

## The First Amendment and *Virginia v. Black*

### Overview

Students learn about the force and limits of the First Amendment's protection of free speech through a documentary about the landmark Supreme Court case *Virginia v. Black*. The students will investigate where the permitted use of a symbol may blur into a prohibited threat of violence by grappling with the meaning of a sign that is particularly charged with history: the burning cross. Students will also consider the duty of an attorney to an unpopular client by comparing and contrasting Black's attorney to other famous attorney/client pairs in history.

### Grades

10-11

### NC Essential Standards for Civics & Economics

- CE.C&G.1.4: Analyze the principles and ideals underlying American democracy in terms of how they promote freedom
- CE.C&G.2.3: Evaluate the U.S. Constitution as a "living Constitution" in terms of how the words in the Constitution and Bill of Rights have been interpreted and applied throughout their existence
- CE.C&G.2.7: Analyze contemporary issues and governmental responses at the local, state, and national levels in terms of how they promote the public interest and/or general welfare
- CE.C&G.3.4: Explain how individual rights are protected by varieties of law
- CE.C&G.3.8: Evaluate the rights of individuals in terms of how well those rights have been upheld by democratic government in the United States.
- CE.C&G.5.2: Analyze state and federal courts by outlining their jurisdictions and the adversarial nature of the judicial process.

### NC Essential Standards for American History II

- AH2.H.2.1: Analyze key political, economic, and social turning points since the end of Reconstruction in terms of causes and effects (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).
- AH2.H.2.2: Evaluate key turning points since the end of Reconstruction in terms of their lasting impact (e.g., conflicts, legislation, elections, innovations, leadership, movements, Supreme Court decisions, etc.).

### Essential Questions

- How has the Supreme Court changed its views to adjust to changing times?
- How do state and local governments impact the lives of individuals?
- How do societies resolve conflicts?
- What factors influence the way a judge rules in a case?
- How can an individual's choices affect the liberty and happiness of others?
- Does the First Amendment protect the use of symbols that may be interpreted as threats?
- Do certain principles deserve defending, even for those who would use them against the defenders?
- What duty does an attorney have to defend a client s/he may dislike or with whom s/he fundamentally disagrees?
- What is prima facie evidence?
- Can a state outlaw a symbol without violating free speech?
- Does the meaning of some symbols depend upon the setting in which they are used?
- At what point does the right to speak freely end, and the right to be protected from such speech begin?
- How is the American justice system shaped by history and the emotions associated with it?

## Materials

- Documentary of *Virginia v. Black* (Voices of American Law DVD, available at [www.voicesofamericalaw.org](http://www.voicesofamericalaw.org))
- Television and DVD player
- Virginia v. Black accompanying PowerPoint (for the warmup activity), available in the Database of K-12 Resources (in PDF format)
  - To view this PDF as a projectable presentation, save the file, click “View” in the top menu bar of the file, and select “Full Screen Mode”
  - To request an editable PPT version of this presentation, send a request to [CarolinaK12@unc.edu](mailto:CarolinaK12@unc.edu)
- Virginia v. Black Case Video Viewer’s Guide and Answer Key, attached
- Representing Unpopular Clients Exercise, attached
- David Baugh’s Party Narrative Viewer’s Guide and Answer Key, attached
- Virginia Code Exercise
- Tenth-Grade Writing Test Essay Prompt: Controversial Legal Representation, Letter to the Editor, attached
- Discussion/Advanced Writing Prompt: Virginia v. Black and Abortion Protest, attached

