

## CRIMINAL LAW CASE UPDATE JUNE 2009

Montejo v Louisiana, 2009 WL 1443049 (5-26-2009)  
Sixth Amendment issues.

United States v Hayes, 129 S.Ct. 1079 (2009)  
18 U.S.C. 922(g) Person prohibited from possessing firearm after  
conviction for domestic violence case.

Melendez-Diaz v Massachusetts, \_\_\_\_\_ S.Ct. \_\_\_\_\_ (2009) PENDING  
Confrontation clause as to lab reports, etc.

Harris v Lafler, 553 F.3d 1028 (6<sup>th</sup> Cir. 2009)  
Brady violation.

State v Scuthcings, 759 N.W.2d 729 (N.D. 2009)  
Comment of defendant not testifying.

State v Knapp, 199 P.3d 505 (Wash. App. 2009)  
Doyle v Ohio violation.

Stufflebeam v Harris, 521 F.3d 884 (8<sup>th</sup> Cir. 2008)  
Making car passenger produce identification unlawful.

United States v Glynn, 578 F. Supp. 2d 567 (S.D. N.Y. 2008)  
Prosecution ballistic expert testimony greatly limited.

Stokes v State, 375 Ark. 394 (2009)  
Backing down the highway is not illegal.

Holt v State, 104 Ark. App. 198 (2008)  
Constructive possession of drugs.

Blanchard v State, 104 Ark. App. 31 (2008)  
Inadmissible photograph.

Hinojosa v State, 103 Ark. App. 312 (2008)  
Bad traffic stop.

Arizona v Gant, 129 S.Ct. 1710 (2009)  
Search of vehicle incident to arrest.

State v Garcia-Cantu, 253 S.W.3d 236 (Tex. Crim. App. 2008)  
What is high crime area? Police use of take down lights contributed to  
unlawful seizure of vehicle.

Atwater v City of Lago Vista, 532 U.S. 318, 121 S.Ct. 1536 (2001)  
Physical arrest for not using seatbelt is OK. 5/4 split  
June 30 is effective date for new Arkansas seat belt law.

# **DISORDERLY CONDUCT FIRST AMENDMENT ISSUES**

JUNE 2009

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Insulting words addressed directly to police officer as breach of peace or disorderly conduct, 14 ALR4th 1252

Validity and construction of statutes or ordinances prohibiting profanity or profane swearing or cursing, 5 ALR4th 956

Validity and construction of statute or ordinance prohibiting use of "obscene" language in public, 2 ALR4th 1331

Gesture as punishable obscenity, 99 ALR3rd 762

Vagueness as invalidating statutes or ordinances dealing with disorderly person or conduct, 12 ALR3rd 1448

Ira P. Robbins, *DIGITUS IMPUDICUS: THE MIDDLE FINGER AND THE LAW*, 41 U.C. Davis L. Rev. 1403 (2008)

Burton Caine, *THE TROUBLE WITH "FIGHTING WORDS": CHAPLINSKY v. NEW HAMPSHIRE IS A THREAT TO FIRST AMENDMENT VALUES AND SHOULD BE OVERRULED*, 88 Marq. L. Rev. 441 (2004)

Thomas M. Place, *OFFENSIVE SPEECH AND THE PENNSYLVANIA DISORDERLY CONDUCT STATUTE*, 12 Temp. Pol. & Civ. Rts. L. Rev. 47 (2002)

Nonverbal communication and the freedom of speech, 1993 Wis. L. Rev. 2525 (1993)

The constitutional ramifications of calling a police officer an "asshole," 16 S. Ill. U. L.J. 741 (1992) (See *Buffkins v City of Omaha*)

**MAJOR US SUPREME COURT CASE: City of Houston v Hill, 107 S.Ct. 2502 (1987)**

State v Suhn, 759 N.W.2d 546 (S.D. 2008) It is not illegal to say to police officer, "Fucking cop, piece of shit. You fucking cops suck. Cops are a bunch of fucking assholes."

Smith v State, 967 So.2d 937 (Fla. App. 2<sup>nd</sup> Dist. 2007) Cursing loudly in bank.

