

## Symbolic Speech, Fighting Words, and Hate Speech

### Terms:

Symbolic Speech

Fighting Words

Group Libel

Heckler's Veto (hostile audience)

Hate Speech

Hate Crime

### Assigned Cases:

*Tinker v. Des Moines*; *TX v. Johnson*; *Chaplinsky v. NH*; *Cohen v. CA*; *Hill v. CO*; *R.A.V. v. St. Paul*; *WI v. Mitchell*; *WV v. Barnette*; *VA v. Black*; *Barnes v. Glen Theatre, Inc.*

### Questions for Reading Assigned Cases:

A number of our cases (*R.A.V.*, *VA v. Black*, *TX v. Johnson*) involve the burning of symbols. What is it about burning that makes it speech? Why is it so powerful as a symbol of dissent or hatred? *R.A.V.*, *Mitchell*, and *Black* all involve the line between hate speech and hate crime. When is an act hate crime and when is an act hate speech?

*WV v. Barnette* and *Tinker v. Des Moines* both involve public school students who "stood out." What place does symbol action have in the schools? To what extent should courts defer to school officials' concerns about disruption?

In both *Cohen* and *Johnson*, the opinion itself (opposition to the draft and Reagan Administration) was clearly protected and held by a substantial minority of the population, but the means of expression was viewed as far too forceful and divisive. In *Chaplinsky*, it was the language and how it was directed that was seen as problematic. What are the limits on how forcefully one expresses one's views? To what extent is the Heckler's Veto a useful test?

### Additional Cases:

#### Symbolic Speech

*Stromberg v. CA* (1931). Supreme Court struck down CA law that prohibited display of "the Red flag" (ie, communism, not Canada).

*U.S. v. O'Brien* (1968). Supreme Court affirmed O'Brien's conviction for burning his draft card, declaring that the government's interest in administering the Selective Service system outweighed his free speech rights. The *O'Brien* case led to the requirement that restrictions be tied to a governmental purpose that is not related to expression.

### **Flag Burning**

*Street v. NY* (1969). Supreme Court struck down conviction for burning flag while shouting “we don’t need no damn flag” because it was not clear whether he was prosecuted for the flag burning itself or his utterance

*Spence v. WA* (1970). Supreme Court set aside a conviction for flag desecration when Spence displayed the U.S. flag with a peace symbol taped in its middle.

### **Fighting Words, Hate Speech**

*Terminello v. Chicago* (1949). Supreme Court invalidated conviction for disturbing the peace when racist speech was not directed at specific persons. Results in “hostile audience” or “heckler’s veto” doctrine that requires that speech may not be banned because of reaction when speech is not directed at individuals.

*Beauharnais v. IL* (1952). Supreme Court upheld conviction for distributing pamphlet defaming African-Americans under the doctrine of “group libel.” Pamphlet was related to practice of “block-busting.”