## Duration

1-1 1/2 block period

## Procedure

### Warm-Up: Human Continuum

1. Before class, choose a wall to create a continuum on. Facing the wall, hang a -5 on the far left, a 0 in the center, and a +5 on the far right. When class begins, project slide 2 of the accompanying PPT and inform the students that you are going to show them a series of pictures. Based on the picture, they will choose a place to stand on the continuum based on the feeling they have towards the picture. Go through the directions provided on slide 2:
  - If the picture arouses a very negative emotion, they will stand at the -5. They can stand in between -5 and 0 for lesser degrees of negative feelings.
  - If the symbol arouses no emotion, they will stand at the 0.
  - If the picture arouses a very positive emotion, they will stand at the +5. They can stand in between 0 and +5 for lesser degrees of positive feelings.
2. Project the visuals on slides 3-9 allow students time to physically respond to each. After each picture (listed below), allow students to share their reasoning for choosing where to stand on the continuum.
  - Stop sign
  - Restroom
  - American flag
  - Christmas tree
  - Swastika
  - Cross
  - Burning cross
3. After the students have taken seat, debrief the activity with the following questions:
  - In what ways do these symbols have multiple meanings?
  - Why did some symbols arouse positive feelings but other symbols arouse negative feelings?
  - What is the difference between the positive symbols and the negative symbols?
  - How much does history affect how we view some of these symbols?
  - Should citizens be allowed to display these symbols, even though some may be offensive? Why or why not?

## Reading the First Amendment

4. Write the First Amendment on the board. It reads (in pertinent part): “Congress shall make no law...abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Ask students:
- What do you make of the First Amendment? If you’ve never read the exact text before, does it differ from your previous conception of what the amendment was about?
  - Is there some speech you can think of that would not be permitted, despite the First Amendment? Examples include:
    - Threats
    - Blackmail
    - Bribery
    - Yelling “fire” in a crowded space
    - Sexual harassment
    - \*Be sure to explain to students, after they have discussed this topic, that threats are generally not protected by the First Amendment. Also point out that for these examples, society has decided that the right to free speech ends where another’s right begins.
  - Should symbols be considered speech? Why or why not? (After students have considered this idea, tell students that for purposes of the law, symbols are generally considered speech, and usually covered by the First Amendment.)
  - Should the offensive symbols discussed earlier be considered speech, and ought they be protected by the First Amendment? Why or why not?
  - What is your reaction specifically to the symbol of a burning cross? What do you understand its meaning to be?
  - Can you think of any other comparable symbols, or do you think it stands alone? Why or why not?

**Documentary: *Virginia v. Black***

5. Explain to students that they are about to watch a video about a case involving the First Amendment, free speech, and the use of a symbol that many find to be offensive and even indicative of a threat: the burning cross. Teachers should take a moment to remind students of classroom expectations. Let students know that because this DVD deals with such a controversial symbol, they are expected to be sensitive to the issues posed as well as one another’s opinions.

- **Teacher Reference: Synopsis of the Case**

Barry Black, a Pennsylvania Klansman, traveled to Carroll County, Virginia to lead a meeting of the Ku Klux Klan on a piece of land he rented from a Carroll County resident. Neighbors complained to the local police about the meeting as Klansmen gathered and gave speeches, and one African-American family stopped to inquire about the activities, then sped away. The sheriff’s department arrived but made no arrests until the group lit a 30-foot cross, at which point they took Mr. Black into custody for a violation of the Virginia Code 18.2-423, which makes it illegal to burn a cross on another’s property with the intent to intimidate. The law also takes the burning of a cross as prima facie evidence of an intent to intimidate. Mr. Black hired an African-American attorney to represent him, who argued both that there was no intent to intimidate and that the Virginia statute violated the First Amendment and was therefore unconstitutional. The trial court found Mr. Black guilty but only imposed a fine—not jail time. Mr. Black appealed, and the case was consolidated with another cross-burning case. The Virginia Supreme Court found the statute unconstitutional. Virginia appealed the case to the United States Supreme Court, which granted certiorari.

- **Viewing Options**

There are several ways you can choose to have the class view the documentary.

- You may choose to have the class watch the video with no pauses and have students work on the attached Viewer’s Guide while watching
- *Suggested Viewing:* You may choose to pause the video at the times outlined below and ask the class to discuss the questions listed. Students may complete the questions below in addition to or instead of the questions on the Viewer’s Guide.

