

6. What would a prosecutor have to allege in order to charge someone with "fighting words"--

(a) in 1943?

(b) in 1973?

Questions 7-10 concern a Springfield State University regulation which prohibits "the viewing of lewd depictions of exposed genitals" on computers in the University's open computer labs.

7. Argue that this regulation IS NOT constitutional, using the topos "slippery slope."

8. Argue that this regulation IS constitutional, using the topos "slippery slope."

9. Argue that this regulation is or is not constitutional, using any free speech value.

10. Argue that this regulation is or is not constitutional, using a metaphor other than "marketplace" and "spark."

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

“We have sometimes said that these categories of expression are ‘not within the area of constitutionally protected speech,’ . . . or that ‘the protection of the First Amendment does not extend’ to them. . . . Such statements must be taken in context, however. . . . What they mean is that these areas of speech can, consistently with the First Amendment, be regulated because of their constitutionally proscribable content (obscenity, defamation, etc.)--not that they are categories of speech entirely invisible to the Constitution.”

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

“All ideas having even the slightest redeeming social importance--unorthodox ideas, controversial ideas, even ideas hateful to the prevailing climate of opinion--have the full protection of the guaranties, unless excludable because they encroach upon the limited area of more important interests. But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance.”

GO ON TO PART TWO

Part Two (50%): Answer BOTH of the following questions. Use a blue book or separate sheet; do not use this sheet.

1. Prof. Harry Kalven has written: "The absence of seditious libel as a crime is the true pragmatic test of freedom of speech." Comment.
2. As a Supreme Court Justice, write an opinion about ONE of the following two cases.

SSU v. Jones: Springfield State University has eliminated its Department of Classics due to a budget shortfall. Outraged students protest. Daily mass meetings are held on the main quad, a large grassy area in the center of campus surrounded by sidewalks and buildings. A former classics major, Jones, builds a small shack in the middle of the quad and put a sign on it that says "Classics Department." Twice a day she leads classes in Latin for whoever stops by. She also recites the orations of Cicero in the shack several hours each day. After two days, SSU takes down the structure and expels Jones for violating the University regulation which prohibits damaging University property—here, the quad. Jones sues in federal court; the judge refuses to overturn the University's decision. The case is now pending before the Supreme Court.

S.B.W. v. Springfield: The year is 1990. S.B.W., a minor, has been arrested after burning a cross on the yard of a neighboring African-American family. He is convicted under Springfield's Hate Crime Ordinance, which makes criminal:

"speech or other expression which is (a) intended to insult or stigmatize an individual or a small number of individuals on the basis of their sex, race, color, religion or ethnic origin; and (b) is addressed directly to that individual or individuals; and (c) is reasonably likely to so insult or stigmatize."

S.B.W.'s conviction is upheld by the State supreme court. The case is now pending before the U.S. Supreme Court. (In writing this essay, assume that the Ordinance is NOT overbroad).