Kinkus v City of Yorkville, 453 F. Supp. 2d 1009 (S.D. Ohio 2006) No probable cause to arrest person for using profanity to officer. Officer not entitled to immunity from federal civil rights lawsuit.

Kaylor v Rankin, 356 F. Supp. 2d 839 (N.D. Ohio 2005) Person called police officer a "fucking asshole." Officer not entitled to immunity from federal civil rights lawsuit.

Turner v State, 274 Ga. App. 731, 618 S.E.2d 607 (2005) Yelling "you bastards" at police officer as he drove by.

People v Taylor, 812 N.E.2d 759 (Ill. App. 2004) Saying "fucking" and "shit" on telephone while complaining about medical treatment of her child was not harassment.

Wilson v Kittoe, 337 F.3d 392 (4<sup>th</sup> Cir. 2003) Officer arrested attorney for interfering with him giving ticket to next door neighbor. Bad arrest and officer not entitled to immunity.

State v Boulais, 150 N.H. 216, 834 A.2d 380 (2003) Making crude sexual remark are generally not fighting words. This guy worked at a tanning salon and make remarks to several women customers.

A. He wanted to "unzipper her pants and eat her for breakfast."

B. He could give her "some good protein."

C. When customer asked him what he was up to, his response was "six three, 220 pounds, 10 ½ inches, fully extended."

Coggin v State, 123 S.W.3d 82 (Tex. App. 2003) Flipping off private person not illegal.

Miller v City of Fairhope, 855 So.2d 1139 (Ala. Crim. App. 2003) Calling private person a "bitch."

H.N.P. v State, 854 So.2d 630 (Ala. Crim. App. 2003) In a full restaurant, using the words ass, fuck and mother fucker not illegal. Defendant also flipped off a off-duty cop.

City of Las Vegas v Eight Judicial District Court, 118 Nev. 859, 59 P.3d 477 (2002) Statute prohibiting "annoys a minor" was vague.

City of Owosso v Pouillon, 254 Mich. App. 210, 657 N.W.2d 538 (2002), *appeal denied*, 661 N.W.2d 241 (2003)

People v Barton, 253 Mich. App. 601, 659 N.W.2d 654 (2002) Using insulting words statute unconstitutional as applied to person using the word "spic."

Shoemaker v State, 343 Ark. 727, 38 S.W.3d 350 (2001) Calling a school teacher a "bitch" is not illegal.

United States v Poocha, 259 F.3d 1077 (9<sup>th</sup> Cir. 2001) Saying "fuck you" to a federal park ranger is not a crime.

Brendle v City of Houston, 177 F. Supp. 2d 553 (N.D. Miss. 2001) Officer arrested defendant for using the word "damn." Officer not entitled to immunity from federal civil rights lawsuit.

Jones v State, 798 So.2d 1241 (Miss. 2001) Calling a deputy sheriff a "child killing motherfucker" not illegal.

Nichols v Chacon, 110 F. Supp. 2d 1099 (W.D. Ark. 2000) Flipping off a state trooper who was driving by was insufficient basis for traffic stop. Officer not entitled to immunity from federal civil rights lawsuit.

Brendle v City of Houston, 759 So.2d 1274 (Miss. App. 2000) Saying "fuck" and "God damn" in presence of police officer is not illegal.

Mattila v City of Lynchburg, 33 Va. App. 592, 535 S.E.2d 693 (2000) Telling police officer, "fucking pigs", "fucking jokes", and officer should be at a "fucking donut shop."

In re Louise C., 3 P3d. 1004 (Ariz. App. 1999) Juvenile's outburst in principals office "Fuck this ... I don't have to take this shit, fuck you. I don't have to do what you tell me" did not amount to fighting words.

Com. v Hock, 728 A.2d 943 (Pa. 1999) Saying "fuck you, asshole" to police officer is not illegal.

Sandul v Larion, 119 F.3d 1250 (6<sup>th</sup> Cir. 1997) Shouting "fuck you" to abortion protesters is not illegal. Officer not entitled to immunity from federal civil rights lawsuit.

