

FIRST AMENDMENT: PROTESTS AND FLASH MOBS

This activity applies the Supreme Court case *Snyder v. Phelps*, 131 S. Ct. 1207 (2011) to a fictional scenario.

In *Snyder v. Phelps* the Supreme Court of the United States was asked to decide if the signs and words of protesters picketing Matthew Snyder's funeral were related to matters of public concern and, therefore, should be entitled to greater First Amendment protection.

About These Resources

- Analyze the [facts and case summary](#) for *Snyder v. Phelps*.
- Apply *Snyder v. Phelps* to a [fictional teen scenario](#).
- Build arguments for both sides, starting with these talking points [talking points](#).

How to Use These Resources

This activity is a modified [Oxford style debate](#).

1. To get started, have participants read the *Snyder v. Phelps* [facts and case summary](#) and the [fictional teen scenario](#).
2. Assign student attorneys to the issues listed in the [talking points](#). They are suggested points– not a script– for the debate. Student attorneys are encouraged to add their own arguments.
3. All other students are jurors who deliberate (and may refer to these talking points) during the open floor debate. They debate among themselves in the large group or smaller groups and come to a verdict after the attorneys present closing arguments.

FACTS AND CASE SUMMARY: SNYDER V. PHELPS

Facts and case summary for *Snyder v. Phelps* 131 S. Ct. 1207 (2011)

FACTS

Fred Phelps and his followers at the Westboro Baptist Church believe that God punishes the United States for its tolerance of homosexuality, particularly within the military. To demonstrate their beliefs, Phelps and his followers often picket at military funerals.

Albert Snyder's son, Lance Corporal Matthew Snyder, was killed in the line of duty in Iraq in 2006. Westboro picketed Matthew Snyder's funeral displaying signs that stated, for instance, "God Hates the USA/Thank God for 9/11," "Thank God for Dead Soldiers," and "Don't Pray for the USA." The church notified local authorities in advance that they intended to picket the funeral, staged the picket on public land adjacent to a public street, and complied with all police instructions. Church members also sang hymns and recited Bible verses.

Although Albert Snyder could see the tops of the picket signs on the day of the funeral, he could not read what was written on them and it was not until he saw a news story about the funeral and the picketing that he became aware of the church's message. Snyder sued Phelps and the church claiming, among other things, that their actions caused him severe emotional distress. In defense, Phelps argued that his speech (the picketing and the signs) was protected under the Free Speech Clause of the First Amendment to the Constitution.

PROCEDURAL HISTORY

A jury in the United States District Court for the District of Maryland agreed with Snyder and awarded him a total of \$10.9 million (which the judge lowered to \$5 million). The Fourth Circuit Court of Appeals reversed the judgment, holding that Phelps' speech was protected by the First Amendment.

ISSUES

Whether Westboro's signs and comments while picketing Matthew Snyder's funeral related to matters of public concern and were, thus, entitled to greater protection under the Free Speech Clause of the First Amendment?

SUPREME COURT HOLDING

Yes. The Supreme Court's holding turned largely on its determination that the church was speaking on "matters of public concern" as opposed to "matters of purely private significance." The Court explained that "[s]peech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community' or when it 'is a subject of general interest and of value and concern to the public.'" Speech on public issues is entitled to special protection under the First Amendment because it serves the "the principle that debate on public issues should be uninhibited, robust, and wide-open." To determine whether the speech dealt with matters of public concern, the Court examined the "content, form, and context" of the speech. The court noted that none of these factors determines the outcome of the case and that a court must evaluate all the circumstances of the speech, "including what was said, where it was said, and how it was said."

Even though some of the picket signs arguably targeted only the Snyder family, most of them addressed issues regarding the moral conduct of the U.S., the fate of the U.S., and homosexuality in the military. As such, the "overall thrust and dominant theme" of the speech related to broader public issues. Furthermore, the church was picketing on public land adjacent to a public street. Finally, there was no pre-existing relationship between Westboro's speech and Snyder that might suggest that the speech on public matters was intended to mask an attack on Snyder over a private matter. Therefore, the Court held that the Phelps and his followers were "speaking" on matters of public concern on public property and thus, were entitled to protection under the First Amendment.

Argued: October 6, 2010

Decided: March 2, 2011

Vote: 8-1

Majority opinion written by Chief Justice Roberts and joined by Justices Scalia, Kennedy, Thomas, Ginsburg, Breyer, Sotomayor, and Kagan.

Concurring opinion written by Justice Breyer.

Dissenting opinion written by Justice Alito.