- **Discussion Point #1:** (*Pause at 4:22*) Ask students how they would have felt to drive by a 30-foot burning cross in their town. Would they be outraged? Would they stop, as one family did, to inquire as to what was going on? Why or why not?
- **Discussion Point #2:** (*Pause at 8:11*) Ask students whether they are surprised that Mr. Black accepted his African-American lawyer. What do you think Mr. Black’s reasoning was?
- **Discussion Point #3:** (*Pause at 16:10*) Ask students which set of facts—those from the Carroll County case or those from Virginia Beach case—they find more offensive and why. Does the statute seem to “fit” one scenario better than the other—that is, does the statute seemed designed to protect against the actions taken in one case, both, or neither? Why?

### Human Continuum II

6. Inform the students that they are going to participate in another human continuum, similar to the one during the warm-up but with a slight difference. Project the instructions on slide 10 and explain that this time they will be read a statement, and that they are to choose where to stand based on how much they agree or disagree. Explain:
  - If you strongly disagree with the statement, stand at -5.
  - If you strongly agree, stand at +5.
  - If you neither agree nor disagree (neutral or no opinion), stand at the 0.
  - You can stand anywhere between -5 and +5 to show lesser degrees of agreement or disagreement.
  
7. Read the following statements. After students have chosen where to stand, teachers can let students elaborate on their feelings:
  - The first amendment should protect the right to free speech unconditionally.
  - Neither the federal government nor the state government can take away the right of free speech as long as it is not harming another citizen.
  - A symbol that represents someone’s beliefs, such as a cross, is a form of speech.
  - Burning the cross is an act of intimidation and should be illegal.
  - Burning the cross should be legal, as it is protected by the First Amendment.
  
8. **Optional Activity: Statutory Interpretation:** Divide students into groups of five students each, and pass out the handout Virginia Exercise: “The Cross Burning Statute.”
  - Ask students to work on Part 1 of the exercise, momentarily disregarding the single sentence on prima facie evidence. The instructions are on the handout itself—essentially students will be breaking down the statute into its component parts, illustrating those parts, and then recomposing the statute as a mathematical equation for the class.
  - Explain to students the meaning of “prima facie evidence.”
    - “Prima facie” is Latin for “on its first appearance.” Prima facie evidence means that some fact alone—without anything else—is taken to indicate that a matter is self-evident. It is on the plaintiff initially to offer evidence to make his case, but once prima facie evidence has been offered, there is a presumption in favor of the plaintiff, and the burden shifts to the defendant. In other words, it becomes the defendant’s turn to show that the presumption is invalid. In this instance, cross-burning is taken as prima facie evidence of the intent to intimidate. This doesn’t necessarily mean the element of the statute that requires an “intent to intimidate” disappears or is automatically proven by the simple act of cross-burning, but it does mean that the law presumes that cross-burning is itself evidence of an intent to intimidate, and it is up to the defendant to prove otherwise.
  - Ask students to proceed to Part 2 of the exercise explained on the handout.
  - Ask students:
    - Do you think cross-burning should be considered prima facie evidence of an intent to intimidate? Why or why not?

- Do you think cross-burning could be considered prima facie evidence of anything else? Some attorneys in the video equate the symbol with a direct threat. Does that seem correct? Why or why not?
- What do you think about prima facie evidence in general? Is it ever fair, just, or necessary to presume certain things from a given fact, or should a plaintiff be forced to prove everything from square one?

### **Representing Unpopular Clients Jigsaw**

9. After discussing the facts of the case and the students' initial views of freedom of expression, remind students of Mr. Baugh's discussion in the documentary about why he took Mr. Black's case. Then ask students:
  - Would you have volunteered to take Mr. Black's case as Mr. Baugh did?
  - Would your answer change if for some reason your boss assigned the case to you? What if you were appointed by the court?
  - In the documentary, Mr. Baugh compares the negative associations the public tends to make between a defendant and his attorney with the lack of associations the public tends to make between a patient and a doctor. Do you think this is a fair comparison? Why or why not?
  
