



Viewing Guide for *Texas v. Johnson* 1989

1. Who was Gregory Johnson and what was he upset about in 1984?
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?
3. What was Texas law at the time regarding the American and Texas flags?
4. What was Johnson's punishment when he was convicted in a district court for violating the Texas law protecting the flag?

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 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?
7. What did Johnson's attorney argue with regard to this question?

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

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

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?

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

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

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

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

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.**
- 16. Who were the Justices who dissented and thus disagreed with the majority's decision?**
- 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?**
- 19. How did the U.S. Congress react to the Supreme Court's decision in *Texas v. Johnson*?**
- 20. What happened to Congress' Flag Protection Act?**
- 21. How has Congress responded to this second Supreme Court decision?**
- 22. How successful has this effort been?**

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.