



Teacher Notes:
Texas v. Johnson 1989

The Background of *Texas v. Johnson 1989* (00:00 to 2:17)

- 1. Who was Gregory Johnson and what was he upset about in 1984?**
Gregory Johnson was a man from Georgia who was upset about certain policies of the Reagan administration as well as those of several Dallas companies.
- 2. What did he and others do in Dallas close to the site of the Republican National Convention, which was expected to nominate President Reagan for a second term?**
Johnson and others marched through the streets of Dallas to City Hall. Once there someone handed Johnson an American flag taken from one of the companies against which he was protesting. He doused the flag in kerosene and set it on fire. He was arrested and charged with violating a Texas statute prohibiting the desecration of a venerated object including both the Texas and American flags.
- 3. What was Texas law at the time regarding the American and Texas flags?**
The Texas penal code made it a criminal offense to desecrate the flag.
- 4. What was Johnson's punishment when he was convicted in a district court for violating the Texas law protecting the flag?**
He was sentenced to one year in jail and a \$2000 fine.

Stop and Think: What is your opinion about the Texas law? What is your opinion about the punishment given Johnson for breaking the law?

- 5. What did a Texas Court of Appeals decide when Johnson appealed his conviction to this court? What did the Texas Court of Criminal Appeals decide (the highest state court for criminal appeals)?**
The Court of Appeals upheld his conviction, while the Texas Court of Criminal Appeals overturned the conviction. Texas then asked the U.S. Supreme Court to review the case.

The Supreme Court Case: (Part One—2:17 to 3:45)

- 6. What was the first question that the U.S. Supreme Court had to answer?**
Is the desecration of the American flag by burning or otherwise a form of speech protected by the U.S. Constitution's First Amendment?
- 7. What did Johnson's attorney argue with regard to this question?**
Johnson's attorney argued that burning a U.S. flag was a form of speech, expressive in nature. It was symbolic speech whereby Johnson expressed his extreme discontent with the country and especially the policies of the current President. Therefore, this was speech protected by the First Amendment.

8. What did the attorney for the state of Texas argue with regard to this question?

The attorney for the state argued that what Johnson did was conduct not speech. The state also argued that there are all manner of ways to express displeasure with government policies, but the burning of an American flag was not essential to make one's point of view known. Therefore, burning a U.S. flag in protest was not speech protected by the First Amendment.

9. How did the U.S. Supreme Court answer this first question?

The Court ruled that Johnson's action was symbolic speech clearly designed to convey a political message.

Stop and Think: Do you agree or disagree with the U.S. Supreme Court's answer to the first question? Why or why not?

Part Two: (3:45 to 7:05)

10. What was the second question the U.S. Supreme Court had to answer?

The Court had to decide if the government had a sufficient interest in restricting this form of symbolic speech.

11. How did the U.S. Supreme Court answer this second question?

The Supreme Court held that Texas was upset at the burning of the American flag only because of its message. There was no indication that there was a breach of the peace as a result of Johnson's action since there was no record of any bystanders attacking Johnson when he burned the flag.

12. What did the attorney for the state argue about the importance of the American flag?

The state's attorney argued that the U.S. flag was a unique symbol of national unity with symbolic and emotional meaning for the American people. The flag therefore should be protected against desecration because it is a sacred symbol of the unity of the American people.

13. What did the Supreme Court majority say was the danger of limiting the use of symbolic speech as a means of protest?

The majority reasoned that trying to protect people from being offended would have no end. This time it was the burning of an American flag. Next time it might be prohibiting someone from merely holding up a sign that protested a government action because the message might offend someone.

14. Why did the Court say allowing freedom of speech is the essence of a constitutional democracy?

People must be able to speak freely and express themselves, particularly when the subject concerns complaints about those in authority. They should be able to do so without fearing they will be prosecuted. That is imperative to guarantee that government is "of, by, and for the people" and not just for those in authority.

Stop and Think: Do you agree or disagree with the Court's answer to the second question? Support your answer.

The Opinions of the Court: (7:05 to 13:05)

15. Who were the Justices who made up the majority in *Texas v. Johnson* and held that the burning of the American flag was symbolic speech protected by the First Amendment.
Justices Brennan, Blackmun, Kennedy, Marshall, and Scalia
16. Who were the Justices who dissented and thus disagreed with the majority's decision?
Chief Justice Rehnquist, and Justices White, O'Connor, and Stevens
17. Read the following quotes from the opinions written in this case and decide which one best represents your opinion. Include a paraphrase of the quote when explaining your choice.
- “We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents...The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them they are wrong...Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Justice William Brennan
 - “The hard fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result....the flag is constant in expressing beliefs Americans share, beliefs in law and peace and that freedom which sustains the human spirit. The case here today forces recognition of the costs to which those beliefs commit us. It is poignant but fundamental that the flag protects those who hold it in contempt.” Justice Anthony Kennedy
 - “Flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others...The Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest...and left him with a full panoply of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy. It was Johnson's use of this particular symbol, and not the idea that he sought to convey by it or his many other expressions, for which he was punished.” Chief Justice William Rehnquist
 - “...sanctioning the public desecration of the flag will tarnish its value, both for those who cherish the ideas for which it waves and for those who desire to don the robes of martyrdom by burning it. The ideas of liberty and equality have been an irresistible force in motivating leaders like Patrick Henry, Susan B. Anthony, Abraham Lincoln, schoolteachers like Nathan Hale and Booker T. Washington, the Philippine Scouts who fought at Bataan, and the soldiers who scaled the bluff at Omaha Beach. If those ideas are worth fighting for, it cannot be true that the flag that uniquely symbolizes their power is not itself worthy of protection from unnecessary desecration.” Justice John Paul Stevens

Conclusion: (13:05 to the end)

18. How many states at this time had laws prohibiting the desecration of the American flag that were affected by the U.S. Supreme Court's decision?

48 states had such laws.

19. How did the U.S. Congress react to the Supreme Court's decision in *Texas v. Johnson*?

The Congress passed the Flag Protection Act making it a federal crime to desecrate the American flag. It attempted to restrict only the action of desecrating the flag rather than the symbolic nature of doing so.

20. What happened to Congress' Flag Protection Act?

The Supreme Court struck down this law by the same vote as in *Texas v. Johnson*.

21. How has Congress responded to this second Supreme Court decision?

Members of both houses of Congress have introduced a proposed constitutional amendment to overrule the Supreme Court's decision in *Texas v. Johnson*.

22. How successful has this effort been?

The House has passed the proposed amendment by more than the required 2/3 vote. However, the Senate has failed to get the required 2/3 vote. Most recently in 2006 the vote in the Senate was one vote shy of the 2/3 requirement.

Stop and Think: What is your personal opinion about a constitutional amendment protecting the American flag by overruling the Supreme Court's decision in *Texas v. Johnson*? Explain your answer.