10. Divide the class into up to six groups and assign each group the role of an attorney who took a controversial case in history. Pass out the parts of the "Representing Unpopular Clients" handout so that each group is assigned an attorney. Print the handouts on different colored paper to make the transition to the second group as smooth as possible.
  - Have students write down two important reasons why they imagine or know their attorney took the case (in some blurbs about these attorneys, some reasons may be given, but the students must also consider what other motivating factors there may have been).
  - Students should also write up two reasons that might have dissuaded him from taking the case. Each student must write down the reasons the group generates.
  
11. Ask the students to jigsaw, so that new groups are re-formed with one person representing each attorney in every group. Each group will have at least one person with each color of paper. Have the jigsaw students discuss the four reasons (two for taking the case, two against) that each attorney team generated previously. Jigsaw groups do not need to agree upon which reasons are most compelling.
  - Assign one member of each jigsaw group to act as "pollster." At the close of the jigsaw group's discussion, the pollster will ask each member of the group two questions:
    - Which attorney in history would you feel most comfortable being?
    - Which attorney in history would you feel least comfortable being?
    - The pollster should write these tallies down.
  - Reconvene as a class to discuss the results of the exercise and the poll. Ask students:
    - Which attorney did most of the class desire/desire to avoid being?
    - Why do you think the class felt this way?
    - What details about the defendants, attorneys, or the crimes committed made you think differently about the case or whether or not you would want to represent a given defendant?
    - Does your new knowledge of historically controversial cases change your feelings about Mr. Baugh's decision?
  
12. Select "Party Narrative," then "David Baugh." Pass out the worksheet David Baugh's Party Narrative Viewer's Guide. Review answers after the clip, with especially emphasis on #6 and #12. Encourage discussion with the following questions:
  - Do you agree with Baugh's justification for representing Black? Why or why not?
  - How is Baugh representing Black similar to the cases from the jigsaw? Which cases in particular?
  - How is Baugh representing Black different to the cases from the jigsaw? Which cases in particular?
  - How do you feel about the US Supreme Court's decision to overturn the Virginia statute?

- Do you think the writers of the Constitution meant to allow citizens to use symbols like swastikas and burning crosses freely? What do you think they were referring to in the First Amendment?

**Additional Activities**

- Assign the attached essay prompt, “Controversial Legal Representation, Letter to the Editor.”
- Discussion/Advanced Essay: Ask students to read The National Review article, “No Boy Scouts,” attached, then write an essay from the attached prompt. Even if students do not write the essay itself, the article can be read as an assignment and discussed using the bullet-points provided in the prompt.

Name: \_\_\_\_\_

### Virginia v. Black Viewer's Guide

1. To what group does Mr. Black belong?
2. Who reported the rally in which Mr. Black took part? What did Sheriff Manning plan to do initially? Why?
3. Who witnessed the rally? What was their reaction?
4. What does Mr. Black say was the purpose of burning the cross?
5. What did the cross-burning statute say?
6. If a cross is burned, what does the law assume was your intention?
7. What did Mr. Black argue, both in terms of the Constitution and the facts themselves?
8. Is there a First Amendment right to threaten a person?
9. What did the prosecution say was the meaning of the cross?
10. There was another case about a cross-burning that was consolidated with this one. In that case, some intoxicated persons lit a smaller cross in their neighbor's yard. What was the racial nature of the case?
11. What happened during the trial that at least one lawyer thought would affect people's perceptions of free speech?
12. What did the Virginia Supreme Court rule? What did Virginia do then?
13. What did William Hurd aim to get across at the Supreme Court level? How did he do that?
14. Which justice asked a question at oral argument that got everyone's attention?

