

Actions Speak Louder Than Words

Purpose:

As nations throughout the world struggle to respond to acts of ethnic intolerance, questions continue to arise, such as “What does the concept of liberty mean in a democracy?” and “What does freedom of expression- both through speech and action- guarantee in a democracy?” In this lesson, students examine issues concerning offensive speech and individual rights of expression versus the need for tolerance in our multicultural nation.

Procedure:

1. Explain to students that many democracies of the world have adopted constitutional protections of freedom of expression similar to those of the United States. However, they depart from the United States' example when it comes to “hate” and “symbolic” speech. For example, many democracies, such as France and Germany, have made it a crime to make ethnic or racial derogatory remarks about citizens. Using the handout “Comparing Constitutional Protections of Hate Speech,” ask students to compare restrictions on free speech in Germany, France, and Canada.
2. Divide the class into two groups. Inform students they will be examining two situations involving “hate” speech and “hate” crimes occurring recently in the United States. Give each student (or use an overhead transparency) a copy of the handout “Facts and Issues.” Instruct one group of students to read the facts of *R.A.V. v. City of St. Paul*, while the other group will read the facts of *Wisconsin v. Mitchell*.
3. Using the “Human Opinion-Continuum” strategy, ask each group, in turn, to take a stand before the class, responding “yes” or “no” to each of the two questions posed about their case. (To initiate the opinion-continuum discussion, the instructor should read aloud the facts of each of the cases.)
4. Allowing students to work in pairs, distribute the handout quoting the Supreme Court's rulings on both cases. Ask student pairs to use the Venn diagram at the bottom of the handout to note the similarities and differences of the two cases, including the Court's reasons for its decisions. Encourage pairs to share their ideas with the class in order to complete a large, poster-size (or overhead transparency) Venn diagram.
5. Inform students that many states have passed laws criminalizing and/or permitting civil suits for actions aimed at specific groups of citizens. Distribute (or display from an overhead transparency) the chart “Hate Crimes Legislation Across America.” Conduct a class discussion analyzing the types of groups protected by such legislation. What patterns can be seen? Are there particular regions of the nation that seem to offer the greatest and least protections for such groups? How do the laws of our state compare with neighboring states?
6. Read aloud excerpts from the New York Times article which discusses a second cross-burning case accepted by the Supreme Court a decade following *R.A.V.* Ask students to discuss whether the Court's ruling has changed or not? In light of current events in our

nation, should the United States follow the example of other nations and enact national laws similar to some states in order to protect certain groups of citizens?

7. For enrichment or extension, students may wish to write a rough draft for a national anti-hate law, including possible penalties or consequences.

COMPARING CONSTITUTIONAL PROTECTION of HATE SPEECH



Germany:

Article 130 of the German Code-

"Whoever, in a manner apt to breach the public peace, attacks the human dignity of others by (1) inciting to hatred against parts of the population, (2) provoking to violence or arbitrary acts against them, (3) insulting, maliciously making them contemptible or defaming them, shall be punished by a term of imprisonment of three months to five years."

In the News:

A member of the National Socialists was convicted of participating in a rally that included members of group wearing Nazi-like clothing and engaging in Nazi salutes.



France:

"Defamation of a race, nationality, ethnicity, or religion is punishable by either a prison term or up to one year. Federal statute makes it a crime to dispute the existence of the Holocaust, wear or display Nazi emblems or uniforms, unless for historical films or exhibitions."

In the News:

Two college graduates were prosecuted under the 1990 law for distributing literature denying the Holocaust occurred.



Canada:

Article 27 of the Canadian Charter of Rights and Freedoms

"...guarantees the rights and freedoms interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians."

In the News:

Newspapers printing hate propaganda aimed at Native American populations in Canada were shut down by court order and forbidden to re-open until a trial found the editor guilty of national law. The editor was fined and lost the license to publish a newspaper in Canada.

FACTS and ISSUES

In 1992 and 1993, the United States Supreme Court decided two cases addressing the constitutionality of statutes directed at bias-motivated intimidation and violence:

R.A.V. v. City of St. Paul and Wisconsin v. Mitchell.

These well-known cases have now substantially defined which hate crimes statutes are, and which are not, acceptable under the First Amendment to the United States Constitution.

Russ and Laura Jones and their five children moved from the crime and drugs of the inner city of St. Paul, Minnesota, to what had been an all-white suburb. Two weeks after they moved into their neighborhood, the tires of the family car were slashed. Then on June 21st, after midnight, they were awakened by a fire. On their small fenced lawn, a cross had been ignited.

