CHAPTER 2: The First Amendment

I. True/False

1. The framers of the Constitution intended the First Amendment to protect citizens from interference with their freedom of expression by state and local governments as well as by the federal government. (False)

2. The Supreme Court disfavors content regulations; yet the First Amendment protects political speech more than it protects advertising. (True)

3. In the 1950s, the Supreme Court ruled in Dennis v. United States that a citizen's membership in the Communist Party constituted a clear and present danger to the nation. (True)

4. The Supreme Court has ruled that high school students have a constitutional right to criticize the principal in a school sponsored newspaper. (False)

5. A federal appellate court in Chicago (the Hosty v. Carter) ruled in 2005 that state university officials can censor state university newspapers—much like high school principals can censor high school papers—if the regulations are reasonable and serve the educational goals of the university. (True)

6. "Fighting words," by definition, encourage large groups to riot. (False)

7. "Fighting words" are words delivered face-to-face that provoke another individual to retaliate. (True)

8. In Brandenburg v. Ohio, the Supreme Court ruled that threatening to get "revengence" at some distant time constitutes a clear and present danger. (False)

9. In R.A.V. v. City of St. Paul, the Court ruled it is constitutional for an ordinance to punish cross burning motivated by racial or religious hatred but not for motives against gays or labor union members. (False)

10. In R.A.V. v. City of St. Paul, the Supreme Court ruled that cross burning is a prohibited true threat regardless of the cross burner's motivation (racial hatred, homophobia, religious hatred, etc.) (False)

11. It violates the First Amendment to forbid judicial candidates from speaking on public issues during an election campaign. (True)

12. A board of city commissioners would be justified under the constitution prohibiting a civil rights parade that might have a "tendency" to draw hostile opposition. (False)

13. The independent, off-campus student newspaper is a traditional public forum. (False)

14. It is constitutional to punish all expression in the legal category of "hate" speech, the Supreme Court has ruled. (False)

15. In Virginia v. Black, the Supreme Court ruled that burning crosses in any location is always an unprotected expressive act intended to intimidate. (False)

16. In Morse v. Frederick, the Bong Hits for Jesus case, the Supreme Court held constitutional an ordinance prohibiting county residents from encouraging the legalization of marijuana by voter referendum. (False)

17. When Professor Vince Blasi says the First Amendment serves a "checking value," he argues the First Amendment permits institutional press entities to monitor and "check" the powers of government institutions. (True)

18. It is constitutional to punish all expression in the legal category of "depicting cruelty to animals," the Supreme Court has ruled. (False)

19. A federal appeals court has ruled (Kowalski v. Berkeley County Schools) that school officials can punish a high school student for off-campus internet posts that harass and bully a fellow student. (True)

20. It is a crime, the Supreme Court has ruled, to falsely claim having won a military medal. (False)

21. The Supreme Court has ruled the First Amendment does not permit a state university to deny funding to a campus religious magazine if the university funds magazines on other topics. (True)

22. American courts generally will not enforce judgments against American media by foreign courts for libel, hate speech and other torts if the expression would be protected under the First Amendment in the United States. (True)

23. A federal appeals court ruled in United States v. Fullmer that the Stop Huntingdon Animal Cruelty organization presented a clear and present danger by inciting electronic civil disobedience through such means as urging members to crash corporate websites and to overload and thus immobilize corporate e-mail and phone servers. (True)

24. The Supreme Court ruled in Waters v. Churchill and Garcetti v. Caballos that government employees might be punished for critical comments made internally about their employment or fellow employees. (True)

25. The Supreme Court had a majority of "absolutists" between 1945 and 1955. (False)

26. To some, free speech is valued as a fundamental right. (True)

27. One of the main purposes of First Amendment due process is to prevent government officials from acting arbitrarily when they ban or regulate speech. (True)

28. In Texas v. Johnson, the Supreme Court ruled that flag burners might be punished because the government has a compelling interest in preserving the peace and preserving the flag as a symbol of national unity. (False)

29. The president of State University can remove bottled fetuses from an anti-abortion display at the university's designated public forum if the fetuses are "highly offensive" to other students. (False)

III. Multiple Choice

1. If a court applies the strict scrutiny test to a government speech regulation, the government must justify the regulation by proving it has a _____ for regulating the speech.
   A. Rational interest
   B. Reasonable interest
   C. Probable cause
   D. A Necessary Tendency
   E. None of the above

Answer: E

2. A county ordinance prohibits newspapers from publishing stories favoring abortions, stories the ordinance says will provoke "discord and dissention" in the community. When a newspaper challenges the law, a court will subject the ordinance to
   A. A bad tendency test
   B. A clear and present danger test.
   C. The fighting words doctrine
   D. Strict scrutiny
   E. None of the above.

Answer: D.

