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CCR Performance Task

ELA Grades 11-12: Writing an Argument

Free Speech

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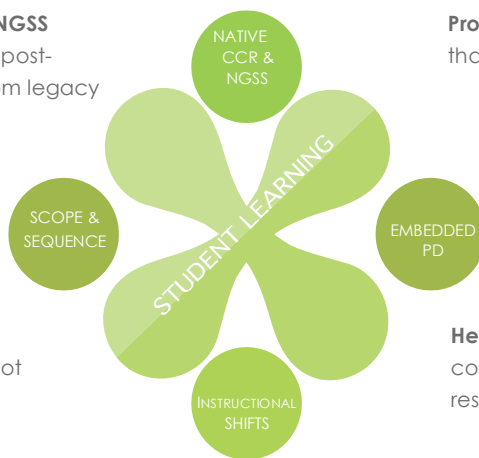
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CCR Performance Tasks

ELA Grades 11-12: Writing an Argument

Free Speech

Student Test Booklet

Name: _____

PART 1

Directions: Read both texts and then follow your teacher’s directions.

First Amendment to the Bill of Rights

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Summary of *New York Times v. Sullivan*

On March 29, 1960, in the midst of the growing civil rights movement, *The New York Times* printed a full-page ad that became the basis for a Supreme Court case on free speech.

Describing a culture of hostility against civil rights workers in the South, the ad called for support for Dr. Martin Luther King, Jr. The ad also listed examples of violent police responses to student protests.

The text of the ad did include some minor errors, such as the songs sung by protesters and the number of times King had been arrested.

Claiming wrongful damage to his reputation, Montgomery's police commissioner, L.B. Sullivan, filed a lawsuit against the *Times* and four civil rights leaders who endorsed the ad. After a trial, a jury awarded Sullivan \$500,000. Later, the Supreme Court unanimously overturned the decision, ruling in favor of the *Times*.

The Court concluded that the freedom of speech guaranteed by the First Amendment extends to publishers. The Court stated that a publisher must have the right to print criticisms of public officials without fear of retaliation. In order to sue for libel, the Court decided, a public figure must prove the existence of “actual malice” on the part of the publisher.

This decision is a landmark in the fight for free speech. By ruling in favor of the *Times*, the Court strengthened the ability of the press to report on controversial subjects.

Option A

Directions: Prepare to participate in a class discussion by considering these questions.

1. **Why does the First Amendment specifically protect citizens' right to "petition the government for a redress of grievances"?**
2. **How is the First Amendment significant to the news coverage of the civil rights movement in the South?**
3. **Why did the Supreme Court overturn the decision from the original trial?**
4. **Why does the author of the summary consider the case a "landmark in the fight for free speech"?**

Option B

Directions: Answer these questions about the texts.

1. Why does the First Amendment specifically protect citizens' right to "petition the government for a redress of grievances"?

2. How is the First Amendment significant to the news coverage of the civil rights movement in the South?

3. Why did the Supreme Court overturn the decision from the original trial?

4. Why does the author of the summary consider the case a "landmark in the fight for free speech"?

Option C

Directions: Reread the text of the First Amendment and then write a short response to the following prompt.

Do you feel that the First Amendment is important in your life? How would you be affected if there were no freedom of speech or press? Use details and examples to support your opinion.

[illegible]

PART 2

Directions: Read the excerpt. Use the notes and consider the questions that are in italics to help you better understand the excerpt. Then follow your teacher's directions.

Supreme Court Opinion Delivered by Justice William Brennan, Jr.

Part 1

The judgment awarded in this case—without the need for any proof of actual pecuniary¹ loss—was one thousand times greater than the maximum fine provided by the Alabama criminal statute, and one hundred times greater than that provided by the Sedition Act². And since there is no double jeopardy limitation³ applicable to civil lawsuits, this is not the only judgment that may be awarded against petitioners for the same publication. Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive.

Part 1 Summary: The first trial awarded Sullivan an exceptional amount of money. Because there is no law preventing multiple such claims against the Times, this kind of ruling could bankrupt newspapers and will certainly intimidate them.

If the original judgment were left standing, what would be the most likely effect on newspapers?

Part 2

A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable "self-censorship." Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. . . . Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is, in fact, true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which "steer far wider of the unlawful zone." . . . The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments. The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

Part 2 Summary: To require publishers to provide proof for every fact they print violates their constitutional right to free speech. It would weaken the press by forcing publishers to avoid all potentially controversial statements. A public official suing for libel must prove that any false information was published with intent to cause harm.