## Virginia v. Black Viewer's Guide- ANSWER KEY

1. To what group does Mr. Black belong?  
*The Ku Klux Klan.*
2. Who reported the rally in which Mr. Black took part? What did Sheriff Manning plan to do initially? Why?  
*Neighbors; Nothing, as the KKK was not breaking any laws.*
3. Who witnessed the rally? What was their reaction?  
*At least one black family witnessed the rally, stopped to ask what was going on, and then sped away.*
4. What does Mr. Black say was the purpose of burning the cross?  
*To show new members of the Klan a cross-lighting. Black says the KKK lights the cross to show that Christ is alive and well in their hearts.*
5. What did the cross-burning statute say?  
*Illegal to burn a cross to intimidate someone.*
6. If a cross is burned, what does the law assume was your intention?  
*To intimidate.*
7. What did Mr. Black argue, both in terms of the Constitution and the facts themselves?  
*That the Virginia cross-burning statute was unconstitutional, in violation of the First Amendment. It punishes people simply for brandishing a symbol. He also argued that there was also no intent to intimidate.*
8. Is there a First Amendment right to threaten a person?  
*No.*
9. What did the prosecution say was the meaning of the cross?  
*To intimidate, threaten, and instill terror.*
10. There was another case about a cross-burning that was consolidated with this one. In that case, some intoxicated persons lit a smaller cross in their neighbor's yard. What was the racial nature of the case? *The neighbors were an interracial family.*
11. What did the Virginia Supreme Court rule? What did Virginia do then?  
*Overtured the convictions. Virginia petitioned with the US Supreme Court review.*
12. What did William Hurd aim to get across at the Supreme Court level? How did he do that?  
*Wanted to emphasize the towering nature of the burning cross, which he achieved by noting that the cross, like the columns in the Court, was 30-feet tall.*
13. Which justice asked a question at oral argument that got everyone's attention?  
*Justice Thomas.*



## Representing Unpopular Clients Jigsaw



### **Representing Unpopular Clients: Stephen Jones and Timothy McVeigh**

Timothy McVeigh engineered the 1995 Oklahoma City bombing that killed 168 people and was the most fatal act of terrorism within the US until the attacks of September 11, 2001. McVeigh was a decorated US army soldier and was raised a devout Catholic. The court appointed attorney Stephen Jones to handle McVeigh's case. Jones has gone on record as noting that the poor treatment of lawyers who agree to represent disliked clients has discouraged attorneys to accept such cases.



### **Representing Unpopular Clients: John Adams and the Soldiers of the Boston Massacre**

On October 1, 1768, British soldiers arrived in Boston to oversee order of the town and enforce the heavy taxes imposed by the Townshend Acts. After two years of confrontations between the two groups that included name-calling, spitting, and fighting, tensions culminated in a deadly skirmish. On March 5, 1770, British soldiers and townspeople came eye to eye at the Customs House of Boston. History reports that the captain ordered his men not to fire, but that in the commotion they likely did not hear him. The soldiers fired, killing five colonists. John Adams, known as a patriot, successfully defended the British—a captain and eight soldiers—from execution. There is no documentation to this day as to why John Adams chose to represent them.



### **Representing Unpopular Clients: Craig Cooley and John Lee Malvo**

Cooley was one of the attorneys to represent Malvo, the younger of the two persons who terrorized the country, ultimately gaining the nickname "The DC Sniper" for their attacks in the nation's capitol area. Malvo was about 19 when he began committing murders with John Allen Muhammad, the other defendant. Malvo's mother befriended Muhammad in Antigua, and left her son with Muhammad when she illegally immigrated to Florida, expecting her son to arrive shortly thereafter. Instead, the pair allegedly engaged in a murderous rampage, killing ten people in an attempt to extort \$10 million from the US government. Cooley and the rest of Malvo's defense team claimed Malvo was not guilty by reason of insanity, specifically the "insanity-by-indoctrination defense," citing Muhammad as the true instigator.



**Representing Unpopular Clients:  
Irving Kanarek and Charles Manson**

Charles Manson is one of the world's most infamous serial killers still alive today. He was the leader of a California cult (known as the "Manson Family") that murdered at least seven people, claiming to have been inspired to commit the carnage by a Beatles' song. The most notorious of his crimes was his followers' brutal murder of Sharon Tate, an actress who was eight and a half months pregnant at the time. Kanarek was known as a particularly vociferous attorney, and is said to have used disruptive, obstructionist courtroom tactics (such as objecting to a witness stating his own name). While he had objected more than 200 times by the third day of the Manson trial, his energy is also credited with keeping important evidence out of trial.

