Why mitchell v wisconsin sucke

On June 11, 1993, the United State Supreme Court upheld Wisconsins penalty enhancement law, which imposes harsher sentences on criminals who intentionally select the person against whom the crime…is committed.. because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person. Chief Justice Rehnquist deliverd the opinion of the unanimous Court. This paper argues against the decision, and will attempt to prove the unconstitutionality of such penalty enhancement laws. On the evening of October 7, 1989, Mitchell and a group of young black men attacked and severely beat a lone white boy. The group had just finished watching the film Mississippi Burning, in which a young black boy was, while praying, beaten by a white man. After the film, the group moved outside and Mitchell asked if they felt hyped up to move on some white people. When the white boy approached Mitchell said, You all want to fuck somebody up? There goes a white boy, Go get him. The boy was left unconscious, and remained in a coma for four days. Mitchell was convicted of aggravated battery, which carries a two year maximum sentence. The Wisconsin jury, however, found that because Mitchell selected his victim based on race, the penalty enhancement law allowed Mitchell to be sentenced to up to seven years. The jury sentenced Mitchell to four years, twice the maximum for the crime he committed without the penalty enhancement law.

The U. S. Supreme Courts ruling was faulty, and defied a number of precedents. The Wisconsin law is unconstitutional, and is essentially unenforceable. This paper primarily focuses on the constitutional arguments against Chief Justice Rehnquists decision and the statute itself, but will also consider the practical implications of the Wisconsin law, as well as a similar

law passed under the new federal crime bill (Cacas, 32). The Wisconsin law and the new federal law are based on a model created by the Anti-Defemation League in response to a rising tide of hate-related violent crimes (Cacas, 33). Figures released by the Federal Bureau of Investigation show that 7, 684 hate crimes motivated by race, religion, ethnicity, and sexual orientation were reported in 1993, up from 6, 623 the previous year. Of those crimes in 1993, 62 percent were racially motivated (Cacas, 32). Certainly, this is a problem the nation must address. Unfortunately, the Supreme Court of the United States and both the Wisconsin and federal governments have chosen to address this problem in a way that is grossly unconstitutional. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the government for a redress of grievances. The most obvious arguments against the Mitchell decision are those dealing with the First Amendment. In fact, the Wisconsin Supreme Court ruled that the state statute was unconstitutional in their decision, which the U. S. Supreme Court overruled. The Wisconsim Supreme Court argued that the Wisconsin penalty enhancement statute, violates the First Amendment directly by punishing what the legislature has deemed offensive thought. The Wisconsin Court also rejected the states argument that the statute punishes only the conduct of intentional selection of a victim. The Courts contention was that the statute punishes the because of aspect of the defendants selection, the reason the defendant selected the victim, the motive behind the selection. The law is in fact a direct violation of the First Amendment, according to the Wisconsin

Supreme Court, which said the Wisconsin legislature cannot criminalize bigoted thought with which it disagrees.

If there is a bedrock principal underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. The Supreme Court was heard to utter such noble phrases as recently as 1989, in Texas v. Johnson. Unfortunately these idealistic principles seem to have been abandoned during Wisconsin v. Mitchell.

Clearly, Mitchells act of assaulting another human is a punishable crime, and no one could logiacally argue that the First Amendment protects this clearly criminal action. However, the states power to punish the action does not remove the constitutional barrier to punishing the criminals thoughts (Cacas, 337). The First Amendment has generally been interpreted to protect the thoughts, as well as the speech, of an individual (Cacas, 338). According to the Courts majority opinion in Wooley v. Maynard, a 1977 case, At the heart of the First Amendment is the notion that an individual should be free to believe as he will, and that in a free society ones beliefs should be shaped by his mind and his conscience rather than coerced by the state.