3. A federal appellate court in California ruled that web pages depicting abortion doctors in "Wanted Posters" constitute _____:
   A. Fighting words
   B. Defamation
   C. A true threat
   D. Obscene expression.
   E. C and D.

Answer: C.

4. A state university speaker's platform, established in 1995, is _____ public forum.
   A. a traditional
   B. a dedicated
   C. public content

D. a nonpublic
E. not a

Answer: B

5. The City of Midville adopts a law making it illegal for "a large number" to picket at one time. A court likely will find the law
   A. Unnecessary.
   B. Unconstitutionally vague.
   C. Content-specific.
   D. Viewpoint-specific.
   E. An acceptable time, place, and manner restriction.

Answer: B

6. The independent student newspaper off campus is _____ public forum.
   A. A Traditional
   B. A Dedicated
   C. Not a
   D. A paper
   E. Non-public

Answer: C

7. First Amendment rights include the power to
   A. Assemble in groups.
   B. Solicit money for churches, political parties and ideological causes.
   C. Receive information.
   D. All of the above
   E. A and C only

Answer: D

8. The government can license the following media operators because they operate on a limited spectrum.
   A. Cable operators
   B. Newspaper publishers
   C. Broadcasters
   D. Internet Service Providers
   E. Advertising agencies

Answer: C

9. The First Amendment serves several purposes, EXCEPT
   A. Finding Truth
   B. Promoting Self-fulfillment
   C. Encouraging family values
   D. Allowing change with stability
   E. Checking government power

Answer: C.

10. In McIntyre v. Ohio Elections Commission, the Supreme Court ruled that a state statute banning anonymous campaign literature "designed to influence voters" was
    A. A constitutional prohibition on potentially fraudulent campaign literature.
    B. A constitutional prohibition on potentially libelous campaign literature.
    C. An unconstitutional subject matter regulation.
    D. A and B above.
    E. None of the above.

Answer. C.

11. Which amendments are involved when a court rules that a state violates freedom of expression?
    A. 1st Amendment only
    B. 1st and 5th
    C. 1st and 13th
    D. 1st and 14th
    E. All of the above amendments.

Answer. D.

12. Precedent suggests a law punishing speech because the speech "might encourage young people to engage in harmful activity" is probably
    A. Constitutional because the government has a compelling interest to discourage youths' harmful activity.
    B. Constitutional because the government has a substantial interest to discourage youths' harmful activity.
    C. Unconstitutionally vague.
    D. Unconstitutionally false.
    E. None of the above.

Answer C.

13. The Supreme Court ruled in McIntyre v. Ohio Elections Commission that punishing distribution of anonymous campaign literature that might influence an election is an example of
    A. An unconstitutional viewpoint regulation.
    B. An unconstitutional subject matter regulation.
    C. A constitutional regulation because the government has a compelling interest in halting fraud and libel.
    D. A constitutional regulation because the government has a reasonable need to stop littering.
    E. None of the above.

Answer. B.

14. A county ordinance prohibits a newspaper, its website and its blogs from publishing stories favoring legalization of marijuana, stories the ordinance says "might encourage young people to engage in harmful activity." When a newspaper challenges the law as a violation of the First Amendment, a court will subject the ordinance to
    A. A balancing test

B. A clear and present danger test.
C. Strict scrutiny.
D. The youthful protection exception.
E. None of the above.

Answer. C.

15. When arrested during an antiwar protest in Indiana, Gregory Hess shouted, "We'll take this f***ing street later." The Supreme Court ruled Hesses' speech to be an example of:
    A. A clear and present danger.
    B. A true threat
    C. Obstruction of a police officer
    D. Fighting words.
    E. None of the above

Answer. E.

16. None of the following categories of speech enjoy constitutional protection EXCEPT:
    A. False advertising
    B. Obscenity
    C. Depictions of animal cruelty
    D. True Threats
    E. Fighting words

Answer. C.

IV. Key Terms/Short Answers

Absolutist: Explain briefly why justices Black and Douglas were characterized as "absolutists."

Justices Black and Douglas argued that "no law" in the First Amendment prohibited legislatures or courts from imposing restrictions on virtually any speech or publishing.

Fourteenth Amendment: What is the contribution of the Fourteenth Amendment to First Amendment freedom of expression? Give an example.

The Fourteenth Amendment allows the courts to strike down state and local government regulations that would violate First Amendment freedoms if imposed by the federal government. In Near v. Minnesota, the Supreme Court declared unconstitutional a state statute forbidding scandalous and malicious speech. The Court ruled the statute violated the First and Fourteenth Amendments.

Vagueness and Overbreadth: What is the difference between a vague and an overbroad law? Give examples.

