

1971

## Law of Mass Communications: Final Examination (Summer 1971)

William & Mary Law School

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FINAL EXAMINATION

Law of Mass Communications

Summer School 1971

Professor Tom A. Collins

This examination contains three questions of equal weight. All require analysis of general legal problems related to mass communications. While the first two questions provide some facts, they are vehicles for a general analysis rather than explicit factual problem analysis. Feel free to state further facts needed. You should allocate time to answer all questions fully. Please be concise and organized. These factors have a bearing upon evaluation.

1. (35 points)

(a) As you know from class discussion, "I Am Curious (Yellow)" has been found obscene in some circuits, not obscene in others, with the Supreme Court affirming a finding of obscene by an equally divided vote. What issue or issues are essential to this determination?

(b) Assuming "I Am Curious (Yellow)" is found not to be obscene, what would be the result if a television station shows the program at 8:00 p. m.? What if at 11:00 p. m.?

(c) What are the most restrictive rules the FCC can draw to control obscene presentations? Justify your conclusion.

2. (35 points)

During the spring and summer Southern California is plagued by a series of bizarre torture murders. Two occur in Orange County where the Sheriff and Prosecuting Attorney are busily building political careers as strong upholders of law and order. On August 17th, Pedro O'Leary is arrested on charges of murder. That afternoon the circuit court judge with jurisdiction announces guides for trial. These are a complete prohibition of statements by attorney, police and court officers and a prohibition of any publication of material concerning the alleged crime. That night the Sheriff and Prosecuting Attorney give an interview to the Morning Orangeman, including pictures of a badly bruised O'Leary subdued after resisting arrest. The Orangeman runs the story and pictures the next morning. The judge holds all in contempt.

(a) What would be the result on appeal?

(b) What other measures might the judge take as the trial progresses?

3. (35 points)

Professor Jerome Barron has written:

"What must be emphasized is the positive dimension of the first amendment: The first amendment must be read to require opportunity for expression as well as protection for expression once secured....The use of an affirmative approach in broadcasting indicates that the eighteenth century associations which insulate the press are not present in broadcasting....But there is a need for such an appraisal of other forums as well--forms such as the press and public facilities, whose capacities for censorship have received little attention....Similarly, attempts to identify procedures created to assure debate with the suppression of ideas must be understood for what they are: the unreflecting use of hallowed symbols for purposes which are antithetical to debate and discussion."

- (a) Suggest viable means of achieving Professor Barron's goal.
- (b) Critically analyze his view of the first amendment both as to legal theory and as to practicality of achievement.