

Panel #5 Are Blanket Prohibitions on Cross Burnings Unconstitutional?

- 1) Explain the reasoning of Sandra Day O'Connor in *Virginia v. Black* (2003) where the Court held that it was unconstitutional to prohibit cross burning categorically under state law. Give an example of when it might not be considered to be an instance of "fighting words" to burn a cross in the front yard of an African American.
- 2) On what basis is it that Clarence Thomas argues that the act of burning a cross in a Black person's yard is inescapably a menacing act conveying the intent to intimidate? Why does Thomas refuse to admit the possibility of a town prankster going around burning crosses in people's yards just for fun?
- 3) What do you make of the majority opinion view that the act of burning a cross is not always intended to intimidate." On the contrary, the claim is made that cross burning may be a statement of beliefs on some abstract level or the act of burning a cross might function as a symbol of group identity. In both of these instances, the claim is made that there is no intent to intimidate. Do you agree? Explain.
- 4) In 1871 the Congress of the United States passed a law outlawing the Ku Klux Klan organization as a terrorist group. The use of force was authorized to suppress and disrupt the Klan's activities. The Klan Act was declared unconstitutional in 1882 but by then the Klan was largely dissolved. Compare this Act with the modern day Virginia statute banning all cross burnings---do you think they were both declared unconstitutional for exactly the same reasons and do you think that they both deserved to be judged unconstitutional?