

## ***WISCONSIN v. MITCHELL (1993)***

On October 7, 1989, in Kenosha, Wisconsin, Todd Mitchell and his friends were discussing a scene from the movie “Mississippi Burning” in which a white man beat a young black child who was praying. The scene especially disturbed the group because they were black. During the discussion, Mitchell asked his friends, “Do you all feel hyped up to move on some white people?”

A short while later, a 14-year-old white male walked toward the group on the other side of the street. Mitchell then said to his friends, “There goes a white boy; go get him.” Some members of the group ran towards the boy, beat him up, and took his tennis shoes. The boy ended up in the hospital in a coma for four days and may have suffered permanent brain damage.

Mitchell was convicted of aggravated battery as a party to the crime.<sup>1</sup> The maximum sentence for this crime in Wisconsin is two years. However, Wisconsin has a **penalty enhancer** statute that allows the judge to increase the sentence if the person who committed the crime selected his or her victim because of the victim’s race, religion, color, disability, sexual orientation, national origin, or ancestry. Since the jury found that Mitchell had selected his victim on the basis of race, the judge sentenced Mitchell to two additional years in prison.

Todd Mitchell appealed his sentence, claiming that the penalty enhancer was unconstitutional. He argued that the statute “enhances the maximum penalty for conduct motivated by a discriminatory point of view.” The statute therefore punishes biased thought which is protected by the First Amendment.

The Wisconsin Supreme Court, with two justices dissenting, agreed with Mitchell. The court held that the statute “violates the First Amendment directly by punishing what the legislature has deemed to be offensive thought.” The court also found that the statute would have a “chilling effect” on free speech. To prove that the person intentionally selected the victim on the basis of race, religion, etc., the state might introduce evidence of the defendant’s prior protected speech, such as racist remarks. People would be afraid to express themselves in a way that might later be used against them in a criminal proceeding.

The state appealed to the U.S. Supreme Court. The Supreme Court granted certiorari and heard the case in April 1993. The state argued that the statute punishes only conduct, not thought. The conduct that the state punishes is the intentional selection of the victim because of the victim’s protected status (race, religion, color, disability, sexual orientation, national origin, or ancestry). The criminal’s personal bias against these people, Wisconsin argued, is irrelevant.

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<sup>1</sup>*Mitchell was charged with being a party to a crime because he did not actually beat the 14-year-old boy.*

## Arguments in the *Wisconsin v. Mitchell* Case

Directions: Listed below are five statements about the *Wisconsin v. Mitchell* case. Some of them can be used to support Wisconsin's position that the hate crime law is constitutional; some support Mitchell's position that the hate crime law violates the Constitution, **while others may be used to support both positions**. Working with your group, read each statement, then discuss it and classify it as **For Wisconsin, For Mitchell, or For Both**.

1. Hate crimes do not inflict greater harm to the victim and society than other crimes. Essentially these laws say you are more important because of your racial, religious, or ethnic status. What about people who are targets of random violence? Are their lives less valuable to society or themselves because criminals have stalked them without any concern for whom they are? This violates the principle of equal protection of the laws.
2. The Wisconsin law will not have a chilling effect on free speech. The chances are that a person who would utter bigoted comments will do so regardless of whether these comments might constitute evidence against him if he later commits a crime.
3. It is hard to tell exactly how many hate crimes are committed in the United States because the data reporting system for hate crimes is so new. Many victims do not report hate crimes, and some states have no laws against hate crimes.
4. The amount of hatred between groups is growing throughout the United States, and the only thing we have left is to pass laws that condemn these actions. Crimes committed based on hate are more harmful to individual victims and to society at large. These crimes cause tremendous fear, often spark retaliation, and send a message to all members of the victims' group that they are in danger.
5. Hate crime laws infringe on the basic liberties of thought and speech. Once the illegal act is committed (e.g. assault and battery), the government criminalizes the underlying thought by enhancing the penalty based on viewpoint. If the legislature can enhance a penalty for crimes committed by reason of racial bigotry, why not for reasons of viewpoint on abortion, war or any other political or moral viewpoint?

## Summary of the Supreme Court's Decision

The Supreme Court announced its decision in *Wisconsin v. Mitchell* on June 11, 1993. The court held in favor of the state in a unanimous (9-0) decision. It found that the penalty enhancer did not violate the First Amendment for several reasons. First, motive is valid consideration when deciding the sentence of a criminal. The court, quoting a famous legal scholar, W. LaFare, said, "[I]t is not uncommon for a defendant to receive a minimum sentence because he was acting with good motives, or a rather high sentence because of his bad motives." Motive under this statute plays the same role that motive under the anti-discrimination statute plays. Just as the anti-discrimination laws do not violate an employer's First Amendment rights, neither does Wisconsin's penalty enhancement statute violate the criminal defendant's First Amendment rights.

Second, the state showed that bias-motivated crimes have a worse impact on the individual victim and society than other crimes. They incite retaliation, “inflict a distinct emotional harm on their victims,” and provoke community unrest. The Court found that the state has an interest in punishing such crimes more severely.

Finally, the connection between the statute and a chilling effect on speech is too weak to invalidate the law on the basis. The chances are slim that a citizen will feel that he must suppress his bigoted speech “for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victim’s protected status.”