Mrs. Jones later described her feelings, "If you are black and you see a burning cross, you know it's a threat and you imagine all the church bombings and lynchings that have gone on before, not so long ago..."

Investigators identified those responsible as teenage neighbors who were charged with misdemeanor assault and sentenced to 30 days in jail.

Additional misdemeanor charges were filed under the city's hate crime law, passed one year earlier. The law forbid the placement "on public or private property a symbol, or object, graffiti, including a burning cross and Nazi swastika, which one knows or has reasonable grounds to know, will arouse anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender."

Issue:

Is the city hate crime law unconstitutional?

Do citizens have the right according to the First Amendment to convey unpopular messages through symbols?

On the evening of October 7, 1989, a group of young black men, including Todd Mitchell, gathered near an apartment complex in Kenosha, Wisconsin. Several discussed scenes from a motion picture they had just viewed, entitled, "Mississippi Burning." Mitchell asked, "Do you all feel hyped up to move on some white people?"

Shortly thereafter, a young white boy approached the group on the opposite side of the street. As he walked by, Mitchell yelled, "There goes a white boy, go get him." The group beat the boy severely, stole his tennis shoes, and left him unconscious. The boy remained in a coma for four days.

After a jury trial, Mitchell was convicted of aggravated assault, which normally carried a maximum sentence of two years imprisonment. However, Wisconsin had earlier passed hate-crime legislation allowing judges to give longer sentences to defendants who chose their victims based on such factors as race, religion, ethnicity, sexual orientation, or disability. Mitchell's sentence was increased to seven years.

Issue:

Is Wisconsin's hate-crime legislation unconstitutional?

Are Mitchell's actions protected as "symbolic speech" according to the First Amendment of the Constitution?

(9-0) "Mitchell's First Amendment rights were not violated by the application of the penalty-enhancement provision in sentencing him...In determining what sentence to impose, sentencing judges have traditionally considered a wide variety of factors in addition to evidence bearing on guilt, including a defendant's motive for committing the offense. While it is equally true that a sentencing judge may not take into consideration a defendant's abstract beliefs, however obnoxious to most people, the Constitution does not erect a barrier to the admission of evidence concerning one's beliefs at sentencing simply because they are protected by the First Amendment. The ordinance at issue here is aimed at conduct unprotected by the First Amendment."

