimidate others. The Court said that burning a cross could be an expressive or political activity and, without the intent to intimidate others, it would be protected by the First Amendment. The Court said that a true threat was “where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.” They said true threats were not protected by the First Amendment in order to protect “individuals from the fear of violence and the disruption that fear engenders. Justice Thomas wrote a dissent that said the Virginia law statute was constitutional, because the unique history of cross burning in America makes it inherently threatening.

Classifying Arguments: The following is a list of arguments in the Elonis v. United States case. Read through each argument and decide whether it is an Arguments for Elonis (E) or it supports the position of the United States (US). Place the appropriate mark in the blank provided AND circle the appropriate E or US.

\_\_\_\_1. (E/US): Writing these lyrics was merely a therapy and form of art for Elonis, it was not intended to be threatening. In fact, Elonis said on his Facebook page that his posts were lyrics.

\_\_\_\_2. (E/US): Elonis’ raps are no different than many performed by major rap artists. Many rappers use violent, graphic words to express themselves. If Eminem’s lyrics are protected by the First Amendment, Elonis’ should be too.

\_\_\_\_3. (E/US): Eminem’s raps are different because they are presented in a different context. At concerts, on CD, or on the radio, people are looking to be entertained by music. Sometimes music is explicit. Facebook and the internet are a totally different context.

\_\_\_\_4. (E/US): Without considering whether a person intended their speech to be a threat, the government will be able to prosecute all sorts of speech that is not dangerous. Young people use graphic language to joke on the internet all the time, but those jokes are not often true threats.

\_\_\_\_5. (E/US): By focusing on the intent to threaten, it will be more difficult to find enough evidence to find the person guilty of a crime because it is so hard to know what the defendant was thinking.

\_\_\_\_6. (E/US): The worry that kids online will be convicted under this statute is not relevant. Judges and juries will be able to tell the difference between actual threats and online jokes. And if young people are saying things online that are actually threatening, they should be held responsible. If someone is using the internet to threaten others, he or she should be stopped.

\_\_\_\_7. (E/US): If we don’t understand whether the speaker intended to threaten anyone, how do we know whether it was actually a threat? One proposed way to figure that out is to examine whether a reasonable person would have found the speech threatening. The government says that this standard is easy to apply, but it’s not easy when it comes to the Internet. A “reasonable person” and a “reasonable Facebook user” might have very different interpretations of the same words. A rule that requires juries to look at the defendant’s intent to threaten is easier to administer.

\_\_\_\_8. (E/US): Many criminal laws depend on the intent of the defendant. It would not be difficult for judges and juries to examine the defendant’s intent when it comes to true threats.

\_\_\_\_9. (E/US): Elonis’s posts scared his ex-wife and the FBI agent, and the school was warned about a potential shooting. All three were actually scared. It should not matter that he did not mean to cause all of this harm. He caused it and should be held liable.

\_\_\_\_10. (E/US): In the modern age, domestic violence takes place online, on websites like Facebook. If the Court decides that a threat is only a “true threat” when the abuser intends it to be so, that will allow online abusers to avoid criminal responsibility for their threats by claiming their words are rap lyrics or art.

I found the argument above stated in #\_\_\_\_ most compelling for Elonis because…
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I found the argument above stated in #\_\_\_\_ most compelling for the United States because…
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What rights Supreme Court Must Balance? Explain. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

What would you tell a friend of yours that is not in this class why this case is important? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

How Should This Case Be Decided by The Supreme Court? Explain
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