Constitutional Law: Final Examination (May 22, 1964)

William & Mary Law School
DIRECTIONS: Discuss fully all issues raised by the following questions whether or not the answer to any one issue is decisive of the question. Where abbreviations are used in the questions, the same abbreviations should be used in your separate paragraphs.

I. A is a resident of State X, B is a resident of State Y. Both A and B are engaged in the business of importing wines from Europe. The wines are received in sealed casks in State Y where each A and B hold the casks for storage only. However, buyers often call at the warehouses of A and B where they are permitted to sample the wines. If a sale is consummated, delivery is made from the warehouse directly to the buyer. Y has enacted an ad valorem tax applicable to all personal property located and used in business in Y, but excepting from its application merchandise belonging to non-residents held for storage only. The purpose of the exemption was, admittedly, to encourage industry to come into Y, and Y for this reason made no attempt to collect the tax from A. B seeks to have the statute declared unconstitutional by proper procedure. What result? Why?

II. D is arrested and prosecuted by information in State X on the charges of (1) larceny from the office of a used car dealer and (2) breaking and entering the office of a used car dealer with intent to commit larceny, the penalty for either of which is 5-10 years in the state pen. Upon arraignment, D was asked if he wished counsel. Upon replying that he didn't know, that he had no money, he was told to hurry up as the court was busy. Thereupon, D pled not guilty and was bound over for trial. At the trial, D being a very unpopular young man in his community, there were frequent demonstrations which tended to interrupt D's lawyer (one having been appointed after arraignment and prior to trial) in cross-examination of the State's witnesses. On the other hand, one newspaper editor, C, has long resented the State's use of the information system, and has, in the face of court warnings not to do so, continually written editorials viciously accusing the court of trying to railroad D by "Star Chamber" procedures. These editorials contributed to the demonstrations. D is convicted; C is held in contempt. D appeals on the basis of the Fifth and Sixth Amendments to the Constitution of the United States. C appeals urging his contempt conviction was in violation of the First Amendment and of his right to trial by jury. What result? Why?

III. State X has enacted legislation requiring all employers of women not to permit them to work in excess of six hours per day, and, further requiring they be paid a minimum of $1.00 per hour. Exempt from the requirements of the statute, however, are hotels which employ women as chambermaids. A, owner of a completely intrastate fruit store, claims this statute is in derogation of his freedom of contract, and by proper court procedure seeks to have it annulled. There are no severability provisions in the statute. What result? Why?

IV. Ds were accused and tried for conspiring to organize a group which advocated forcible overthrow of the United States Government and for advocating and teaching the forcible overthrowing of same. At the federal trial it was proved beyond a reasonable doubt that Ds taught Marxist-Lenin doctrine, that they used Marxist classics as texts, that they repeated official pronouncements of the Communist Party uttered during previous conventions of same, that they disseminated general outlines of general Marxist literature, that they taught the history and structure of the Communist Party, that they met in secret, and that they had sympathy for, and advocated alliance with, the USSR. The Court then instructed the jury in all the proper formal charges, including the burden of proof, that Ds could be convicted only if their speech and writings created a clear and present danger of accomplishing the evils of forcibly overthrowing the U. S. Government; and that to convict the jury just find Ds had the intent to overthrow the U. S. Government as speedily as circumstances would permit. The statute under which Ds were accused provided it should be unlawful to organize any group who teach, advocate or encourage the overthrow of any Government in the United States by force or violence. Ds are convicted and they appeal. What result? Why?
V. State X has enacted a statute providing it "Shall be unlawful for any person to present or exhibit in any place any literature or sound recording which portrays criminality or lack of virtue of a class of citizens or of any race, color, creed or religion or which exposes any class or citizens or any race, color, creed or religion to contempt, derision or obloquy, or which is productive of breach of the peace or riots." A companion statute provides that "No person shall solicit money or subscriptions for any religious or charitable organization, other than from a member of the organization for whose benefit the solicitation is made unless approved by the Secretary of State. Upon application the Secretary shall decide if the organization is bona fide and, if so, shall forthwith issue a certificate to that effect." D is a member of Y church and has procured excerpts from a current Broadway play which depicts the Head of Z Church as a moral contributor to the death of thousands of hermits during Hitler's race extermination policies prior to and during World War II.

D, on a Sunday morning, appeared in front of the largest Z Church in New York City and commenced selling the excerpts without obtaining the certificate from the Secretary of State. In his sales pitch he yelled, "Head of Z Church Accused of Killing Hermits." Crowds gather, angry mutterings are heard, and a few tomatoes are hurled. The police advise D to leave and when, within 15 minutes, he failed to do so, arrested him, charging violation of both statutes. Conviction under each follows, and being unable to post supersedeas bond, D is sent to prison even though he has perfected an appeal to the U. S. Supreme Court. By the time D's appeal reaches the Court, he is released from prison on parole. How should the Court decide the appeal? Why?

VI. The City of X has passed an ordinance requiring all meat products sold in the city to have been inspected by a qualified employee of its board of sanitation and health and such employee after such inspection is required to place on the meat or meat package a stamp of approval. Any person retailing meats without such stamp is deemed to have committed a misdemeanor and made subject to fine. D is engaged in the business of retailing meats. Ordinarily he receives his meats pre-packaged from out-of-state packers. The packages are labeled and recite the grade of meat contained according to U. S. Department of Agriculture standards. They also bear a stamp of approval as to health standards placed thereon by inspectors in the state from which the meats are shipped. Accordingly, D does not bother to inform the X inspectors of arrivals of shipments and sells without the X stamp of approval. D is charged with violation of the X ordinance. What result? Why?

VII. The legislature of State X has passed a statute authorizing its Attorney General to make an investigation of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, a violation of the laws of the state or of the United States or would be inimical to the well-being and orderly pursuit of the personal and business activities of citizens of the State or of the United States. The Attorney General then ordered D, president of the State White Muslims, to appear at a designated time and place. Prior to the interrogation D requested, but was denied, information relative to the purpose of the interrogation. At the hearing, D did not understand the questions and asked how they related to the purpose of the inquiry, but the Attorney General insisted D answer without delay. Upon D's refusal to answer he was, in accordance with an applicable statute, cited for contempt before a court of record in the state. Should the court issue a citation of contempt? Why?