FICTIONAL SCENARIO

Snyder v. Phelps Applied to Student Loan Flash Mobs

The *Our Fair Share* (OFS) movement is a national initiative that has come to prominence due to a wave of high-profile demonstrations, primarily by college students and recent graduates. The movement, inspired by other grassroots protests, seeks to raise awareness of two issues: the enormous financial burden that student loans put on students, and the lack of employment opportunities for recent college graduates.

John Smith is a recent honors graduate with a degree in philosophy. However, he has been unable to find a job in the 18 months since graduation. Smith did not pay rent for six months and was evicted from his apartment in New York City. As a result, he moved home to New Jersey to live with his parents. Smith was inspired by the OFS movement and became involved in many of the protests. Having leadership experience in student government and sports, Smith immediately took a vocal role in the protests. He instigated flash mobs, and often was at the forefront of marches leading fellow protestors in chants. Smith stood out in the crowd and local media coverage soon made him the face of the OFS movement.

Ms. Laura Anderson was the landlord in New York who evicted John Smith from the apartment building where she also lived. She frequently made a point of the fact that she had survived the Great Depression and that she opposes OFS. At a Thanksgiving gathering at her home, Ms. Anderson made an impassioned speech at the dinner table, which her nephew filmed with his phone. She held her trembling chihuahua in her arms as she scolded the protestors for being lazy, spoiled children who have a false sense of entitlement and are unwilling to work hard to make their own way in the world. She also expressed her frustration with the disorder caused by the protests and flash mobs, arguing that even if the protestors have a right to express their views, they had no right to interfere with people who are going about their own business and trying to make a living.

Ms. Anderson specifically referenced John Smith's recent eviction, mentioning him by name. Frequently looking directly at the camera, as her dog anxiously licked her face, she relayed that when Smith was attempting to negotiate a payment plan with her, he said he had no intention of repaying his student loan debts because the country owed him an education. He also said that he had maxed out his credit cards to cover his living expenses. Ms. Anderson reported that, since Smith did not leave a forwarding address, she had intercepted numerous letters from what appeared to be collection agencies.

A few days later, Ms. Anderson's nephew posted the video of his aunt's speech on the Internet. Because of Ms. Anderson's rather quirky manner of delivery as she held her nervous dog, and Smith's prominent role in the protests, the video quickly went viral and was picked up by local and national news stations.

Smith was devastated that his personal financial situation was receiving such widespread attention and criticism. He became severely depressed and manifested both physical and psychological symptoms for which he sought treatment. He continues to be treated for depression, and his doctors anticipate that he will require many more years of counseling.

Smith is suing Ms. Anderson for intentional infliction of emotional distress based upon the statements made in the video. He alleges that damages exceed \$75,000. Ms. Anderson asserts that she is shielded from liability because her speech was a matter of public concern under the First Amendment.

TALKING POINTS

Use these talking points to initiate thoughtful discussion on *Snyder v. Phelps* and the fictional scenario. This activity is based on a modified [Oxford Style Debate](#).

JUDGE: The issue before us today is – Are Ms. Laura Anderson's statements matters of public concern that are entitled to the protections of the First Amendment? We will analyze this question by exploring three issues – the content of the message, the form of the message, and the context of the message. Are they matters of public concern? After each attorney presents, I will ask a couple of follow-up questions.

Starting Talking Points

JUDGE: Issue #1 – Is the content of Ms. Anderson's statements a matter of public concern?

John Smith

Ms. Laura Anderson

Plaintiff's Position: #1 [CONTENT]

The content of Ms. Anderson's statements was directed at Mr. Smith personally. She used his name and she specifically referenced his recent eviction, unpaid student loan debt, maxed out credit cards, and correspondence from collection agencies.

JUDGE: Optional follow-up questions. Thank you, Counsel. We will now hear from the Defense.

Defense's Position: #1 [CONTENT]

The content of Ms. Anderson's statements was directed at the message and composition of OFS, generally, not Mr. Smith personally. Ms. Anderson's statements centered on her issues with the movement and the young people who support it. She only incidentally mentioned Mr. Smith as an example of a generation's sense of entitlement.

JUDGE: Optional follow-up questions.

JUDGE: Issue #2 – Is the form of Ms. Anderson's statements a matter of public concern?

Plaintiff's Attorney #2: [FORM]

Ms. Anderson's statements were made in a private venue with only her family at a holiday dinner. Although her nephew was filming the speech with his phone, Ms. Anderson's statements were off-the-cuff and informal. They were not for public consumption. The subsequent rebroadcast of the statements by her nephew was not by her choice or direction and should not matter as the original audience was in a private setting.

