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CONSTITUTIONAL LAW II (B)

Mr. Williamson

Final Examination

January 19, 1973

Instructions:

The examination consists of five (5) questions totaling 100 points. Each question states the points given to such question, a suggested time limit and a maximum page limit. The maximum page limit is to be computed by counting one side of the page as one page. You may write on both sides of the page but such will count as two pages. Think before you write and organize your answers carefully. If the question involves more than one issue discuss each issue separately.

I. (45 minutes - 25 points) 8 pages

The following quotation is taken from the majority opinion in NAACP v. Alabama:

"It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective restraint on freedom of association . . . This Court has recognized the vital relationships between freedom to associate and privacy in one's associations . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

Keeping in mind the wide range of cases where the "inviolability of privacy in group association" has been the issue before the Court, how vigilant has the Supreme Court been in adhering to the spirit of the quotation set forth above? Use specific case examples where necessary. Can the relevant cases be reconciled?

II. (30 minutes - 16-2/3 points) 5 pages

Plaintiffs brought an action challenging on First Amendment grounds the constitutionality of a facilities lease and dual enrollment agreement between the Marshall School District and the Holy Cross School of the Roman Catholic Bishop of Marshall. Under the agreement the School District leases classroom space in the building of the Holy Cross School and uses the leased space for the teaching of secular courses solely to the students of Holy Cross School.

The facilities are leased at a reasonable rate and contain no crucifixes, religious symbols or artifacts. The subjects taught include Arts, Science, Math, Music and Physical Education and the teachers are employed and supervised wholly by the School District.

The students spend one-half day in the Holy Cross School and one-half day in the school operated by the School District.

As the judge of the case, write a judicial decision on the merits of the plaintiffs' first amendment claim.

III. (45 minutes - 25 points) 8 pages

Plaintiff, a corporation engaged in the business of promoting live theatrical productions, contacted the director of the Marshall Civic Center and requested a reservation of the Civic Center Auditorium for two weeks for the presentation of a musical play entitled "Body." The director of the center requested the city's Municipal Building and Athletic Committee to decide if the play could be presented. The committee denied the request explaining that the use of the auditorium was restricted to wholesome, "family type" productions and that the committee did not think "Body" was the proper type of entertainment for a public auditorium.

Plaintiff filed an action in state court seeking to compel the committee to lease the auditorium on the grounds that the denial constituted a prior restraint on plaintiff's freedom of speech. The city raised two defenses: First, that "Body" is obscene and pornographic and if presented, would violate certain state criminal statutes, including those prohibiting indecent exposure, desecration of the flag and use of profane language; second, that the play involves non-speech elements which are not protected by the First Amendment. What standards should be applied by the Judge when deciding the merits of the plaintiff's claim, keeping in mind the defenses raised by the city?

IV. (30 minutes - 16-2/3 points) 5 pages

Appellant, Jones, was notified by the Commander of Fort Kick, a military base located in Waco, Texas, that his re-entry upon such military base would result in his arrest and prosecution under the provisions of 18 U.S.C. §1382. [The provisions of §1382 prohibit re-entry of any person onto a military post ordered not to re-enter by a commanding officer.] The order was issued because information had been received that appellant had participated in an attempt to distribute an unauthorized publication contrary to regulations of Fort Kick promulgated under authority of a U.S. Army Regulation issued by the Secretary of the Army pursuant to 10 U.S.C. §3012.

Appellant thereafter re-entered Fort Kick in defiance of the order and at the time of his arrest on the base was distributing leaflets advertising an anti-war meeting.

Appellant was convicted in Federal District Court. He appeals from that decision and asks that his conviction be set aside because both his re-entry and prior conduct are protected by the First Amendment. How should the Court decide the case? Discuss all issues fairly presented.

V. (30 minutes - 16-2/3 points) 5 pages

Plaintiffs brought a class action in Federal District Court seeking injunctive relief prohibiting defendant YMCA from operating any of its branches or administering any of its programs in a racially discriminatory manner. The plaintiffs alleged that they were denied membership in defendant's summer day camp program solely because they are Negro in violation of the Equal Protection clause of the Fourteenth Amendment. The defendant stipulated that the practices of YMCA were discriminatory but nevertheless were not within the coverage of the Fourteenth Amendment, such amendment applying only to the States and not to private citizens or organizations.

As counsel for the plaintiffs, what type of evidence would you seek to obtain to support your argument that the 14th Amendment is applicable to the defendant's discriminatory practices, indicating why [in terms of the applicable constitutional test(s)] such evidence would be relevant.