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UNITED PRESS INTERNATIONAL

## Supreme Court strikes down 'hate crime' statutes

By GREG HENDERSON

WASHINGTON (UPI) — The Supreme Court Monday said "hate crime" statutes that outlaw cross-burning and other expressive action if they are aimed at angering minorities violate the First Amendment's freedom of speech protection.

The court, by a 9-0 vote, struck down a 1989 St. Paul, Minn., law that made it a misdemeanor to engage in bias-motivated disorderly conduct by speech or action that might arouse "anger, alarm or resentment in others on the basis of race, color, creed, religion or gender."

It also implicates similar laws in dozens of towns, and a type of legislation that has split the civil rights community.

The case involved a 17-year-old white male prosecuted under the act for burning a cross in the yard of a black family.

The teen's lawyers said while burning a cross in someone's yard may violate trespassing and even assault laws, the hate-crimes ordinance is unconstitutional because it targets motivation — not action.

A district court agreed, but the Minnesota supreme court said the statute could be "narrowly interpreted" to cover only those actions not protected by the First Amendment.

Minnesota's highest court said burning a cross in public symbolized "virulent notions of racial supremacy," and that the statute could be narrowed to outlaw only "expressive conduct that amounts to 'fighting words,'" or conduct "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."

The Supreme Court Monday said even such a narrowing construction does not allow the law to pass constitutional muster. "We conclude that, even as narrowly construed by the Minnesota Supreme Court, the ordinance is facially unconstitutional," Justice Antonin Scalia wrote for the high court. "Although the phrase in the ordinance, 'arouse anger, alarm or resentment in others,' has been limited by the Minnesota Supreme Court's construction to reach only those symbols or displays that amount to 'fighting words,' the remaining unmodified terms make clear that the ordinance applies only to 'fighting words' that insult, or provoke violence 'on the basis of race, color, creed, religion or gender.'"

Scalia noted that under the St. Paul law, those who used fighting words against others — homosexuals, for example — could not be prosecuted because sexual orientation was not listed as a triggering factor.

"The First Amendment does not permit St. Paul to impose special prohibitions on those speakers who express views on disfavored subjects," he wrote.

Hate-crime laws have become more common in towns nationwide in recent years in response to growing attacks on racial groups, homosexuals and women, but their application has split the civil rights community.

Some like the American Civil Liberties Union claim they are not acceptable because they base their prosecution on the emotional impact a person's speech or action will have on an individual — rather than on the action itself.

But others, like the NAACP, claim cross-burning and similar acts aimed at inciting anger or fear amount to terrorism that is not protected by the Constitution.

Advocates say the laws are needed to control an upsurge of crimes motivated by hatred for blacks, Jews, Asians, homosexuals, other minorities and women.

According to the Anti-Defamation League of B'nai B'rith, only Utah, Wyoming, Nebraska and Alaska lack some form of hate-crime law.

Groups such as the American Civil Liberties Union say the laws pose a threat to free speech and seek to impose "politically correct" expression on all. Such laws could be used to stifle dissent and criticism of public officials, they say.

The St. Paul ordinance was upheld unanimously by the Minnesota Supreme Court last year.

The state court said the local law could be applied narrowly to ban only "fighting words" and speech likely to incite disorder or lawless conduct.

The state court said Robert A. Viktora, 17 when he was charged with burning two makeshift crosses in the yard of a black family's home, may be tried for violating the hate crime ordinance.

Viktora also was charged with assault for causing fear of immediate bodily harm or death. He still could be prosecuted on that charge.

The St. Paul ordinance makes it a misdemeanor to place a burning cross, Nazi swastika, and similar symbols - including some forms of graffiti - on public or private property.

The local law says such action is a crime if it "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." The maximum penalty is 90 days in jail and a \$500 fine.

The case is R.A.V. vs. St. Paul, 90-7675.

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## The Right To Burn a Cross

Does the First Amendment to the Constitution protect the right to burn a cross, Ku Klux Klan style, in a black American's yard? We thought not. Freedom of speech is cherished, but no one has ever convincingly argued that it is an absolute right. False and damaging accusations are not protected by the First Amendment, nor is child pornography, nor until now so-called "fighting words." That is speech conveying a threatening message of imminent harm and violence. The Supreme Court enunciated its fighting words doctrine exactly 50 years ago. This week in a narrow 5-4 opinion the court in effect overturned that doctrine.

