Government and Economics free speech assignment

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Brandenburg v. Ohio, 1969

Facts of the Case:

Appellant, a Ku Klux Klan leader, was convicted under the Ohio Criminal Syndicalism statute for "advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and for, "voluntarily assembl[ing] with any society, group or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."

Brandenburg had held a KKK clansmen meeting and had been filmed. Portions of the rally were filmed, showing several men in robes and hoods, some carrying firearms, first burning a cross and then making speeches. One of the speeches made reference to the possibility of "revengeance" against black people, Jews, and those who supported them and also claimed that "[our President](https://en.wikipedia.org/wiki/Lyndon_B._Johnson), our [Congress](https://en.wikipedia.org/wiki/United_States_Congress), our Supreme Court, continues to suppress the white, [Caucasian race](https://en.wikipedia.org/wiki/Caucasian_race)", and announced plans for a march on Congress to take place on the [Fourth of July](https://en.wikipedia.org/wiki/Independence_Day_(United_States)). Another speech advocated for the forced expulsion of African Americans to Africa and Jewish Americans to Israel. After that, the State of Ohio arrested him and convicted him of inciting violence (under the Syndicalism). Brandenburg was fined $1,000 and sentenced to one to ten years in prison. Brandenburg appealed based upon a violation of the Constitution, 1st amendment.

Decision:

The Justices reversed Brandenburg's conviction, holding that government cannot constitutionally punish abstract advocacy of force or law violation. The earlier draft had originally been prepared by Justice [Abe Fortas](https://en.wikipedia.org/wiki/Abe_Fortas) before he was forced to resign in the midst of an ethics scandal, and it would have included a modified version of the [clear and present danger](https://en.wikipedia.org/wiki/Clear_and_present_danger) test. In finalizing the draft, Justice [Brennan](https://en.wikipedia.org/wiki/William_J._Brennan_Jr.) eliminated all references to it by substituting the "imminent lawless action" language. Justices [Black](https://en.wikipedia.org/wiki/Hugo_Black) and [Douglas](https://en.wikipedia.org/wiki/William_O._Douglas) concurred separately. No Justices dissented.

Reasoning:

They cited Noto v. United States, (1961), "the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence is not the same as preparing a group for violent action and steeling it to such action.” For example, Brandenburg would have encouraged immediate violence if he had said, "let's go right now and burn down the building where African Americans are." Although the Supreme Court did not agree with Brandenburg's opinions, it said the freedom of speech protected his right to share those opinions with others.

Aftermath:

The Brandenburg test remains the standard used for evaluating attempts by the government to punish inflammatory speech, and it has not been seriously challenged since it was laid down in 1969. After Brandenburg, the [First Amendment](https://www.encyclopedia.com/social-sciences-and-law/law/law-divisions-and-codes/first-amendment) protects speech unless it encourages immediate violence or other unlawful action.