Another componet of Mitchells First Amendment argument against the penalty enhancement law, was that the statute was overbroad, and might have a chilling effect on free speech. Mitchell contended that with such a penalty enhancement law, many citizens would be hesitant to experess their unpopular opinions, for fear that those opinions would be used against them in the future. In Abrams v. United States, Justice Holmes, in his dissent,

argued that laws which limit or chill thought and expression detract from the goal of insuring the availability of the broadest possible range of ideas and expression in the marketplace of ideas. Chief Justice Rehnquist, however, rejects the notion that the Wisconsin statute could have a chilling effect on speech. We must conjure up a vision of a Wisconsin citizen suppressing his unpopular bigoted opinions for fear that if he later commits an offense covered by the statute, these opinions will be offered at trial to establish that he selected his victim on account of the victims protected status, thus qualifying him for penalty enhancement... This is too speculative a hypothesis to support Mitchells overbreadth claim. However, a legitimate argument certainly exists that the logical next step would be to examine the conversations, correspondence, and other expressions of the accused person to determine whether a hate motive prompted the crime, if a criminals sentence is being considered for penalty enhancement (Feingold, 16). How can Rehnquist argue that this will not cause a chilling effect? Rehnquist denies this chilling effect exists under penalty enhancement laws such as Wisconsins, but one must consider how Rehnquist would rule if the penalty enhancement did not cover something, such as racism, that he finds personally repugnant. The recent attempt at political correctness differs only slightly from the Red Scare of the 1950s. The anti-communists claimed and the politically correct ideologists claim to have good intentions (The Road to Hell...). Unfortunately, these two groups infringed upon the rights of the minority in their quest to mold the htoughts of others into ideas similar to their own.

How would Rehnquist rule if the statute called for enhanced penalties for persons convicted of crimes while expressing Communist ideas? Or what if the criminal was Mormon, and the majority found those religious views morally repugnant? Could Rehnquist also justify suppressing the religious freedoms found in the First Amendment, as well as its free speech clause, if they were found to be as reprehensible as racism by the general public? The United States Supreme Court is granting selective protection of First Amendment rights, in Mitchell v. Wisoconsin, and is yielding to political pressure to suppress bigoted views.

Mitchells second constitutional argument is that the statute violates the Foruteenth Amendment as well as the First. The Foruteenth Amendment contains the equal protection clause, which states that no state shall deny to any person within its jurisdiction the equal protection of the laws. The Wisconsin statute punishes offenders more seriously because of the views they express, and punishes more leniently those whose motives are of an acceptable nature (Gellman, 379). This seems to be a clear violation of the Fourteenth Amendment, but again, Rehnquist (and the entire Supreme Court), sees things quite diiferently.

Rehnquist argues that, The First Amendment… does not prohibit the evidentiary use of speech to establish the elements of a crime and to prove motive or intent. Motive, however, is used to establish guilt or innocence, and is not in itself a crime. Undeniably, however, those that express bigoted views are punished more severely than those who do not. Rehnquist, however, never specifically mentions the Fourteenth Amendmeent because they were not developed by Mitchell and fell outside of the question on

which the Court granted certiorari. Rehnquist also argues that Traditionally, sentencing judges have considered a wide variety of factors in addition to evidence bearing on guilt in determining what sentences to impose on a convicted defendant... The defendants motive for committing the offense is one important factor. This is a compelling argument, but I would argue this practice is itself of questionable constitutionality, in that it allows the sentencing judge to exercise excessive discretionary judgement based on his view as to what constitutes acceptable and unacceptable motives. However, even if this practice is held to be constitutional, surpassing the existing maximum penalty with an additional statute that specifically lists bigotry as an unacceptable motive, certainly qualifies as being the same as imposing an additional penalty for unpopular beliefs. To illuatrate the dangers inherent in laws such as Wisconsins penalty enhancement statute, we need only examine Texas v. Johnson, a 1989 Supreme Court case. The states flag desecration statute was ruled unconstitutional by the Court. However, using Rehnquists logic in Mitchell, the state of Texas could have easily achieved their goal by prohibiting public burning, a legitimate exercise of their police power, and enhancing the penalty for those convicted of violating the statute if they did so in in opposition to the government (Gellman, 380). Therefore, penalty enhancement laws such as Wisconsins give the government too much power to excessively punish what it deems unacceptable. Clearly, when the legislature enacts penalty enhancement laws with the intent of suppressing unpopular ideas, the state violates both the First and the Fouteenth Amendments. The state interferes with an individuals right to free speech by suppressing ideas not supported by the government, and fails to provide equal protection to all its citizens when it punishes an act more

severely when committed by an individual whose opinions are not shared by the state. Mitchell v. Wisconsin is a clear example of majority will infringing upon minority rights, and proves that the BIll of Rights works well, except in the instances when it is most needed.