It did so in a case from St. Paul, Minn. A city ordinance forbids hate crimes — which it defines as acts or speech that "arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender." All nine Supreme Court justices agreed that this ordinance was invalid. But for four the reason was basically that it criminalizes too many things. For example, causing "resentment" is not a valid reason for a state to outlaw a form of speech. In First Amendment jurisprudence, laws are subjected to "strict scrutiny" to see if the state has an important reason for limiting speech.

But the court's narrow majority, led by Justice Antonin Scalia, went beyond this simple conclusion and justified its reasoning in an alarming way. Justice Scalia said a law could not forbid any form of hate speech including fighting words unless it banned all forms. He said the St. Paul ordinance

was unconstitutional because it protected *only* those attacked on the basis of their "race, color, creed, religion or gender." This left out homosexuals, union members and Republicans and Democrats, he said, thus it was selective regulation of the content of speech.

Well, yes. But Justice John Paul Stevens gave the proper assessment of that silliness: "Conduct that creates special risks or causes special harms may be prohibited by special rules. Lighting a fire near an ammunition dump . . . is especially dangerous; such behavior may be punished more severely than burning trash in a vacant lot. Threatening someone because of her race or religious beliefs may cause particularly severe trauma or touch off a riot . . . Such threats may be punished more severely than threats against someone based on, say, his support of a particular athletic team."

Given this nation's history of racial strife and terror, it is not a good idea in effect to ban all provocative hate crime laws of the fighting words category. Yet by its insistence that hate crime laws apply so widely across the board, this decision may produce that result. In addition to "strict scrutiny," another principal element of First Amendment jurisprudence is that speech bans not be "overbroad." If St. Paul and other jurisdictions rewrite anti-hate ordinances to include speech or acts not related to a limited list of specifics such as "race . . . gender" etc., judges looking to other precedents may well rule that that is unconstitutional, too.

## No haven for deeds of hate

**A** DEEPLY divided U.S. Supreme Court reached a unanimous decision on Monday to throw out a "hate crimes" ordinance from St. Paul, Minn., but quarreled over whether the First Amendment is an absolute protection for bigots.

In doing so, the court offers little guidance to the Florida Supreme Court, which will consider a challenge to this state's hate law on Sept. 2. That law stiffens penalties for crimes motivated by prejudice. St. Paul's ordinance, by contrast, banned symbols and graffiti that arouse "anger, alarm, and resentment in others" because of race, religion, or gender. A white teenager appealed his conviction for burning a cross on the lawn of a black family.

Minnesota courts said that the ordinance was a permissible ban on "fighting words." The Supreme Court majority, led by Justice Antonin Scalia, disagreed, calling the ban "viewpoint discrimination" because it singled out particular words and symbols that the city found offensive. The city has other laws "to prevent such behavior without adding the First Amendment to the fire."

While calling the St. Paul law "overbroad," four other justices criticized the Scalia opinion itself as overbroad. They said

### HIGH COURT ON FREE SPEECH

it elevates "fighting words" to the level of "debate" and takes an "all-or-nothing" approach to bans on hateful words.

This conflict adds confusion to efforts to distinguish laws such as Florida's from St. Paul's. While some argue that the Florida law merely enhances punishment for *actions*, others say that it still punishes unpopular free *speech*. A Broward judge has found the Florida law too vague in a ruling now before the state Supreme Court.

Rep. John Cosgrove, Democrat of Miami, says that he will push to tighten the law, if need be, after the state court makes its ruling. During the present special session, the Florida Senate has not considered his House bill providing such tightening.

St. Paul's ordinance was an honest effort to make clear the city's attitude toward bigotry. There is a way, though, to cut through the constitutional confusion. Rather than targeting bigoted opinions themselves, the law surely can and should target bigotry's fruits — vandalism and open burning in the St. Paul case — and prosecute them with great vigor.



## HATE CRIMES

### Court ruling shouldn't deter bias fight

In no society — not even one that values free speech as deeply as ours — should someone be able to burn a cross in another individual's front yard.

This week's Supreme Court decision voiding St. Paul's ban on cross burning has cast doubt on other city ordinances and state statutes dealing with hate crimes, raising the specter of prolonged litigation. But when all is said and done, the powers that be must make clear that such despicable behavior will not be tolerated.

Justice Antonin Scalia wrote that the city law ran afoul of the Constitution because it tried to ban expression based on content — and selective content at that. The ordinance made it a crime to engage in behavior — and even speech — that was likely to arouse "anger or alarm" based on "race, color, creed, religion or gender."