Brooks v North Carolina Department of Correction, 984 F. Supp. 940 (W.D. N.C. 1997) Defendant arrested for saying "I'm not going any fucking where" and "get the hell away from me." These are not fighting words, but protected speech under the First Amendment. Habeas corpus granted.

United States v McDermott, 971 F. Supp. 939 (E.D. Pa. 1997) "This is bullshit" not fighting words.

Cook v Board of the County Commissioners of the County of Wyandotte, 966 F. Supp. 1049 (D. Kan. 1997) Not illegal to flip off police officer.

State v Miller, 703 So.2d 125 (La. App. 1997) Using unspecified profanity not illegal.

People v Allen, 680 N.E.2d 795 (Ill. App. 4<sup>th</sup> Dist. 1997) Making crude sexual overtones is not fighting words.

Long v L'Esperance, 701 A.2d 1048 (Vt. 1997) Officer did not have immunity from lawsuit for illegally arresting the defendant for using the work "fucking" while complaining about having to wait for a roadblock.

Brockway v Shepherd, 942 F. Supp. 1012 (M.D. Pa. 1996) Not illegal to flip off a police officer.

State v Maynard, 673 N.E.2d 603 (Ohio App. 1996) Telling officer "if you don't have a fucking warrant, get out" is protected by the First Amendment.

Com. v Gilbert, 674 A.2d 284 (Pa. App. 1996) Defendant was being too loud in protesting police conduct. Just because the officer was being annoyed does not mean the public at large would be annoyed.

Com. v Zullinger, 676 A.2d 687 (Pa. App. 1996) Defendant should not have been arrested for wearing a T-shirt to court that said "Fuck You."

Sweatt v Bailey, 876 F. Supp. 1571 (M.D. Ala. 1995) Using profanity in officers presence not illegal.

R.I.T. v State, 675 So.2d 97 (Ala. Crim. App. 1995) Stating "fuck you" to police officer.

Miller v State, 667 So.2d 325 (Fla. App. 1995) Cussing and talking too loudly to police in defendant's residential yard.

L.A.T. v State, 650 So.2d 214 (Fla. App. 1995) Juveniles loud and obscene protest to friends arrest was not illegal. Defendant said "fuck ya'll" to the police.

State v Leung, 904 P.2d 552 (Hawaii App. 1995) Using loud profanity in lobby of movie theater.

State v Najibi, 892 P.2d 475 (Hawaii App. 1995) If person is yelling, officer must make the determination that the noise, to be "unreasonable" is a gross deviation from the normal.

Com. v Bryner, 652 A.2d 909 (Pa. App. 1995) Shouting "go to hell Betsey" in a public place is not unlawful.

Aguilar v People, 886 P.2d 725 (Colo. 1994) "Abusing a person ... in a public place in obviously offensive manner" overbroad.

State v Indrisano, 228 Conn. 795, 640 A.2d 986 (1994) Section of statute concerning "annoys" unconstitutional.

Price v State, 622 N.E.2d 954 (Ind. 1993) Screaming "fuck you" to police officer.

State v Garren, 117 N.C. App. 393, 451 S.E.2d 315 (1994) Statute prohibiting singing, yelling, or playing music was overbroad.

State v Lamm, 609 NE2d 1286 (Ohio App. 1992) Using the word "motherfucker" and "what the hell do you think you are doing" in police officers presence. MF not directed to officer personally.

Herschfield v Com., 417 S.E.2d 876 (Va. App. 1992) Telling private citizen to "go fuck yourself" from a distance. Also flipped off the person.

Buffliks v City of Omaha, Nebraska, 922 F.2d 465 (8<sup>th</sup> Cir. 1991), *cert denied*, 502 U.S. 898 (1991) It is not illegal to call a police officer an "asshole."

Cunningham v State, 260 Ga. 827, 400 S.E.2d 916 (1991) Bumper sticker that says "shit happens" is not illegal.

Baker v Glover, 776 F. Supp.2d 1511 (M.D. Ala. 1991) Bumper sticker that

says, "eat shit" is not illegal.