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**Representing Unpopular Clients:  
Atticus Finch and Tom Robinson**

The fictional character of attorney Atticus Finch, of Harper Lee's novel *To Kill a Mockingbird*, is renowned for his defense of Tom Robinson. Finch took on the case of Robinson, a black man accused of raping a white woman in 1930s Alabama, at no pay, risking his reputation and his own safety. While Atticus's famous cross-examination revealed that the alleged crime had likely not even occurred, the fictional jury spent hours deliberating, only to deliver a verdict of guilty.

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**Representing Unpopular Clients:  
Edward Bennett Williams and Joe McCarthy**

Senator Joseph McCarthy of Wisconsin's infamous allegations in the 1950s that various State Department officials held communist and anti-American sympathies gave rise to a Cold-War paranoia and the Army-McCarthy hearings, designed to route out any such persons. As a result of the accusations, many were blacklisted, lost their jobs, and/or were imprisoned. Ultimately, however, McCarthy failed to substantiate his claims, and was censured by the Senate by a vote of 67 to 22, and many verdicts were subsequently overturned. Once asked why he defended him, Williams simply replied, "Everyone has the right to a lawyer." Williams started his own prominent DC law firm and owned the Orioles from 1980-88.

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Name: \_\_\_\_\_

### David Baugh's Party Narrative Viewer's Guide

1. What was Mr. Baugh's experience in college that made him realize the importance of a good lawyer?
2. Mr. Baugh works for which organization?
3. What was Mr. Baugh's first reaction to reading the Cross Burning Statute?
4. How did Mr. Baugh justify defending a Klansman?
5. How did Mr. Black feel about the fact that his lawyer was an African American?
6. What comparison does Mr. Baugh make about the associations people often make between attorneys and their clients?
7. What did Mr. Baugh say to his client when Mr. Black told him his strategy would be to try to come off as a nice person?
8. What are the three approaches to defenses in a criminal case?
9. According to Mr. Baugh, in America, you have the right to say what you want to say. What is the tradeoff for this right?
10. What did Mr. Baugh decide to do with potential jurors who said they could not be impartial?
11. How did Mr. Baugh feel about Justice Thomas's note that cross-burning was historically a symbol of terror? Why?
12. What was the Supreme Court's finding?

## David Baugh's Party Narrative Viewer's Guide- ANSWER KEY

1. What was Mr. Baugh's experience in college that made him realize the importance of a good lawyer?  
*Mr. Baugh was expelled for protesting the integrating of his historically all-black college with white students.*
2. Mr. Baugh works for which organization?  
*The ACLU (American Civil Liberties Union).*
3. What was Mr. Baugh's first reaction to reading the Cross Burning Statute?  
*He questioned whether the statute was constitutional.*
4. How did Mr. Baugh justify defending a Klansman?  
*The Constitution stands for a set of principles, and must be defended for all people and viewpoints if it is to be protected for anyone.*
5. How did Mr. Black feel about the fact that his lawyer was an African American?  
*He accepted the representation.*
6. What comparison does Mr. Baugh make about the associations people often make between attorneys and their clients?  
*Doctors are not associated with their clients but lawyers are.*
7. What did Mr. Baugh say to his client when Mr. Black told him his strategy would be to try to come off as a nice person?  
*"You have a right to be a bigot."*
8. What are the three approaches to defenses in a criminal case?  
*The acts did not occur; the acts occurred but there is an explanation; or attacking the statute.*
9. According to Mr. Baugh, in America, you have the right to say what you want to say. What is the tradeoff for this right?  
*Americans must listen to much that they don't want to hear.*
10. What did Mr. Baugh decide to do with potential jurors who said they could not be impartial?  
*Dismissed them.*
11. How did Mr. Baugh feel about Justice Thomas's note that cross-burning was historically a symbol of terror? Why?  
*He was disappointed in the direction Justice Thomas took the discussion because he comments were not grounded in a legal argument. He believes Justice Thomas effectively became an advocate.*
12. What was the Supreme Court's finding?  
*The Supreme Court ruled in Mr. Black's favor and his conviction was overturned.*

**Virginia Code Exercise**  
**“The Cross-Burning Statute”**

“It shall be unlawful for any person or persons, with the intent of intimidating any person or group of persons, to burn, or cause to be burned, a cross on the property of another, a highway or other public place. Any person who shall violate any provision of this section shall be guilty of a Class 6 felony.

