**Constitutional Law I**

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Free Speech Hypotheticals: Part 1, Dangerous Speech

Discuss the arguments likely to be advanced by both sides in the following situations. Consider what additional facts might be important.

(1) The American Coalition of Life Activists, an anti-abortion group, maintains a website that displays “Wanted” posters showing doctors who perform abortions, identifying them by name, home address and other personal information. Prior to the publication of the website, several doctors who performed abortions had been shot by people not affiliated with the Coalition. After the website was created, several more doctors are shot, also by people not affiliated with the Coalition. The Coalition updates the website by drawing lines through the pictures of those who had been killed. Planned Parenthood, an organization that (among other things) provides abortion services, sues the Coalition under a statute providing a private right of action against persons who “intimidate” abortion providers. The Coalition defends on the grounds that its speech is protected by the First Amendment.

(Adapted from *Planned Parenthood v. American Coalition of Life Activists*, 290 F.3d 1058 (9th Cir. 2002), in which a narrow majority of the Ninth Circuit en banc panel upheld the law.)

(2) Paladin Enterprises publishes a book called “Hit Man: A Technical Manual for Independent Contractors,” which describes in detail how to become a murder-for-hire hit man. A person who reads the book kills someone in a murder-for-hire. The murdered person’s survivors sue the publisher, and the publisher defends on First Amendment grounds.

(Adapted from *Rice v. Paladin Enterprises*, 128 F.3d 233 (4th Cir 1997), which allowed the suit.)

(3) During World War I, Mr. Schenck distributes pamphlets criticizing the war, opposing the military draft and calling on people to “assert your opposition to the draft” and “do not submit to intimidation.” He is prosecuted under a federal statute prohibiting obstruction of or interference with military recruiting and enlistment, and defends on First Amendment grounds.

(Adapted from *Schenck v. United States*, 249 U.S. 47 (1919), upholding the conviction. Note: for the majority, Justice Oliver Wendell Holmes made the famous remark: “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic.”).

(4) Mr. Counterman sends abusive Facebook messages with violent imagery to a woman he has never met. She interprets them as threats and reports them to the police. Counterman is prosecuted under an applicable state law. The government argues (and a jury agrees) that a reasonable person would find the messages to be threats. Counterman contends that he did not intend them to be threatening and therefore they are protected by the First Amendment.

(Adapted from *Counterman v. Colorado*, No. 22–138 (U.S. Supreme Court 2023), in which the Court held for Counterman. Compare the threat cases mentioned briefly in the book: *Watts* and *Virginia v. Black*, note c on pp. 1158-1159.)