1. Explain the importance of the two basic purposes served by the guarantees of free expression.
2. Summarize how the Supreme Court has limited seditious speech and obscenity.
3. Examine the issues of prior restraint and press confidentiality, and describe the limits the Court has placed on the media.
4. Define symbolic and commercial speech; describe the limits of their exercise.
Key Terms

- **libel**: the false and malicious use of printed words
- **slander**: the false and malicious use of spoken words
- **sedition**: the crime of attempting to overthrow the government by force or disrupt it by violent acts
- **seditious speech**: advocating sedition
- **prior restraint**: banning an idea before it is expressed
- **injunction**: a court order
- **shield laws**: laws protecting lawyers from giving up confidential sources
- **symbolic speech**: expressing an idea by one’s conduct
- **picketing**: patrolling a workplace while on strike
• What are the limits on the guarantees of free speech and free press?

  – No person has the right to libel or slander another person.
  – It is illegal to encourage others to commit a crime.
  – Laws can ban the use of obscene words, printing or distributing obscene materials, and false advertising.
Free Expression

• The 1st amendment guarantees each person the right of free expression by speech, writing, and all other means of communication.
  – The 14th Amendment extends this federal right to citizens of every state.

• Everyone has the right to hear what others have to say on public issues.
  – Only an informed populace can make good decisions about public policy.
Seditious Speech

• Congress has passed several laws banning seditious speech.
  – The Espionage Act of 1917 made it a crime to say, write, or publish disloyal comments about the government.
  – The Smith Act of 1940 makes it a crime to urge or plan the violent overthrow of the American government.
What Counts as Sedition?

- In *Schenck v. United States*, the Supreme Court established the “clear and present danger rule.”
  - Words can be banned if there is a strong risk that they will encourage criminal activity.

- In *Yates v. United States*, the Court ruled that it is not illegal to urge someone to *believe* something but it is illegal to urge them to *do* something.
Obscenity

- It is illegal under federal and state law to distribute obscene material.
- The Supreme Court created a three-part test to determine if something is obscene.
- Material is obscene if it:
  - Incites lust according to local community standards
  - Deals with sexual conduct banned in an anti-obscenity law
  - Lacks serious literary, artistic, political, or scientific value

NOTE TO TEACHERS: The censorship cases in the sub-listing for the second bullet are Greer v. Spock, 1976 (military bases), Thornburgh v. Abbott, 1989 (prisons), Snepp v. United States, 1980 (CIA)
Checkpoint Answer: Student speech (including writing) has fewer protections that speech made outside of a school setting, and may be censored by school officials for educational reasons.
The Supreme Court has ruled that under federal law, news reporters must testify in court even if it means revealing confidential sources.

- Some 30 states have passed shield laws that give reporters some rights to withhold confidential sources.
• Freedom of the press does not give the movie industry as much protection as newspapers. Films can be censored.
• Radio and television receive the least 1st Amendment protection.
  – Radio and TV stations are licensed to broadcast their signals on publicly owned airwaves.
  – Such stations have no guaranteed 1st Amendment right to broadcast their material.
  – Instead, they fall under the commerce power of Congress.

• Radio and TV are heavily regulated by the Federal Communications Commission (FCC)

• The FCC can refuse to license stations that use indecent language.

• Cable TV has fewer regulations.

NOTE TO TEACHERS: The relevant Supreme Court rulings are Reno v. American Civil Liberties Union, 1997 (overturned an anti-pornography law) and United States v. American Library Association, 2003 (upheld CIPA).
Symbolic Speech

• Symbolic speech is the expression of ideas by a person’s conduct and is often meant as an act of dissent.

  – An example is picketing a workplace while on strike to draw public attention to a controversy. Peaceful picketing is protected speech.

  – Burning the American flag or a cross as a political protest is also protected speech according to the Supreme Court.

NOTE TO TEACHERS: The relevant Supreme Court case for the first sub-listing is Thornhill v. Alabama, 1940. For the second sub-listing, the two flag-burning Court cases are Texas v. Johnson, 1989 and United States v. Eichman, 1990. The cross case is Virginia v. Black, 2003.
Checkpoint Answer: See the listed items above, which can be restated as follows: If the act or law being protested is a legal action of the U.S. government, if the limit on free expression is not excessive, and if the government’s goal is not specifically to ban dissent.

NOTE TO TEACHERS: These criteria come from the Supreme Court case United States v. O'Brien, 1968, in which four young men who burned their draft cards to protest the Vietnam War were prosecuted because burning draft cards was a federal crime.
• Commercial speech most often refers to advertising.

• The Supreme Court usually strikes down arbitrary bans on advertising.

• The government can ban false and misleading advertisements or the advertising of illegal goods and services.

• Congress has also banned tobacco ads on radio and television.
Review

• Now that you have learned about the limits on the guarantees of free speech and free press, go back and answer the Chapter Essential Question.
  – How can the judiciary balance individual rights with the common good?