

UNITED STATES v. O'BRIEN
391 U.S. 367 (1968)

Facts

David Paul O'Brien and three companions burned their Selective Service registration certificates on the steps of the South Boston Courthouse. A sizeable crowd, including several agents of the Federal Bureau of Investigation, witnessed the event. Immediately after the burning, opposing groups concerning American involvement in Vietnam began scuffling, and some members of the crowd began attacking O'Brien and his companions. An FBI agent ushered O'Brien to safety inside the courthouse. After he was advised of his right to counsel and to silence, O'Brien stated to the FBI agents that he had burned his Selective Service registration card because of his beliefs about the war and that he had intentionally violated federal law. He even displayed the charred remains of his draft card which he allowed to be photographed.

For his actions, O'Brien was indicted, tried, and convicted for willfully and knowingly mutilating, destroying, and changing his registration certificate (Selective Service System Form No. 2) by burning it. On appeal, O'Brien claimed that the burning had merely been a symbolic one in full expression of his right to free speech as guaranteed by the First Amendment of the United States Constitution.

Decision of the Court

In *United States v. O'Brien*, the United States Supreme Court did acknowledge the constitutional protection of freedom of expression to O'Brien's acts as a public statement of his political protest against the Vietnam War. However, O'Brien's conviction was upheld, solely on the basis that he violated a provision of the Selective Service Act which required that an individual possess proof of registration with the draft law system. The draft law was held to be a reasonable and necessary act of government in a wartime situation.