City of Maryville v Costin, 805 S.W.2d 331 (Mo. App. W.D. 1991), Not illegal to call private citizen a "bitch." Statute invalid.

City of Bismark v Schoppert, 469 N.W.2d 808 (N.D. 1991) Calling a woman police officer a "fucking, bitching cop" and "fuck you" not illegal.

Morehead v State, 807 S.W.3d 577 (Tex. Crim. App. 1991) Statute overbroad.

State v Janiszczak, 579 A.2d 736 (Maine 1990) "Fuck you" to police officer.

Logan City v Huber, 786 P.2d 1372 (Utah App. 1990) Disorderly conduct statute invalid. SAME AS ARKANSAS STATUTE

Duran v City of Douglas, Arizona, 904 F.2d 1372 (9<sup>th</sup> Cir. 1989) Flipping off police officer not illegal.

State v Fratzke, 446 N.W.2d 781 (Iowa 1989) Writing letter to police officer stating "motherfucker" and hoping the officer was killed in the line of duty. The defendant was mad about getting a speeding ticket from the officer.

State v McCoy, 546 So.2d 240 (La. App. 1989) Using the word "damn" and "motherfucker" to police officer while speaking "loudly."

People v Dietze, 550 N.Y.S.2d 595 (N.Y. 1989) Statute invalid. Calling a private citizen a "bitch."

City of Toledo v Grince, 548 N.E.2d 999 (Ohio App. 1989) Stating this is "fucking bullshit" to police officer.

Burgess v City of Virginia Beach, 385 S.E.2d 59 (Va. App. 1989) "Fucking cops" and "asshole." Statute invalid.

Harrington v City of Tulsa, 763 P.2d 700 (Okla. Crim. App. 1988) Calling police officer "motherfucker" and "pussies."

Lewis v City of Tulsa, 775 P.2d 821 (Okla. Crim. App. 1989) Prolifer at abortion protest using the word "murder."

City of Wichita v Hughes, 12 Kan. App. 2d 621, 752 P.2d 1086 (1988) Calling police officer, "pig", "nigger" and a "homosexual" was OK because ordinance was invalid.

Ketchens v Reiner, 239 Cal. Rptr 2d 549 (Cal. App. 1987) Statute making it illegal to insult a school teacher is invalid.

City of West Monroe v Cox, 511 So.2d 1200 (La. App. 1987) Telling police officer to "shove it up your goddam ass" is not illegal. Cites many other Louisiana cases.

State v Carpenter, 736 S.W.2d 406 (Mo. 1987) Statute invalid as overbroad.

Klein v State, 635 F. Supp. 1440 (Maine 1986) Flipping off a school teacher after school hours.

Musselman v Com., 705 S.W.2d 476 (Ky. 1986) Verbal harassment statute overbroad.

State v Woolverton, 474 So.2d 1003 (5<sup>th</sup> Cir. 1985) Using unknown profanity towards police officer.

Com. v Ashcraft, 691 S.W.2d 229 (Ky. App. 1985) Statute prohibiting insulting a school teacher is invalid.

City of Jackson v Oliver, 680 S.W.2d 406 (Mo. App. E.D. 1984) State invalid as to "shouting, yelling or unnecessary loud noise."

State v Wylie, 482 N.E.2d 1301 (Ohio App. 1984) Using the words "goddamn" and "fucking bitch" to private person.

Vela v White, 703 F.2d 147 (5<sup>th</sup> Cir. 1983) No probable cause to arrest screaming woman.

Cavazos v State, 455 N.E.2d 618 (Ind. App. 1983) Calling police officer or private citizen an "asshole" is not illegal.

State v Swoboda, 658 S.W.2d 24 (Mo. 1983) Calling a neighbor a "cocksucker" and "motherfucker" not unlawful. Statute invalid as to "abusive" language.

State v Wade, 667 P.2d 459 (N.M. App. 1983) Telling a police officer to "get the hell out of the house" is not illegal. Analysis of "abusing" speech directed at police officer.

