**MOCK SUPREME COURT CONFERENCE**

**FIRST AMENDMENT PART II**

**FREEDOM OF SPEECH**

**Directions Keep the same roles as you did in the previous session. Discuss the cases below using the new set of Constitutional tests identified below.**

**Part II: Freedom of Speech – Summarize the following terms**

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| First Amendment right to freedom of speech |  |
| Clear and Present Danger Test |  |
| “Fighting Words” |  |
| “Prior Restraint” |  |
| “Symbolic Speech” |  |
| Obscenity Test |  |

**Case one: *Schenck v. US***

**Facts of the Case**

During World War I, Schenck mailed circulars to draftees. The circulars suggested that the draft was a monstrous wrong motivated by the capitalist system. The circulars urged "Do not submit to intimidation" but advised only peaceful action such as petitioning to repeal the Conscription Act. Schenck was charged with conspiracy to violate the Espionage Act by attempting to cause insubordination in the military and to obstruct recruitment.

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| **Question**Are Schenck's actions (words, expression) protected by the free speech clause of the First Amendment? |
| Your Answer | SCOTUS Answer |
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**Case two: *Miller v. California***

Miller, after conducting a mass mailing campaign to advertise the sale of "adult" material, was convicted of violating a California statute prohibiting the distribution of obscene material. Some unwilling recipients of Miller's brochures complained to the police, initiating the legal proceedings.

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| QuestionIs the sale and distribution of obscene materials by mail protected under the First Amendment's freedom of speech guarantee? |
| Your Answer | SCOTUS Answer |
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**Case three: *West Virginia Board of Education v. Barnette***

Facts of the Case

The West Virginia Board of Education required that the flag salute be part of the program of activities in all public schools. All teachers and pupils were required to honor the Flag; refusal to salute was treated as "insubordination" and was punishable by expulsion and charges of delinquency.

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| QuestionDid the compulsory flag-salute for public schoolchildren violate the First Amendment?  |
| Your Answer | SCOTUS Answer |
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### Case four: *Dennis v. United States*

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| Facts of the Case In 1948, the leaders of the Communist Part of America were arrested and charged with violating provisions of the Smith Act. The Act made it unlawful to knowingly conspire to teach and advocate the overthrow or destruction of the United States government. Party leaders were found guilty and lower courts upheld the conviction. |  |  |  |  |  |  |  |  |
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| QuestionDid the Smith Act's restrictions on speech violate the First Amendment? |
| Your Answer | SCOTUS Answer |
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**Case 5: Cohen v. California**

Facts of the Case

A 19-year-old department store worker expressed his opposition to the Vietnam War by wearing a jacket emblazoned with "F--- THE DRAFT. STOP THE WAR" The young man, Paul Cohen, was charged under a California statute that prohibits "maliciously and willfully disturb[ing] the peace and quiet of any neighborhood or person [by] offensive conduct." Cohen was found guilty and sentenced to 30 days in jail.

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| QuestionDid California's statute, prohibiting the display of offensive messages such as "F--- the Draft," violate freedom of expression as protected by the First Amendment? |
| Your Answer | SCOTUS Answer |
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**Case 6: Texas v. Johnson**

**Facts of the Case**

In 1984, in front of the Dallas City Hall, Gregory Lee Johnson burned an American flag as a means of protest against Reagan administration policies. Johnson was tried and convicted under a Texas law outlawing flag desecration. He was sentenced to one year in jail and assessed a $2,000 fine. After the Texas Court of Criminal Appeals reversed the conviction, the case went to the Supreme Court.

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| **Question**Is the desecration of an American flag, by burning or otherwise, a form of speech that is protected under the First Amendment? |
| Your Answer | SCOTUS Answer |
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**Case 7: *New York Times v. Sullivan***

Facts of the Case

Decided together with Abernathy v. Sullivan, this case concerns a full-page ad in the New York Times which alleged that the arrest of the Rev. Martin Luther King, Jr. for perjury in Alabama was part of a campaign to destroy King's efforts to integrate public facilities and encourage blacks to vote. L. B. Sullivan, the Montgomery city commissioner, filed a libel action against the newspaper and four black ministers who were listed as endorsers of the ad, claiming that the allegations against the Montgomery police defamed him personally. Under Alabama law, Sullivan did not have to prove that he had been harmed; and a defense claiming that the ad was truthful was unavailable since the ad contained factual errors. Sullivan won a $500,000 judgment.

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| QuestionDid Alabama's libel law, by not requiring Sullivan to prove that an advertisement personally harmed him and dismissing the same as untruthful due to factual errors, unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections? |
| Your Answer | SCOTUS Answer |
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**Case 8: *Tinker v. DeMoins***

**Facts of the Case**

John Tinker, 15 years old, his sister Mary Beth Tinker, 13 years old, and Christopher Echardt, 16 years old, decided along with their parents to protest the Vietnam War by wearing black armbands to their Des Moines schools during the Christmas holiday season. Upon learning of their intentions, and fearing that the armbands would provoke disturbances, the principals of the Des Moines school district resolved that all students wearing armbands be asked to remove them or face suspension. When the Tinker siblings and Christopher wore their armbands to school, they were asked to remove them. When they refused, they were suspended until after New Year's Day.

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| **Question**Does a prohibition against the wearing of armbands in public school, as a form of symbolic protest, violate the First Amendment's freedom of speech protections? |
| Your Answer | SCOTUS Answer |
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**Case 9 *New York Times v. United States***

Facts of the Case

In what became known as the "Pentagon Papers Case," the Nixon Administration attempted to prevent the New York Times and Washington Post from publishing materials belonging to a classified Defense Department study regarding the history of United States activities in Vietnam. The President argued that prior restraint was necessary to protect national security. This case was decided together with United States v. Washington Post Co.

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| QuestionDid the Nixon administration's efforts to prevent the publication of what it termed "classified information" violate the First Amendment? |
| Your Answer | SCOTUS Answer |
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**Case 10: *Near v. Minnesota***

Facts of the Case

Jay Near published a scandal sheet in Minneapolis, in which he attacked local officials, charging that they were implicated with gangsters. Minnesota officials obtained an injunction to prevent Near from publishing his newspaper under a state law that allowed such action against periodicals. The law provided that any person "engaged in the business" of regularly publishing or circulating an "obscene, lewd, and lascivious" or a "malicious, scandalous and defamatory" newspaper or periodical was guilty of a nuisance, and could be enjoined (stopped) from further committing or maintaining the nuisance.

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| QuestionDoes the Minnesota "gag law" violate the free press provision of the First Amendment? |
| Your Answer | SCOTUS Answer |
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