

## ***BRANDENBURG v. OHIO, 395 U.S. 444 (1969)***

### **SPEECH ADVOCATING UNLAWFUL CONDUCT**

#### **The Facts**

Mr. Brandenburg, a Ku Klux Klan leader, invited a television reporter to a Klan rally. The reporter filmed the rally and later broadcast it on television. The film showed persons wearing hoods over their heads gathering to burn a cross. Derogatory statements about “niggers” and “Jews” were continually made, demanding that they be forced to leave the country, with violence if necessary.

Brandenburg remarked that “personally, I believe the niggers should be returned to Africa, the Jews to Israel.” As a result, Brandenburg was arrested for violating an Ohio law prohibiting “advocating sabotage, violence, or unlawful methods of terrorism as a means of accomplishing a reform.” He was convicted and appealed to the United States Supreme Court, arguing that his remarks were protected by the First Amendment.

#### **Issues for Discussion**

1. Should the First Amendment protect statements made by the Klan members?
2. Is it unlawful for a person to publicly make insulting remarks about a person’s race or religion?
3. Did Brandenburg’s speech advocate unlawful conduct? What unlawful conduct?
4. Should the state be allowed to prohibit a person’s speech advocating unlawful conduct when there is no immediate danger that such conduct will occur? What if there is an immediate danger of unlawful activities?

## **Decision of the United States Supreme Court**

Speech advocating unlawful activity cannot be prohibited except where the speech is directed at producing immediate unlawful conduct, and it is likely to produce such conduct. Thus the state law is unconstitutional, and the defendant's conviction is reversed.

## **Reasoning of the Court**

The First Amendment of the Constitution provides that "Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

In this case, the Court ruled that the constitutional guarantees of free speech and free press do not permit a state to forbid or punish mere "advocacy of the use of force or of law violation." However, the Court recognized an exception where advocacy is directed to producing "imminent lawless action and is likely to incite or produce such action."

Here, the Supreme Court found that the Ohio statute punished the mere advocacy of illegal conduct and that Brandenburg was not convicted for incitement to imminent lawless action. Therefore, the Ohio statute is unconstitutional since it prohibits controversial speech that is protected by the First Amendment.