State v Nelson, 448 A.2d 214 (Conn. App. 1982) "Fucking asshole" and "fucking pig" not illegal.

Evans v State, 434 N.E.2d 940 (Ind. App. 1982) Calling police officer "fucking pig" and "fucking prick" not illegal.

State v Tavarozzi, 446 A.2d 1048 (R.I. 1982) Unreasonable noise section invalid.

State v Montgomery, 644 P.2d 747 (Wash. App. 1982) "Fucking pigs" and "assholes"

State v Yoakum, 638 P.2d 1264 (Wash. App. 1982) Using unspecified four letter words to police officer.

City of Alamogordo v Ohlrich, 625 P.2d 1242 (N.M. App. 1981) Calling police officer "you motherfucking son-of-a-bitch."

State v John W., 418 A.2d 1097 (Maine 1980) Telling police officer "you fucking pig."

State v Spencer, 289 Or. 225, 611 P.2d 1147 (1980) "Public inconvenience, annoyance or alarm" section of statute violates Oregon constitution.

City of Macon v Smith, 259 S.E.2d 90 (Ga. 1979) Flipping off a private citizen.

Matter of Pierre, 595 P.2d 506 (Or. App. 1979) Juvenile cussed a police officer. Insufficient evidence as to element of offense "annoy, inconvenience, or alarm" the public.

State v Anonymous, 389 A.2d 1270 (Conn. App. 1978) Jury instruction should state that the defendant can only be convicted for using "fighting words."

Jimmerson v State, 561 S.W.2d 5 (Tex. Crim. App. 1978) Unspecified cussing while officers present.

State v Anonymous, 377 A.2d 1342 (Conn. App. 1977) Flipping off state trooper not illegal.

United States v Sturgill, 563 F.2d 307 (6<sup>th</sup> Cir. 1977) Kentucky statute void for vagueness as to First Amendment.

State v Anonymous, 377 A.2d 1342 (Conn. App. 1977) Flipping off police officer.

City of New Orleans v Lyons, 342 So.2d 196 (La. 1977) Saying "shit" and "fuck you" to police officer.

People v the City of Oak Park v Smith, 262 N.W.2d 900 (Mich. App. 1977) Flipping off police officer.

Big Eagle v Andrea, 418 F. Supp. 126 (S.D. 1976) Tribal statute vague as to First Amendment.

City of St. Louis v Tinker, 542 S.W.2d 512 (Mo. 1976) Calling police officer "stupid" and "pig". Statute invalid.

City of Baton Rouge v Ewing, 308 So.2d 776 (La. 1975) Profanity statute invalid.

Com. v A Juvenile, 334 N.E.2d 617 (Mass. 1975) "Fucking asshole" and "pig."

State v Oliveira, 347 A.2d 165 (N.H. 1975) Stating "fucking pigs" at public meeting.

Garvey v State, 537 S.W.2d 709 (Tenn. Crim. App. 1975) Calling "sooey" to police officer.

Eaton v City of Tulsa, 415 U.S. 697 (1974) The use of the word "chicken shit" in court was not contempt.

Wiegand v Seaver, 504 F.2d 303 (5<sup>th</sup> Cir. 1974) Florida statute vague as to First Amendment.

City of Columbus v Schwarzwald, 313 N.E.2d 798 (Ohio 1974) Saying "fucking pigs" to police officer.

City of Kennewick v Keller, 525 P.2d 267 (Wash. App. 1974) Saying "fucking pigs" to police officer.

State v Rosenfeld, 303 A.2d 889 (N.J. 1973) Stating at public meeting about racial problems, "then the mother fucking town, county, and state will burn down."

City of Pasco v Dixon, 503 P.2d 76 (Wash. 1972) Stating "shit, you pigs got no right" and "fuck you, pigs."

Coates v City of Cincinnati, 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214

(1971) "Annoying" part of statute illegal.

State v Profaci, 266 A.2d 579 (N.J. 1970) "What the fuck are you bothering me for."

Wilson v Gooding, 303 F. Supp. 952 (N.D. Ga. 1969) Statute vague as to "abusive language."