¹ financial

² The Sedition Act of 1798 made speaking or publishing criticisms of the United States government punishable by a fine of up to \$5000.

³ Double jeopardy limitations, when applicable, protect a defendant from being tried multiple times on the same charges.

Why would the need to prove the truth of all information prevent newspapers from publishing valid criticisms?

What is the "federal rule" that Justice Brennan believes the Constitution calls for?

Part 3

In *Barr v. Matteo*⁴, 360 U.S. 564, 575, this Court held the utterance of a federal official to be absolutely privileged if made "within the outer perimeter" of his duties. The States accord the same immunity to statements of their highest officers, although some differentiate their lesser officials and qualify the privilege they enjoy. But all hold that all officials are protected unless actual malice can be proved. The reason for the official privilege is said to be that the threat of damage suits would otherwise "inhibit the fearless, vigorous, and effective administration of policies of government" and "dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties." . . . Analogous considerations support the privilege for the citizen-critic of government. It is as much his duty to criticize as it is the official's duty to administer. . . . As Madison said . . . "the censorial power is in the people over the Government, and not in the Government over the people." It would give public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves.

Part 3 Summary: Public officials are protected from excessive lawsuits in order to allow them to do their jobs freely. It would be unfair not to give critics of the government the same protection. The American people must be allowed to criticize the government to prevent it from having too much power.

How does Justice Brennan compare "the citizen-critic" and "the official"?

⁴ This case gave public officials greater protection from libel lawsuits against statements they make in the line of duty.

Option A

Directions: Prepare to participate in a class discussion by considering these questions.

1. Why does Justice Brennan compare the monetary award in *New York Times v. Sullivan* to other related fines?
2. What effect does the phrase "the pall of fear and timidity" create?
3. In the third paragraph, why does Brennan include quotes from another case about the privileges granted to public officials?
4. What does Justice Brennan mean by the term "actual malice"?

Option B

Directions: Complete the graphic organizer by filling in the central idea and at least one supporting detail from each paragraph.

Paragraph 1

Central idea:

Supporting detail:

Paragraph 2

Central idea:

Supporting detail:

Paragraph 3

Central idea:

Supporting detail:

Option C

Directions: Now you will discuss your opinion about the excerpt in small groups. Reread the excerpt and prepare to discuss the following questions.

Does Justice Brennan provide an effective argument that the First Amendment protects *The New York Times*? How does he accomplish or fail to accomplish his purpose?

PART 3

Directions: Read the excerpt. Use the notes and consider the questions that are in italics to help you better understand the excerpt. Then follow your teacher's directions.

Supreme Court Concurrence Delivered by Justice Hugo Black

Part 1

The half-million-dollar verdict does give dramatic proof . . . that state libel laws threaten the very existence of an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials. The factual background of this case emphasizes the imminence and enormity of that threat. One of the acute and highly emotional issues in this country arises out of efforts of many people, even including some public officials, to continue state-commanded segregation of races in the public schools and other public places despite our several holdings that such a state practice is forbidden by the Fourteenth Amendment. Montgomery is one of the localities in which widespread hostility to desegregation has been manifested. This hostility has sometimes extended itself to persons who favor desegregation, particularly to so-called "outside agitators," a term which can be made to fit papers like the *Times*, which is published in New York. The scarcity of testimony to show that Commissioner Sullivan suffered any actual damages at all suggests that these feelings of hostility had at least as much to do with rendition of this half-million-dollar verdict as did an appraisal of damages. Viewed realistically, this record lends support to an inference that, instead of being damaged, Commissioner Sullivan's political, social, and financial prestige has likely been enhanced by the *Times'* publication. Moreover, a second half-million-dollar libel verdict against the *Times* based on the same advertisement has already been awarded to another Commissioner. There, a jury again gave the full amount claimed. There is no reason to believe that there are not more such huge verdicts lurking just around the corner for the *Times* or any other newspaper or broadcaster which might dare to criticize public officials. In fact, briefs before us show that, in Alabama, there are now pending eleven libel suits by local and state officials against the *Times* seeking \$5,600,000, and five such suits against the Columbia Broadcasting System seeking \$1,700,000. Moreover, this technique for harassing and punishing a free press—now that it has been shown to be possible—is by no means limited to cases with racial overtones; it can be used in other fields where public feelings may make local as well as out-of-state newspapers easy prey for libel verdict seekers.

Part 1 Summary: The anger that many in Montgomery—and all over the South—feel toward new desegregation policies extends to papers like The New York Times. Sullivan won the first trial without proving that the ad caused him any actual harm. This suggests that the outcome was influenced by the bias of Southern courts against the Times. This verdict leaves all newspapers vulnerable to many more such damaging lawsuits.