There are probably more Supreme Court cases that favor Wisconsins position than there are that support Mitchells argument. However, many of these rulings are of questionable constitutionality themselves. Two cases arguably support Rehnquists position, but the Supreme Court has traditionally ignored the first of rulings, and the second has been misinterpreted.

In Chaplinsky v. New Hampshire, Justice Murphy wrote what has become known as the fighting words doctrine. Chaplinsky was a Jehovas Witness in a predominantly Catholic town. He distributed leaflets to a hostile crowd, and was refused protection by the towns marshall. Chaplinsky then referred to the marshall as a god damn racketeer and a damn fascist, for which he was convicted of breaching the peace. Justice Murphys opinion argued that certain speech, including that which is lewd, obscene, profane, or insulting, is not covered by the First Amendment.

According to Murphy, There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or fighting words- those which by their very utterance inflict injury or tend to incite an immediate breach of the peace.

Under Chaplinky, bigoted remarks would probably qualify as fighting words. However, the courts have generally been reluctant to uphold the fightingwords doctrine, and the Supreme Court has never done so (Gellman 369, 370). Even if todays Court were to consider Chaplinsky valid, Mitchells comments, though racial in nature, would be difficult to classify as bigoted. In fact, Constitutional considerations aside, the biggest problem with penalty enhancement laws such as Wisconsins, is classifying and prosecuting an incident as hate-motivated (Cacas, 33). At what point can we be certain the victim was selected based on race, religion, or sexual orientation? Another more pressing problem is police unwillingness to investigate a crime as hate-motivated (Cacas, 33). Certainly, the difficulting in determining whether a crime is hate-motivated is one of the reasons police are hesitant to pursue crimes as hate-motivated, and illustrates yet another reason why such statutes should not exist. Consider the following FBI guidelines to help determine whether a crime is hate-motivated (Cacas, 33): 1. a substantial portion of the community where the crime occurred perceives that the incident was bias-motivated; 2. the suspect was previously involved in a hate crime; and3. the incident coincided with a holiday relating to, or a date of particular significance to, a racial, religious, or ethnic/national origin group These guidelines certainly fail to offer any exact or definitive system with which to classify crimes as hate-motivated.

Another case which is cometimes cited as a precedent to support rulings such as Wisconsin v. Mitchell, is U. S. v. OBrien. OBrien had burnt his draft card to protest the draft and the Vietnam War, despite a law specifically forbidding the burning of draft cards. The Supreme Court ruled that the

statute did not differentiate between public and private draft card burnings, and was therefore not a government attempt to regulate symbolic speech, but a constitutionality legitimate police power. The Court ruled that there is no absolutist protection for symbolic speech. Under OBrien, the government may regulate conduct which incidentally infringes upon First Amendment rights, as long as the government interest is unrelated to the suppression of belief or expression. However, when states enact laws such as the Wisconsin statute, the state is not regulating conduct despite its expressive elements, but is penalizing conduct because of its expressive elements (Gellman, 376). Therefore, a more accurate interpretation of OBrien, would be that it actually supports an argument against the Courts ruling in WIsconsin, and is not a precedent to support Rehnquists decision.

Possibly more important, and certainly more recent, is the precedent established in R. A. V. v. St. Paul, a 1992 case. This case involved a juvenille who was convicted under the St. Paul Bias-Motivated Crime Ordinance for burning a cross in the yard of a black family that lived across the street from the petitioner. Justice Scalia delivered the opinion of a unanimous Court, but the Court was divided in its opinions for overturning the St. Paul statute. Scalia argued that the city ordinance was overbroad, because it punished nearly all controversial characterizations likely to arouse resentment among defined protected groups, and under-inclusive, because the government must not selectively penalize fighting words directed at some groups while not prosecuting those addressed to others, which is where the problem lies in the logic of the Mitchell decision. Though Rehnquist argued that Wisconsin v. Mitchell did not overturn R. A. V. v. St. Paul, If a hate speech law that

enumerated some categories is invalid because, in Justice Antonin Scalias opinion in St. Paul, government may not regulate use based on hostility- or favoritism- toward the underlying message involved, how can a hate crime law be upheld that increases the penalty for crimes motivated by some hates but not those motivated by other hates? In other words, if the St. Paul statute is determined to be under-inclusive, how can we include every conceivable hate within the context of any statute.