JUDGE: Optional follow-up questions. Thank you, Counsel. Now we will turn to the Defense.

Defense Attorney #2: [FORM]

Ms. Anderson was fully aware that she was being filmed. She frequently looked directly at the camera as her nephew pointed his cell phone camera at her. While her statements were made to a small audience on private property, the camera was in plain view. Accordingly, she was directing her statements to a much broader audience than those at the dinner table.

JUDGE: Optional follow-up questions.

JUDGE: Issue #3 – Is the context of Ms. Anderson's statements a matter of public concern?

Plaintiff's Attorney #3: [CONTEXT]

Ms. Anderson's statements were made in direct response to Mr. Smith's recent eviction. Ms. Anderson had a direct financial interest in Mr. Smith's failure to pay rent and sought to embarrass him through reference to his personal circumstances.

JUDGE: Optional follow-up questions.. Thank you, Counsel. Now we will turn to the Defense.

Defense Attorney #3: [CONTEXT]

Ms. Anderson's statements were a response to the vigorous public debate raised by the OFS movement. She sought to express her opinions that, in general, the movement was not contributing to the productivity of the economy and was interfering with the public order. She referenced Mr. Smith incidentally, as an example.

JUDGE: Optional follow-up questions.

JUDGE: – Now that the open floor debate is concluded, we will turn to the closing arguments. Then we will ask for a verdict by a show of hands, so please listen closely. We will start with Plaintiff's Counsel representing Mr. Smith.

Plaintiff's Attorney #4: [CLOSING ARGUMENTS]

Ms. Anderson's statements were a personal attack on Mr. Smith intended to destroy his credibility. It was a blatant personal assault on his character that could have a long-term negative impact on his future. Ms. Anderson was Mr. Smith's landlord, who evicted him for nonpayment of rent. She was privy to his student loan and credit card debt only as a result of personal

Defense's Attorney #4: [CLOSING ARGUMENTS]

Ms. Anderson's statements were part of a public response to the OFS movement. She was exercising her First Amendment right to voice her political opinions. Her comments emphasized the public consequences when people accrue debts that they have no intention of repaying. Massive failure to pay off debt is a high-profile public issue about which she stated her concerns as a

communications with him relating to rent. The fact that Ms. Anderson wants to embarrass Mr. Smith for failing to repay his debts is not a matter of political or social concern. His personal financial status and plans are not of general interest, value or concern to the public. Because Ms. Anderson launched a personal attack on Mr. Smith, her speech is not a matter of public concern and is not entitled to full First Amendment protection.

survivor of a national financial meltdown – The Great Depression. Ms. Anderson was responding to the public message of OFS and its public tactics. The fact that Ms. Anderson used the example of a protestor was incidental to the overall purpose of the statements. Ms. Anderson's statements in response to the OFS movement relate to matters of public concern and are entitled to full First Amendment protections.

JUDGE: – I will now give the jurors their instructions for the open floor debate. We want to give everyone the opportunity to participate in open court so, instead of going to a jury deliberation room, we will open the floor debate in the courtroom.

All jurors are encouraged to express your opinions. Jurors, based on your initial impressions during the arguments, the Moderator will ask you to sit behind the counsel table whose position you support, at this time.

You are asked to be open minded, as if you were serving on a real jury. During the open floor debate, you are free to move back and forth in the audience section behind the counsel tables as you change your mind.

You are to direct your comments only to jurors on the other side of the issue – not to the student or adult attorneys, or to me. This is your time as jurors to express your opinions and analysis. The program moderator will facilitate the discussion and bring it to a close within our limited time.*

JUDGE: – Thank you, Jurors. Due to time limits, we will take the verdict by a show of hands. The Moderator will count the results. First, we will see a show of hands by those in favor of Mrs. Anderson. (Count is taken.) Now we will see a show of hands by those in favor of Mr. Smith. (Count is taken.) The Moderator will announce the verdict.

***Notes to the Moderator:** Ask all audience members (jurors) to sit in the gallery behind Mrs. Anderson or Mr. Smith – whichever side they favor at this point in the process.

During the debate, ask the student jurors to stand and identify themselves every time they speak and make sure that no students or opinions dominate the discussion. Only audience members (jurors) in the gallery may participate in this segment of the program.

They are to direct their arguments and questions only to jurors/audience members on the other side of the issue. No questions/comments for the Judge and attorneys are allowed during the floor debate. This is time for the jurors to try to persuade each other. The student attorneys may not defend their positions during the open floor debate.