Name:
Class:

First Amendment Case Study

Case Name	Case's Question or Problem	Your Answer
A.		
B.		
C.		
D.		
E.		

CASES

A. Ashcroft v. Free Speech Coalition

Issue

Whether the provisions of the Child Pornography Prevention Act of 1996 concerning the shipment, distribution, receipt, reproduction, sale, or possession of any visual depiction that "appears to be of a minor engaging in sexually explicit conduct" violate the First Amendment. It also contains a similar prohibition concerning any visual depiction that is "advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct.

ASHCROFT, ATTORNEY GENERAL, *et al. v.*
FREE SPEECH COALITION *et al.*

certiorari to the united states court of appeals for the ninth circuit

No. 00-795. Argued October 30, 2001--Decided April 16, 2002

The Child Pornography Prevention Act of 1996 (CPPA) expands the federal prohibition on child pornography to include not only pornographic images made using actual children, 18 U. S. C. §2256(8)(A), but also "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture" that "is, or appears to be, of a minor engaging in sexually explicit conduct," §2256(8)(B), and any sexually explicit image that is "advertised, promoted, presented, described, or distributed in such a manner that conveys the impression" it depicts "a minor engaging in sexually explicit conduct," §2256(8)(D). Thus, §2256(8)(B) bans a range of sexually explicit images, sometimes called "virtual child pornography," that appear to depict minors but were produced by means other than using real children, such as through the use of youthful-looking adults or computer-imaging technology. Section 2256(8)(D) is aimed at preventing the production or distribution of pornographic material pandered as child pornography. Fearing that the CPPA threatened their activities, respondents, an adult-entertainment trade association and others, filed this suit alleging that the "appears to be" and "conveys the impression" provisions are overbroad and vague, chilling production of works protected by the First Amendment. The District Court disagreed and granted the Government summary judgment, but the Ninth Circuit reversed. Generally, pornography can be banned only if it is obscene under *Miller* v. *California*, 413 U. S. 15, but pornography depicting actual children can be proscribed whether or not the images are obscene because of the State's interest in protecting the children exploited by the production process, *New York* v. *Ferber*, 458 U. S. 747, 758, and in prosecuting those who promote such sexual exploitation, *id.,* at

761. The Ninth Circuit held the CPPA invalid on its face, finding it to be substantially overbroad because it bans materials that are neither obscene under *Miller* nor produced by the exploitation of real children as in *Ferber*.

Held: The prohibitions of §§2256(8)(B) and 2256(8)(D) are overbroad and unconstitutional

B.

R.A.V. v. City of St. Paul (1992)

Issue Whether a municipality may constitutionally enact an ordinance that makes it a crime to place a symbol on public or private property that arouses anger in others on the basis of race, color, creed, religion, or gender.

R.A.V. v. ST. PAUL, 505 U.S. 377 (1992)

505 U.S. 377
R.A.V., PETITIONER v. CITY OF ST. PAUL, MINNESOTA
CERTIORARI TO THE SUPREME COURT OF MINNESOTA

No. 90-7675

Argued December 4, 1991
Decided June 22, 1992

After allegedly burning a cross on a black family's lawn, petitioner R.A.V. was charged under, inter alia, the St. Paul, Minnesota, Bias-Motivated Crime Ordinance, which prohibits the display of a symbol which one knows or has reason to know "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The trial court dismissed this charge on the ground that the ordinance was substantially

overbroad and impermissibly content based, but the State Supreme Court reversed. It rejected the overbreadth claim because the phrase "arouses anger, alarm or resentment in others" had been construed in earlier state cases to limit the ordinance's reach to "fighting words" within the meaning of this Court's decision in Chaplinsky v. New Hampshire, 315 U.S. 568, 572 , a category of expression unprotected by the First Amendment. The court also concluded that the ordinance was not impermissibly content based, because it was narrowly tailored to serve a compelling governmental interest in protecting the community against bias-motivated threats to public safety and order.

Held:

The ordinance is facially invalid under the First Amendment. Pp. 381-396.

C.

Federal Communications Commission v. Pacifica (docket #: 77-528) (1978)
The "Seven Dirty Words" case of George Carlin

Issue Whether a broadcast of patently offensive words dealing with sex and excretion may be regulated because of its content.

FCC v. PACIFICA FOUNDATION, 438 U.S. 726 (1978)

438 U.S. 726
FEDERAL COMMUNICATIONS COMMISSION v. PACIFICA FOUNDATION ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT
No. 77-528.

Argued April 18, 19, 1978
Decided July 3, 1978

A radio station of respondent Pacifica Foundation (hereinafter respondent) made an afternoon broadcast of a satiric monologue, entitled "Filthy Words," which listed and repeated a variety of colloquial uses of "words you couldn't say on the public airwaves." A father who heard the broadcast while driving with his young son complained to the Federal Communications Commission (FCC), which, after forwarding the complaint for comment to and receiving a response from respondent, issued a declaratory order granting the complaint

A satiric humorist named George Carlin recorded a 12-minute monologue entitled "Filthy Words" before a live audience in a California theater. He began by referring to his thoughts about "the words you couldn't say on the public, ah, airwaves, um, the ones you definitely wouldn't say, ever. The original seven words were, shit, piss, fuck, cunt, cocksucker, mother-fucker, and tits.

D. Dennis v. United States (docket #: 336) (1951)

Issue

Whether the Smith Act -- which makes it a crime to "knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by assignation" -- is on its face and as applied to the Petitioners violative of the First Amendment.

DENNIS v. UNITED STATES, 341 U.S. 494 (1951)

341 U.S. 494

Argued December 4, 1950.
Decided June 4, 1951.

1. As construed and applied in this case, 2 (a) (1), 2 (a) (3) and 3 of the Smith Act, 54 Stat. 671, making it a crime for any person knowingly or willfully to advocate the overthrow or destruction of the Government of the United States by force or violence, to organize or help to organize any group which does so, or to conspire to do so, do not violate the First Amendment or other provisions of the Bill of Rights and do not violate the First or Fifth Amendments because of indefiniteness. Pp. 495-499, 517.

E. Texas v. Johnson (docket #: 88-155) (1989)

Issue Whether Respondent's conviction, under a Texas law, for publicly burning an American flag as a means of political protest is protected under the First Amendment.

TEXAS v. JOHNSON, 491 U.S. 397 (1989)

No. 88-155.

Argued March 21, 1989
Decided June 21, 1989

During the 1984 Republican National Convention in Dallas, Texas, respondent Johnson participated in a political demonstration to protest the policies of the Reagan administration and some Dallas-based corporations. After a march through the city streets, Johnson burned an American flag while protesters chanted. No one was physically injured or threatened with injury, although several witnesses were seriously offended by the flag burning. Johnson was convicted of desecration of a venerated object in violation of a Texas statute, and a State Court of Appeals affirmed. However, the Texas Court of Criminal Appeals reversed, holding that the State, consistent with the First Amendment, could not punish Johnson for burning the flag in these circumstances. The court first found that Johnson's burning of the flag was expressive conduct protected by the First Amendment. The court concluded that the State could not criminally sanction flag desecration in order to preserve the flag as a symbol of national unity. It also held that the statute did not meet the State's goal of preventing breaches of the peace, since it was not drawn narrowly enough to encompass only those flag burnings that would likely result in a serious disturbance, and since the flag burning in this case did not threaten such a reaction. Further, it stressed that another Texas statute prohibited breaches of the peace and could be used to prevent disturbances without punishing this flag desecration.

Held:

Johnson's conviction for flag desecration is inconsistent with the First Amendment. Pp. 402-420