To be consistent, legislatures must now include other categories, including sex, physical characteristics, age, party affiliation, anti-Americanism or position on abortion.(Feingeld, 16)More interesting (and Constitutional) than the majority opinion in R. A. V. v. St. Paul, is the concurring opinion written by Justice White, with whom Justice Blackmun and Justice OConnor join. White writes, Although the ordinance as construed reaches egories of speech that are constitutionally unprotected, it also criminalizes a substantial amount of expression that- however repugnant- is shielded by the First Admendment… Our fighting words cases have made clear, however, that such generalized reactions are not sufficient to strip expression of its constitutional protection. The mere fact that expressive activity causes hurt feelings, offense, or resentment does not render the expression unprotected… The ordinance is therefore fatally overbroad and invalid on its face…

Rehnquist argues that whereas the ordinance struck down in R. A. V. was explicitly directed at expression, the statute in this case is aimed at conduct unprotected by the First Amendment. Nevertheless, had Mitchell not stated, There goes a white boy; go get him, his sentence would not have been

enhanced, he would have instead received the maximum sentence of two years in jail for his crime, instead of four. Therefore, the Wisconsin statute does not only punish conduct, as Justice Rehnquist suggests, but speech as well.

The Wisconsin v. Mitchell decision cannot simply be viewed as one that does harm to racists and homophobics. There are much broader costs to society than the quieted opinions of an ignorant few. First, laws which chill thought or limit expression detract from the goal of insuring the availability of the broadest possible range of ideas and expressions in the marketplace of ideas. Second, the Mitchell ruling not only affects eveyones free speech rights with a general constriction of the interpretation of the First Amendment, but the ruling makes way for further constrictions. Third, penalty enhancement laws place the legislature in the position of judging and determining the quality of ideas, and assumes that the government has the capacity to make such judgements. Fourth, without the expression of opinions generally deemd unacceptable by society, society tends to forget why those opinions were deemed unacceptable in the first place. (More specifically, nothing makes a skinhead seem more stupid than allowing him to voice his opinion under the scrutiny of a national television audience.) Finally, when society allows the free expression of all ideas, regardless of its disdain for those ideas, it is a sign of strength. So when a society uses all its power to suppress ideas, it is certainly a sign of that societys weakness (Gellman, (381-385).

The United States Supreme Courts unanimous decision in Wisconsin v. Mitchell is incorrect for a number of reasons. Constitutionally, the decision

fails to comply with the freedom of speech guaranteed in the First Amendment, and the guarantee to all citizens of equal protection under the laws, listed in the Fourteenth Amendment. The decision also arguably overturns R. A. V. v. St. Paul, and suggests that the Court may be leaning towards a new fighting words doctrine, where unpopular speech equals unprotected speech. The decision also damages societ as a whole in ways that are simply immeasureable in their size, such as those listed in the preceding paragraph. Wisconsin v. Mitchell is a terribly flawed Supreme Court decision, which one can only hope will be overturned in the very near future.

The freedom to differ is not limited to things that do not matter much. That would be a mere sahdow of a freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order.

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion… -Justice Jackson in W. V. Board of Education. v. BarnetteBibliography Cacas, Samuel. Hate Crime Sentences Can Now Be Enhanced Under A New Federal Law. Human Rights 22 (1995): 32-33 Feingold, Stanley. Hate Crime Legislation Muzzles Free Speech. The National Law Journal 15 (July 1, 1993): 6, 16 Gellman, Susan. Sticks And Stones. UCLA Law Review 39 (December, 1991): 333-396 Chaplinsky v. New Hampshire R. A. V. v. St. Paul Texas v. Johnson U. S. v. OBrien Wisconsin v. Mitchell Wooley v. Maynard W. V. State Board of Education v. Barnette