A vague law is so unclear that a reasonable person cannot understand it and know what expression is prohibited; to avoid running afoul of a vague law, speakers will censor themselves. An overbroad law regulates speech that constitutionally may be regulated but it also regulates protected speech. The Supreme Court declared "indecency" in the Telecommunications Act of

1996 to be unconstitutionally vague because it was not precisely defined. The law prohibiting indecency was also overbroad because it unconstitutionally prohibited protected indecent speech for adults while constitutionally prohibiting indecency for minors.

Why have publishers said good riddance to the **"bad tendency"** test?

The bad tendency test was vague and elusive, allowing government to prohibit or punish expression having a "tendency" to harm, without the government having to demonstrate the speech would cause concrete harm.

Explain briefly what Alexander Bickel, the New York Times' attorney in the Pentagon Papers case, meant when he said after his victory: **"We extend the legal reality of freedom of at some cost to its limitless appearance."**

Bickel meant that the Supreme Court suggested limits to First Amendment freedoms at the same time it ruled the New York Times had a First Amendment right to publish stolen, confidential documents. Before the Pentagon Papers case, First Amendment freedoms may have appeared limitless because the Supreme Court had never ruled on the constitutionality of a prior restraint on the publication of stolen government documents. The Times won a great victory in New York Times v. United States, but all justices except two suggested circumstances in which an injunction on publication might be constitutional in the future, thus curbing the "limitless appearance" of freedom.

V. Essays

1. Billy Bob, 28, proclaims on the "I Hate Everyone" web page that he plans to make bombs. "I'm tired of the media splattering garbage all over the place, and I'm not going to take it no more." Bob says. "If the elite media don't stop ruinating the country, we have to do something drastic." Police arrest Bob for issuing "fighting words." True? Define "fighting words" and tell whether the speech fits the definition. Support your conclusion with a comparison to at least one Supreme Court fighting words case.

Billy Bob's statements on the "I Hate Everyone" web page may be aggressive and inappropriate, but they do not constitute fighting words. For speech to be considered "fighting words" it must motivate someone to respond with violence based on the very utterance of the words. Fighting words are used in face-to-face confrontations; they are a "slap" that contribute nothing to public discourse. Disseminated broadly over the Internet, Bob's words were not addressed to any individual; the "media elite" is a broad term designating no one. This case is similar to Cohen v. California in which the Supreme Court ruled that a man did not issue fighting words when he wore a jacket in a courthouse proclaiming "Fuck the Draft." People who disagreed with the statement could look away, the Court said. In both cases, the speech was not targeted at anyone specifically, and its intent was not to incite violence, but to express an opinion.

2. Bob Editor, editor of the Palisades High School newspaper, says on the paper's website that a school math teacher named Mr. Whiz is a "loser" who ought to be "got rid of in any way possible." Principal Book suspends Editor from school for two days for his

"offensive" posting which the principal characterizes as a "true threat." The website is run by the school as part of a "New Media Class" taught by Lawrence Lenient, an English teacher. Principal Book calls his policy a reasonable regulation of a nonpublic forum. But the ACLU says Principal Book violates Editor's First Amendment rights by censoring political speech on a public forum. Citing Supreme Court cases, tell whether the online newspaper is (1) a public forum and whether Principal Book can punish Editor for (2) "offensive" speech that the Book says is a (3) "true threat."

Principal Book is probably within constitutional bounds punishing Editor for "offensive" speech on a non-public forum, but the language was hardly a "true threat."

(1) Book can impose reasonable regulations on a non-public forum. In the Kuhlmeier case, the Supreme Court ruled that high school administrators do not violate the First Amendment if they impose reasonable regulations on school-sponsored speech; school sponsored speech does not take place in a public forum. As in Kuhlmeier, the speech occurred in a class taught by regular faculty, not in a venue dedicated as a limited public forum.

(2) Just as the principal in Kuhlmeier could constitutionally delete two articles from a classroom newspaper, Principal Book might punish Editor for his "offensive" expression. The Court said in Kuhlmeier a school does not have to be associated with speech it does not wish to be associated with.

(3) Editor's post, however, is not a true threat, which the Supreme Court has defined as an attempt to intimidate by intentionally creating a pervasive fear in victims that they are a target of violence. Burning a cross could be a true threat, the Court said in Virginia v. Black, if conducted with the intent to intimidate. The Ninth Circuit Court of Appeals recognized a true threat in Internet "wanted posters" that named abortion doctors, highlighting dead ones. Doctors testified to a pervasive fear in the context of abortion doctors being murdered.

Editor has named no targets and expressed no intent to intimidate by creating a pervasive fear of physical harm in any individual or identifiable group. Editor issued general venom and discontent that would be less threatening than Charles Evers' coercion of blacks to boycott white businesses in NAACP v. Claiborne Hardware. Evers did not create a true threat, the Court said, even though he said during racially tense times that blacks' necks would be broken if blacks traded with white businesses. Editor's vague remarks are even less coercive.