



Case Study 1

Permits and demonstrations

A group of National Socialist Party of America members decided to hold a demonstration in a city with a large number of Jewish residents, many of whom survived the Holocaust. The party members wanted to display the swastika, a symbol of Nazi beliefs that for many people represents the Holocaust itself. The citizens of the city were not only deeply offended by the Nazis' beliefs but feared that violence would result if the National Socialist Party members were allowed to parade through their streets in uniform and distribute materials "inciting and promoting hatred against Jews" The city government passed several ordinances regulating public demonstrations. These ordinances required the organizers of any parade or assembly that involved more than 50 persons to obtain insurance coverage. The ordinances also gave the city council the authority to deny a permit for a demonstration if that demonstration might result in disorder. The council also banned demonstrations by members of groups wearing military-style uniforms, as well as all demonstrations that "incite violence, hatred, abuse, or hostility toward a person or group of persons by reasons or reference to religious, racial, ethnic, national, or religious affiliation." The National Socialist Party of America then sued, declaring the ordinances unconstitutionally interfered with their rights to free speech.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 2

Burning a selective service registration certificate

In 1966 four friends burned their draft cards on the steps of the South Boston Courthouse to protest the Vietnam War. After the cards were burned, a crowd that had been watching attacked the four young men. An FBI agent in the crowd took the men into the courthouse, where they were arrested and charged with violating a law that made it illegal to destroy or mutilate a draft card. The protesters said that this law unconstitutionally denied them freedom of speech.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 3

Gathering petitions in a shopping mall

Mike Robins and a group of his classmates went to their local shopping mall to seek support for their opposition to a United Nations resolution they believed to be anti-Semitic. They set up a table to distribute pamphlets and to ask shoppers to sign a petition. A security guard at the mall asked them to leave, and they did.

Robins and his friends then sued the shopping mall, claiming that their First Amendment rights had been violated. The shopping mall responded that free expression could be restricted at the mall because (1) it was private property, (2) the shopping center's regulations forbid "publicly expressive" activities, and (3) the actions of the protesters interfered with people shopping and therefore with the merchants' ability to make a living.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 4

Obscene or indecent phone calls

The federal government passed a law making it illegal to offer commercial, interstate services that involved “obscene” or “indecent” telephone communications. The law was aimed at “dial-a-porn” services. These services provide a taped, sexually explicit message that is activated when customers dial a phone number. Customers are charged for the call. One company sued, claiming that the law was unconstitutional under the First Amendment.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 5

Distribution of anonymous political flyers

On April 27, 1988, Margaret McIntyre passed out flyers outside a school where a public meeting was being held to discuss an increase in school taxes. McIntyre's flyers urged people not to vote for the tax increase. The flyer was signed "Concerned Parents and Taxpayers" but did not give the name or address of the individual(s) issuing the literature.

A school official complained, and McIntyre was charged with violating an Ohio state law against distributing anonymous literature about election issues. The law required that the name and address of a person or organization be printed on all campaign pamphlets, flyers, brochures, etc. The law was to protect candidates and voters from anonymous libelous or false information that might unfairly influence the results of an election. However, it applied to all anonymous literature, even if it was not libelous or obviously false.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 6

Third-party candidate inclusion in televised debates

An independent candidate with little popular support, Ralph Forbes, was denied permission to participate in a debate sponsored by a state-owned public television station in 1992. The Arkansas Educational Television Commission (AETC) had selected the two major party candidates to debate. Forbes sued for his inclusion.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Case Study 7

Student speech at school assemblies

At a voluntary school assembly, a public high school student delivered a speech nominating a candidate for student government office. The school-sponsored activity was attended during the school day by approximately 600 students, many of whom were 14-year-olds. The student used a graphic, sexual metaphor throughout the speech. The speech began, “I know a man who is firm — he’s firm in his pants, he’s firm in his shirt, his character is firm — but most ... of all, his belief in you, the students of Bethel, is firm.”

Prior to the assembly, two teachers had advised the student, Matthew Fraser, not to give the speech because it was inappropriate. The next day the assistant principal notified him that his speech was in violation of the school’s “disruptive-conduct rule.” He was given an opportunity to explain his conduct. After admitting he knew he was using explicit sexual innuendo, Fraser was suspended and his name was removed from the list of potential graduation speakers.

Is this speech protected?

If not, what harm might occur as a result of the speech?

What value or right is conflicting with free speech in this case?



Answers, case studies: when may speech be limited?

Case 1 — This case, which involved the National Socialist Party of America and the Village of Skokie (a suburb of Chicago), generated rulings in both Illinois state and federal courts. The Illinois Supreme Court, by a 6-to-1 margin, held that displaying swastikas was a form of symbolic speech protected by the First Amendment. The court further held that the “fighting words” doctrine developed by the Supreme Court did not permit “prior restraint” of the Nazis’ speech because advance notice of the march gave citizens the option of avoiding face-to-face insults. Such prior restraint to prevent violence, which the court admitted was a possibility, amounted to a “heckler’s veto.”

A month later, a federal district judge ruled that Skokie’s ordinances were unconstitutional, holding that not only did the ordinances censor certain kinds of speech, they provided for censorship on the basis of what might be said, rather than what was actually said. The judge said, “The ability of American society to tolerate the advocacy even of the hateful doctrines espoused by the plaintiffs without abandoning its commitment to freedom of speech and assembly is perhaps the best protection we have against the establishment of any Nazi-type regime in this country.” This decision was upheld by the court of appeals. When the Supreme Court refused to hear [National Socialist Party of America v. Skokie, 432 U.S. 43 \(1977\)](#). The decision of the court of appeals held.