Who are the "outside agitators" mentioned by Justice Black?

What could make other newspapers "easy prey" for more libel lawsuits?

Part 2

In my opinion, the Federal Constitution has dealt with this deadly danger to the press in the only way possible without leaving the free press open to destruction—by granting the press an absolute immunity for criticism of the way public officials do their public duty. . . .

This Nation of ours elects many of its important officials; so do the States, the municipalities, the counties, and even many precincts. These officials are responsible to the people for the way they perform their duties. While our Court has held that some kinds of speech and writings, such as "obscenity" . . . and "fighting words" . . . are not expressions within the protection of the First Amendment, freedom to discuss public affairs and public officials is unquestionably, as the Court today holds, the kind of speech the First Amendment was primarily designed to keep within the area of free discussion. To punish the exercise of this right to discuss public affairs or to penalize it through libel judgments is to abridge or shut off discussion of the very kind most needed. This Nation, I suspect, can live in peace without libel suits based on public discussions of public affairs and public officials. But I doubt that a country can live in freedom where its people can be made to suffer physically or financially for criticizing their government, its actions, or its officials.

Part 2 Summary: State and federal officials must serve the good of the people who elected them. The Constitution allows people to discuss and criticize these public figures without fear of punishment. It is impossible for our nation to remain free without protecting this right.

Option A

Directions: Prepare to participate in a class discussion by considering these questions.

1. Why does Justice Black consider "widespread hostility to desegregation" relevant to the case?
2. What is the author's attitude toward Sullivan and other "libel verdict seekers"?
3. What does the author feel is the main purpose of the First Amendment?

Option B

Directions: Reread both excerpts from the Supreme Court decision. Then fill in the graphic organizer with arguments made in one or both excerpts in defense of *The New York Times*. Provide at least two arguments in each column.

Supreme Court opinion by Justice Brennan	Intersection	Concurring statement by Justice Black

Option C: PLANNING EXERCISE

Directions: Now you will prepare to write an extended response to a question about the texts you have read. For the extended response, you will write an argument responding to the following prompt.

Should newspapers like *The New York Times* be protected from libel lawsuits when criticizing public officials? Why or why not? Use details from the texts you have read to support your opinion.

Reread the texts, and review your notes and responses to the earlier parts of this task. As you plan your response, you should think about:

- the argument you will make;
- the evidence you will draw from the texts to support your argument;
- the arguments that could be made against your claim and how you might respond; and
- the way in which you will organize your argument.

Use the space below and on the next page to make notes that prepare you to write your essay.

Notes

Notes

EXTENDED WRITING PROMPT

Directions: Review the texts and review your notes and responses for the earlier parts of this task. Respond to this prompt on the next pages.

Should newspapers like *The New York Times* be protected from libel lawsuits when criticizing public officials? Why or why not? Use details from the texts you have read to support your argument.

Your response will be scored using this rubric.

4 Point Response

Student will:

- Precisely and thoughtfully state an argument about freedom of speech and press;
- Use well-chosen, relevant, and sufficient details from the texts that clearly support the argument;
- Create a cohesive organization that includes a concluding section which supports the argument.

3 Point Response

Student will:

- Clearly state an argument about freedom of speech and press;
- Use relevant details from the texts that clearly support the argument;
- Create an organization that includes a concluding section.

2 Point Response

Student will:

- State an argument about freedom of speech and press that lacks clarity;
- Use details from at least one text;
- Fail to provide organization or a conclusion.

1 Point Response

Student will:

- Provide a vague or minimal argument or statement about the texts with some support.

0 Point Response

Student provides no response, or the response is off topic.

CCR Performance Tasks

ELA Grades 11-12: Writing an Argument

Free Speech

Teacher Guide

Passage Summary

Title	Text Type	Word Count	Lexile	Levels of Meaning/	Text Structure	Language Features	Knowledge Demands
First Amendment to the Bill of Rights/Summary of <i>New York Times v. Sullivan</i>	Informational Text	279	1160L	3	2	2	3
Supreme Court opinion Delivered by Justice Brennan, Jr.	Informational Text	701	1420L	3	2	4	4
Supreme Court Concurrence Delivered by Justice Hugo Black	Informational Text	731	1450L	3	2	3	4

Passage Placement Rationale

Title	Placement Rationale
First Amendment to the Bill of Rights/Summary of <i>New York Times v. Sullivan</i>	<ul style="list-style-type: none"> Although the Lexile is slightly below range for grades 11-12, the subject matter is sophisticated. The qualitative measures indicate that the text is appropriate for grades 11-12.
Supreme Court opinion Delivered by Justice Brennan, Jr.	<ul style="list-style-type: none"> Although the text is very complex in its vocabulary and in its concepts, the summaries aid students in understanding the content of the decision.
Supreme Court Concurrence Delivered by Justice Hugo Black	<ul style="list-style-type: none"> Although the text is very complex in its vocabulary and in its concepts, the summaries aid students in understanding the content of the decision.