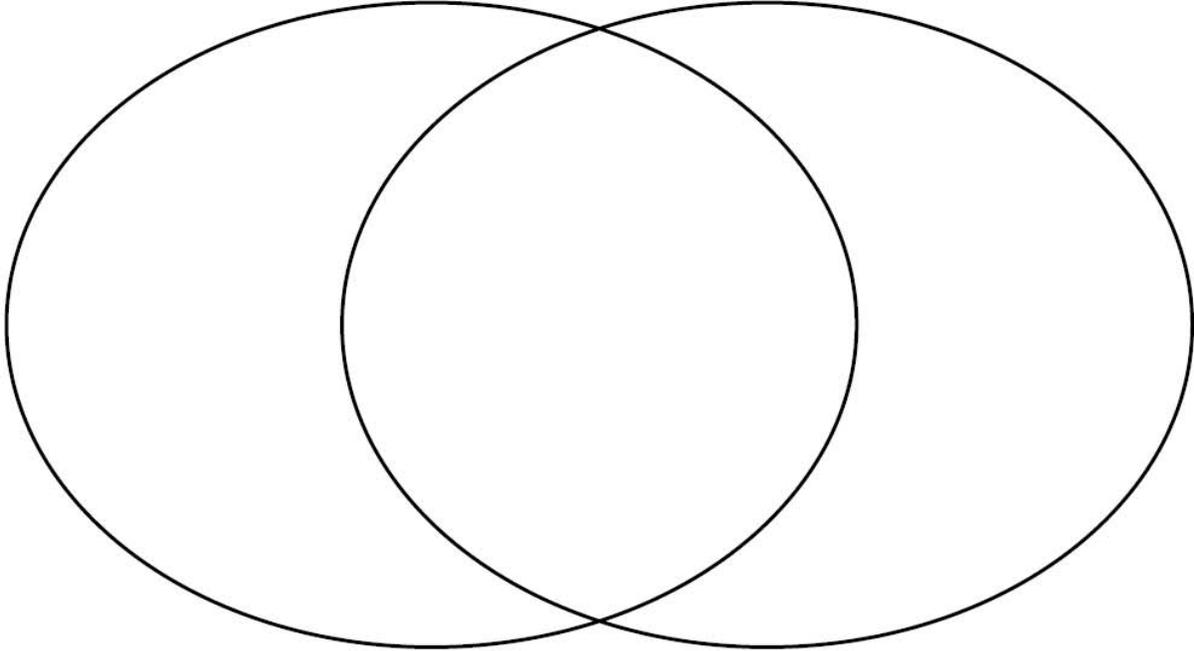
Wisconsin v. Mitchell



R.A.V. v. St Paul

(9-0) "Let there be no mistake about our belief that burning a cross in someone's front yard is reprehensible...and while recognizing St. Paul's compelling interest in protecting the rights of members of groups subject to discrimination...The ordinance is unconstitutional because it imposes special prohibitions on those speakers who express views on the disfavored subjects of "race, color, creed, religion or gender...(thus) selectively silencing speech on the basis of its content...The First Amendment generally prevents government from proscribing speech or even expressive conduct because of disapproval of the ideas expressed."

Compare and Contrast: Complete the Venn Diagram below, comparing similarities and differences in the situations, constitutional issues, and court decisions of the two "hate-crime" cases above.



HATE CRIME LEGISLATION ACROSS AMERICA



	AL	AK	AZ	AR	CA	CO	CT	DC	DE	FL	GA	HI	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN	MS	MO
Bias-Motivated Violence and Intimidation -- Criminal Penalty *1	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Civil Action				✓	✓	✓	✓	✓		✓	✓		✓	✓		✓			✓	✓		✓	✓	✓		✓
Race, Religion, Ethnicity	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Sexual Orientation			✓		✓	✓	✓	✓	✓	✓		✓		✓		✓	✓	✓	✓	✓	✓	✓		✓		✓
Gender		✓	✓		✓		✓	✓				✓		✓		✓			✓	✓			✓	✓	✓	✓
Disability	✓	✓	✓		✓	✓	✓	✓	✓	✓		✓		✓		✓	✓		✓	✓		✓		✓		✓

	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA	WV	WI	WY	
Bias-Motivated Violence and Intimidation -- Criminal Penalty *1	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓	✓	✓ ^{*5}	✓	✓	✓	✓	✓	
Civil Action		✓	✓		✓			✓		✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓		✓		
Race, Religion, Ethnicity	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓	✓		✓	✓	✓	✓	✓	✓	
Sexual Orientation		✓	✓	✓	✓	✓	✓					✓	✓	✓			✓	✓		✓		✓		✓		
Gender		✓		✓	✓	✓	✓	✓	✓				✓	✓			✓	✓		✓		✓	✓			
Disability		✓	✓	✓	✓	✓	✓				✓		✓	✓		✓	✓		✓	✓		✓		✓		

Source: Anti-Defamation League, 2007

FOLLOW-UP on SYMBOLIC SPEECH: Justices Allow Bans On Cross Burnings

By LINDA GREENHOUSE

Excerpts from New York Times, April 8, 2003

The Supreme Court ruled today that states may make it a crime to burn a cross with a purpose to intimidate, as long as the law clearly gives prosecutors the burden of proving that the act was intended as a threat and not as a form of symbolic expression.

The vote was 6 to 3 to interpret the First Amendment as permitting the government to single out cross burning as "a particularly virulent form of intimidation," as Justice Sandra Day O'Connor phrased it in her opinion for the court. Thirteen states have laws that ban cross burning.

The Supreme Court has found the relationship between hate speech and free speech troublesome for years, and the case today produced a range of opinions. Justice Souter, joined by Justices Kennedy and Ginsburg, said a burning cross was inherently symbolic, carrying with it not only a message of terror but one of ideology, like "white Protestant supremacy." As such, the law was "content-based" and could not survive First Amendment scrutiny.

In supporting criminal prohibitions against cross burning, Justice Thomas said he saw no reason at all to consider the act in light of the First Amendment, because its message was one of terror and lawlessness that did not qualify as protected expression. "Just as one cannot burn down someone's house to make a political point and then seek refuge in the First Amendment, those who hate cannot terrorize and intimidate to make their point." He said a burning cross was "unlike any symbol in our society" and was not intended to communicate any message other than fear and hatred.

The decision was the court's first effort in a decade to revisit the question of hate speech. In a 1992 decision, *R.A.V. v. St. Paul*, the court invalidated a Minnesota city's ordinance making it a crime to burn a cross in the knowledge that the act would "arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender."

Justice O'Connor said that while some cross burnings had symbolic or ideological messages, others came within the category of "true threats" that were not entitled to First Amendment protection, and that a properly written law could distinguish between the two.