Case 2 — In the case of the [United States v. O'Brien](#), the Supreme Court ruled 8 to 1 against the protesters. The Court held that Congress had the authority to raise armies and could therefore require that Selective Service registration certificates (draft cards) be handled in particular ways. The military purposes of the draft law outweighed David O’Brien’s right to expression through symbolic speech (i.e., burning of his draft card). He had alternative ways to express himself that did not involve violating a valid law that prohibited destroying the card.

Case 3 — In this case, [Pruneyard Shopping Center v. Robins](#) (1980), the court ruled that Robins’ manner of speech was orderly and the activity was conducted in the common public area of the mall. Since the California Constitution protected “speech and petitioning, reasonably exercised, in shopping centers even when the shopping centers are privately owned,” the time, place, and manner test was not violated and the speech was protected.

This case affirms the legal principle that state and local governments may give their citizens more free-speech rights than are accorded them by the First Amendment and the federal constitution.



Case 4 — In this 1989 case, [*Sable Communications of California v. FCC and Thornburgh*](#), the Supreme Court said that the government could ban “obscene” communications but not “indecent” communications. While the Supreme Court agreed that preventing children from hearing indecent messages was a valid goal, it did not think this goal justified making indecent communications illegal. While stopping “indecent” speech would protect children, it would also unconstitutionally deny adults access to protected “indecent” speech. The Supreme Court and other courts have cited *Sable* to rule unconstitutional federal laws setting limits on Internet expression.

Case 5 — The Court ruled in [*McIntyre v. Ohio Elections Commission*](#) (1995) that Ohio’s ban on anonymous elections literature was too broad to achieve the purpose that it was intended to achieve — protecting voters and candidates from false, misleading or libelous statements. While such a state interest might be compelling, the remedy used by the state was too broad. The court stated, “Anonymous pamphleteering is ... an honorable tradition of advocacy and of dissent” and held that McIntyre’s speech was protected.

Case 6 — Forbes lost in district court but won on appeal. AETC appealed to the Supreme Court, where the case was argued on October 8, 1997. In a 6-to-3 decision, the court found in favor of AETC since AETC had created a “nonpublic forum” when it selected participants by “objective indications of their popular support” rather than their points of view. [*Arkansas Ed. Television Comm. v. Forbes*](#) determined that public broadcasters can exclude participants from sponsored debates as long as the debates are not public forums. News coverage of the case can be found on washingtonpost.com.

Case 7 — The U.S. Supreme Court ruled in [*Bethel School District No. 403 v. Fraser*](#) that school systems may prohibit the use of vulgar and offensive language at school-sponsored activities or forums. The informal suggestion by teachers not to give the speech was sufficient warning to Fraser. The decision held: “It is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the work of the school, and the determination of what manner of speech is inappropriate properly rests with the school board.”

Note that this decision applies only to school-sponsored expression. The *Bethel* ruling and standard do not apply to individual expression, such as wearing an inscribed pin or a shirt with a message that does not disrupt the school or educational process. The court made it clear in *Bethel* that it was not overturning *Tinker*, with the “disruption” standard that applies to individual expression. And that test survived *Hazelwood*, as well.



Lawyer Argument Worksheet

Name of your law firm: _____

Members of your law firm:

Lead Attorney _____

Associate Attorney _____

Legal Secretary _____

Paralegal #1 _____

Paralegal #2 _____

Paralegal #3 _____

Stance On the Issue _____

Opening Statement (30-60 seconds) Notes here:

Paralegal #1 Argument:

Paralegal #2 Argument:



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Paralegal #3 Argument:

Additional Arguments:

Opposing Side Rebuttal Arguments:



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Judges Worksheet

Initial Questions

Pro Side:

Con Side:

Third Question (either side):

Pro-side Notes

Con-side Notes



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Final Decision

Please write which side you thought gave the strongest argument. Within your opinion please refer to the arguments given that swayed your thinking. Please also refer to the arguments that you thought were not presented well. Jot down your opinion on the following lines.



Guidelines for Protected Speech Templates

Group One

- **Clear And Present Danger**
- Will this act of speech create a dangerous situation?
- The First Amendment does not protect statements that are uttered to provoke violence or incite illegal action.

Group Two

- **Fighting Words**
- Was something said face-to-face that would incite immediate violence?
- Supreme Court stated that the “English language has a number of words and expressions which by general consent [are] ‘fighting words’ when said without a disarming smile. ... Such words, as ordinary men know, are likely to cause a fight.”

Group Three

- **Libel and Slander**
Was the statement false, or put in a context that makes true statements misleading?
- You do not have a constitutional right to tell lies that damage or defame the reputation of a person or organization.



Group Four

- **Obscenity**
- Obscene materials do not enjoy First Amendment protection.
- In the three-part Miller test, three questions must receive affirmative responses for material to be considered “obscene”:
 - Would the average person, applying the contemporary community standards, viewing the work as a whole, find the work appeals to the prurient interest?
 - Does the work depict or describe sexual conduct in a patently offensive way?
 - Does the work taken as a whole lack serious literary, artistic, political, or scientific value?

Group Five

- **Conflict with Other Legitimate Social or Governmental Interests**
- Does the speech conflict with other compelling interests? For example, in times of war, there may be reasons to restrict First Amendment rights because of conflicts with national security.

Group Six

- **Time, Place, Manner**
- A question to ask: Did the expression occur at a time or place, or did the speaker use a method of communicating, that interferes with a legitimate government interest?