Any such burning of a cross shall be prima facie evidence of an intent to intimidate a person or group of persons.”

**Part 1**

In your groups, analyze the statute above. Each of the five people in your group is responsible for illustrating one element of the statutory provisions. When you are finished, your final product will be a “statutory equation.” You will be able to plug in your sketches to the equation by taping them in the spaces on the board, which looks like this.

\_\_\_\_\_ + \_\_\_\_\_ + \_\_\_\_\_ + \_\_\_\_\_ = \_\_\_\_\_  
(What)            (How)            (Where)            (Who)            (What)

- What is the action the law prohibits?
- How must that action be done, or with what frame of mind?
- Where is it prohibited?
- Who is not allowed to do this action?
- What is the person who violates this statute guilty of?

**Part 2**

Now that we’ve discussed what “prima facie” evidence means, how might your equation look different? Can you think of a way to express the statute in this way, given the meaning of that term? There is no clearly right answer here, so feel free to be creative and/or use other methods of diagramming the statute that may help you visualize the concept.

## Virginia Code Exercise- ANSWER KEY

**Part 1:** Students should create pictures representing:

- What is the action the law prohibits? *Cross burning*
- How must that action be done, or with what frame of mind? *With the intent to intimidate*
- Where is it prohibited? *On someone else's property*
- Who is not allowed to do this action? *Any one person or a group of people*
- What is the person who violates this statute guilty of? *A Class 6 Felony (you may choose to tell students this comes with possible jail time and/or a fine, since otherwise this element could be difficult to draw)*

The sketches should be arranged on the board (or other place easily viewable by the class) so that the first four sketches fall between the plus signs, with the result (a Class 6 Felony) on the other side of the equals sign.

**Part 2:** Students should feel free to get creative in attempting to mathematically express the concept of prima facie evidence. Simply leaving out or subtracting “attempt to intimidate” is technically incorrect, since it’s not as if that component is not required at all. Here are some potential ways to express the idea:

Cross-burning + intent to intimidate + another’s property + person or group = felony

Cross-burning + another’s property + person or group = felony  
Where Cross-burning ( $\approx$  intent to intimidate)

(Cross-burning  $\times$  2) + another’s property + person or group = felony

Prima Facie Evidence

**Tenth-Grade Writing Test Essay:  
Controversial Legal Representation, Letter to the Editor**

Write a persuasive letter to the editor of your town's newspaper, praising or condemning Attorney David Baugh's decision to represent Klansman Barry Black. In order to support your argument, compare and/or contrast Mr. Baugh's decision with the decision of one other attorney we discussed in class who also decided to represent an unpopular client. Remember as you write to:

- Write in an organized fashion.
- Remember the audience for which you are writing.
- Effectively address counterarguments as well as the points that support your view.
- Compare Baugh with another attorney in ways that support your argument.
- Edit your writing for grammar and language usage.

### Essay: Virginia v. Black and Abortion Protest

Read the following article by Linda Greenhouse of The New York Times. Given your knowledge of the case *Virginia v. Black*, write an essay comparing and contrasting the perspectives on the First Amendment offered by the abortion-protest case and the Black case. As you write, consider the similarities and differences between the following:

- Abortion-protestors' mission and the KKK's mission
- The psychological effects of the presence of both groups
- The legality of Florida's buffer zones and Virginia's cross-burning statute, and the reasoning provided for the (un)constitutionality of both laws
- The status of abortion seeking women and blacks both currently and historically, and how that might play into the First Amendment analysis
- Bonus: Given how the Supreme Court ruled in *Virginia v. Black*, make a prediction as to how you believe this case would turn out were it ruled on by the same court. Be sure to provide your reasoning.



