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Jour 3100-1002

## Brandenburg v. Ohio (1969)

### Procedural History:

The trial ended with Brandenburg convicted under Ohio's Criminal state, fined 1,000 dollars, and sentenced up to 10 years in prison. The Court of Appeals affirmed the conviction, but the Supreme Court dismissed the appeal without opinion.

### Facts:

Brandenburg, a Ku Klux Klan leader, invited a reporter to a Klan party, in which he advocated for political change, derogatory statements, and possibly advocated for revenge. He was convicted by Ohio law for advocating violence and assembling with others for such advocacy.

### The Issue:

Possibly: The Ohio law that punishes individuals for advocating violence as a means of political change constitutional under the First Amendment?

### Rule:

The government cannot prohibit advocacy of force or law violation unless such advocacy is directed to inciting or producing imminent action.

### Reasons:

- Ohio statute punished mere advocacy, not limited to incitement of imminent lawless action (I believe that is what it is called).
- The First Amendment does not allow the state to criminalize abstract advocacy of violence or crime.

- Previously overruled case, *Whitney v California*, that allowed punishment based in advocacy alone.

Judgment: *Brandenburg* won and the Supreme Court reversed the conviction.

Concurring Opinions:

- Justice Black: Criticized the “clear and present danger” test.
- Justice Douglas emphasized that the First Amendment protects advocacy.