A statement "casting aspersions on a person's mother" might be equally offensive to the listener but was not among St. Paul's "favored topics," the justice explained.

As unsettling as the high court's decision may seem, it needs to be put in perspective. Of all the "hate crime" ordinances and statutes passed in recent years, St. Paul's was perhaps the broadest. It punished "speech or thought crime." Even before this week's ruling, many legal experts considered that approach to be flawed.

Other cities and states, by contrast, address the problem by punishing action. Generally, they take existing crimes — such as assault, trespassing and vandalism — and increase the penalties when the crimes were motivated by prejudice.

Texas legislators took a similar approach three years ago when they approved a statute that increased the punishment for certain types of vandalism.

Legal experts say it is unclear what message the Supreme Court was sending to state and local governments attempting to deal with the wave of hate crimes sweeping the country. But a logical response to the decision would be to assume that these other laws, which rely on stepped-up punishment, are as valid as ever.

Perhaps the best clue to the court's thinking can be found in Justice Scalia's summation: "Let there be no mistake about our belief that burning a cross in someone else's front yard is reprehensible. But St. Paul has sufficient means at its disposal to prevent such behavior without adding the First Amendment to the fire."

Hate, by itself, is not against the law, and our guarantee of free speech means we sometimes must listen to repugnant thoughts. But when prejudice flares up into illegal actions, we have a duty to deal with that conduct in the strongest terms possible.

# Los Angeles Times

## San Diego County

### The V.P. in the 'Hood

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■ **Politics:** Dan Quayle receives mostly critical response to his visit to a tough section of Southeast San Diego.

By MICHAEL GRANBERRY  
TIMES STAFF WRITER

Vice President Dan Quayle went to Southeast San Diego Monday to check out what Ted Thomas calls "the hood." Flanked by minicams and motorcycles, Quayle left as he came—with a toothy smile and a wave of the hand.

Afterward, Thomas stood alone in the parking lot, muttering about promises and dreams and missed opportunities. He didn't mean "photo opportunities."

Moments after the motorcade pulled away, the 27-year-old ex-Marine and lifelong resident of the neighborhood frowned and said, "I really wonder—why was he here? Was he here to better our community or here for a media blitz?"

"What did the man do for us, really? Deep down, I want to know, is something really going to happen here, or will the 'hood stay like it is? This was nothing but media, man. This was a media show! When are we going to get someone who will actually do something?"

Quayle met briefly with children and staff members of the Nu-Way Youth Center at Logan, Olvera and Euclid avenues, which police escorting the vice president called one of the toughest areas in the city.

Quayle said he came to the corner because it falls within a "Weed and Seed" district, meaning the surrounding area is eligible for federal funds in a program designed to enhance law enforcement (the "weed" portion) and community involvement (the "seed").

The program was announced a year ago. San Diego is one of



DON BOOMER / Los Angeles Times

#### Dishing It Out

Vice President Dan Quayle received a cool response from Southeast San Diego residents during a visit to their community. Quayle said he came to the area because it falls within a "Weed and Seed" district, meaning it is eligible for federal funds. Quayle, above, helps hand out hot dogs at the Nu-Way Youth Center.

several cities due to receive \$500,000 in the current fiscal year and \$500,000 in the next—amounts criticized by some as minuscule. Quayle stopped at the youth center to showcase the "seed" portion.

So far, the center, which serves about 1,000 children from 10 and 21 years old, and up to 300 families, has yet to receive a penny of federal funds. Sixty-five percent of the children and teen-agers in the program are "law-enforcement referrals," meaning they have police records.

The remaining 35% are from what director Doris Green called "dysfunctional families, kids who are troubled, with all sorts of behavioral problems." Green said the program provides tutoring and recreation for inner-city children in drug-plagued areas and targets latchkey kids.

Green said the goal of the Nu-Way program is to "prevent kids from entering the criminal-justice system, which many seem headed for." She said the vice president's visit "helps our children's self-esteem. I hope he sees meaning and takes our message back. And I hope it translates into funds."

Begun in 1979, the program seeks primarily to intervene in families whose children are courting or being courted by gangs. It operates on an annual budget of

\$70,000, all of which comes from county and city sources. About a year ago, the program received a philanthropic donation of \$100,000.

Police say that many of the 35 gangs in the city, with more than 4,000 known members, come from the area visited by Quayle on Monday. In 1990 alone, police reported 52 drive-by shootings, many in the neighborhood of Doris Green's center. Twelve gang-related homicides occurred in the area in 1990.