## Justices to Review Order Curbing Abortion Protest

By LINDA GREENHOUSE,

Published: January 22, 1994

The Supreme Court agreed today to decide whether judicial orders that keep anti-abortion protesters away from abortion clinics violate the demonstrators' constitutional right to free speech.

The case is a First Amendment challenge to a broadly worded injunction that a Florida state judge issued in April to curb frequent protests at the Aware Woman Center for Choice in Melbourne.

The Justices decided to hear the case, brought by three anti-abortion protesters, as thousands of abortion opponents marched through Washington and demonstrated peacefully in front of the Court to mark the 21st anniversary of *Roe v. Wade*.

The timing of today's order was no doubt a coincidence based on when the case was ready for the Justices' weekly review of new appeals. But the coincidence underscored that the controversy over abortion continues to raise important legal questions, although the Court itself has reaffirmed the 1973 landmark decision and shown no recent interest in revisiting the basic question of the right to abortion. This case will be argued in April.

The Florida judge, Robert B. McGregor of the state Circuit Court in Sanford, issued his injunction to protect the clinic and its patients from large demonstrations that Operation Rescue and other anti-abortion groups and individuals were holding several times a week. Up to 400 people at a time were gathering in front of the clinic, using bullhorns to communicate their message, approaching patients as they drove into the parking lot and following doctors and workers to their homes.

Judge McGregor's order created a 36-foot buffer around the clinic's property, a zone that included public sidewalks, in which "congregating, picketing, patrolling or demonstrating" were barred at all times.

In addition, the order prohibited demonstrators from approaching any patient within 300 feet of the clinic unless the patient herself invited conversation. The order also imposed a 300-foot protected zone around the homes of clinic staff members. *Parallel Federal Case*

The Florida Supreme Court upheld the order in October in a unanimous ruling that found the injunction justified by the state's interest in insuring public safety and protecting the right of women to obtain safe abortions.

Noting that the demonstrators' aim was to close down all abortion clinics in the state, the Florida Supreme Court said the protests had "placed in jeopardy the health, safety and rights of Florida women." The court also said, "The First Amendment must yield when protected speech substantially interferes with the normal functioning of a public or private place."

But 11 days earlier, the United States Court of Appeals for the 11th Circuit, which sits in Atlanta and has jurisdiction over Federal cases in Florida, declared the same injunction unconstitutional in a parallel case that had made its way through the Federal rather than state courts.

The conflicting rulings made it likely that the Justices would hear the case. When three anti-abortion protesters appealed from the Florida Supreme Court's ruling, the clinic's lawyers urged the United States Supreme Court to hear the case and resolve the constitutional issue.

Two appeals from the Florida Supreme Court's ruling reached the Court simultaneously. The case the Court agreed to hear, *Madsen v. Women's Health Center*, No. 93-880, was brought by Judy Madsen, Ed Martin and Shirley Hobbs, who are arguing that the injunction interferes with their First Amendment rights.

"The scope and importance of the ruling in this case is enormous, reaching far beyond the state of Florida," they told the Court in their brief. They said the Florida Supreme Court's ruling upholding the injunction would "create a precedent which allows other states to impose broad restrictions on the peaceful expression of speech within a traditional public forum."

The Court did not act on a separate appeal filed by Operation Rescue.

Courts around the country have issued conflicting rulings on the First Amendment implications of orders to protect abortion clinics. Clinics have turned increasingly to state courts as avenues of protection under Federal law have been closed by court rulings.

Last year, the Supreme Court ruled that the Ku Klux Klan Act, a Reconstruction-era civil rights law that a number of Federal judges had invoked on behalf of abortion clinics, did not give Federal courts jurisdiction to stop the protests. The Supreme Court is currently considering, in a case argued last month, whether clinics can sue protesters under the Federal racketeering law.