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Part Two (50%): As a Supreme Court Justice, write an opinion about ONE of the following two cases. Use a blue book; DO NOT use this sheet.

97-5: Jones v. SSU: Springfield State University has a speech code which prohibits harassment, defined as:

the public use of any symbol, appellation or characterization which one knows or has reasonable grounds to know insults or stigmatizes an individual or a small number of individuals on the basis of sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin.

Jones, a student at SSU, makes several posts to SSU's general newsgroup as part of a heated discussion of affirmative action. In one of them, he calls another SSU student who had posted to the debate and who is black, "nigger." The other student brings a harassment complaint against Jones. SSU determines that Jones has violated the speech code and as a penalty, includes a notation on his transcript that he has committed "racial harassment." Jones sues, claiming that SSU's speech code violates the First Amendment. The case is now pending before the Supreme Court.

97-6: Smith v. Springfield: Springfield has an ordinance which prohibits the public display of the genitals or of the female breast. The Amazon Society of Springfield marches in the annual Fourth of July Parade. As a political statement, to celebrate and show their pride in the female body, each Amazon marches with her right breast bared. Smith, the president of the Amazons, is arrested and convicted under the Springfield ordinance. She appeals; the case is now pending before the Supreme Court.

5. State the case of FCC v. Pacifica.

6. Identify the following quotation, giving the name of the case from which it is taken, its date and author.

"But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas--that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."

7. Identify the following quotation, giving the name of the case from which it is taken, its date and author.

"To many, the immediate consequence of this freedom [of speech] may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength."

8. What would a prosecutor have to allege in order to charge someone with "obscenity"--

(a) in 1907?

(c) in 1997?