Key to Qualitative Measures of Text Complexity

Measure	Levels of Meaning/Purpose	Text Structure	Language Features	Knowledge Demands
1	Theme or purpose of text is explicit.	Organization of text is obvious and generally chronological.	Language is explicit and literal; vocabulary is contemporary and familiar; the text contains mainly simple sentences.	The text describes familiar experiences or everyday knowledge.
2	Theme or purpose of text may be more complex or implied but still easy to identify.	Literary text: May include more than one storyline, and may be difficult to predict. Informational text: Connections between some ideas are implicit or subtle; organization of text is generally evident and sequential. Text features and graphics directly support comprehension of text.	Language is largely explicit and easy to understand; vocabulary is mostly contemporary and familiar; the text includes simple and compound sentences.	Literary text: The text describes experiences common to most readers and has a single theme. Informational text: The text includes some discipline- specific knowledge and both concrete and abstract ideas.
3	Theme or purpose of text is implicit and involves several layers of meaning.	Literary text: Organization may include subplots or time shifts. Informational text: Connections among an expanded range of ideas may be deeper and more subtle. Some text features and graphics may be essential to comprehension of text.	Language is complex and contains some abstract and/or figurative language; vocabulary is somewhat complex and is sometimes unfamiliar, archaic or academic; the text includes many complex sentences.	Literary text: The text describes experiences unfamiliar to most readers and includes complex themes. It may include some references to other texts or cultures. Informational text: The text contains moderate levels of discipline-specific content and may include challenging abstract concepts. It may make references to other texts or outside knowledge.
4	Theme or purpose of text is subtle, difficult to determine, and may involve several layers that are difficult to separate and interpret.	Literary text: Organization is intricate. Informational text: Organization is intricate. Connections among an extensive range of ideas are deep, and often implicit.	Language is dense and complex and contains abstract and/or figurative language; vocabulary is generally unfamiliar, archaic, or academic; the text includes mainly complex sentences, often containing multiple concepts.	Literary text: The text describes experiences that are distinctly different for the common reader and includes sophisticated themes. It may make many references to other texts or cultures. Informational text: The text contains extensive discipline- specific content and a range of challenging abstract concepts. It may make many references to other texts or outside knowledge.

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About the Teacher Guide

This document contains support materials for the “Grade 11-12: Writing an Argument: Free Speech” task. This includes:

- (a) An overview of the task
- (b) The standards addressed by this task, including detailed descriptions of the standards
- (c) The scoring rubrics, including sample student responses
- (d) Questions to stimulate further discussion
- (e) Optional extension activities

PTE28 Grades 11-12 Writing an Argument

DOK Level and Consortia Claims

DOK Level: 4

This performance task provides evidence to support the following claims:

SBAC claims

Primary claim

Claim 2: Students can produce effective and well-grounded writing for a range of purposes and audiences.

Secondary claims

Claim 1: Students can read closely and analytically to comprehend a range of increasingly complex literary and informational texts.	Parts 1, 2, and 3
Claim 3: Students can employ effective speaking and listening skills for a range of purposes and audiences.	Parts 1, 2, and 3

PARCC claims

Primary claim

Major Claim II: Writing —Students write effectively when using and/or analyzing sources.

Secondary claim

Sub Claim I.2: Reading Informational Text —Students demonstrate comprehension and draw evidence from readings of grade-level, complex informational texts.	Parts 1, 2, and 3
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Overview of Performance Task

MAJOR OBJECTIVE: Students will analyze texts related to the *New York Times Co. v. Sullivan* Supreme Court decision and use their analysis to write arguments about the decision.

PRIMARY STANDARDS ALIGNMENT

STANDARD ID	STANDARD DESCRIPTION
LA.11-12.W.1	Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.
LA.11-12.RI.8	Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., <i>The Federalist</i> , presidential addresses).
LA.11-12.RI.3	Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.

Grade 11-12 Writing an Argument: Free Speech

The passages and activities of this task focus on the landmark First Amendment case, *New York Times Co. v. Sullivan* (1964). Set against the tumultuous backdrop of the civil rights movement, the controversial case forced both state and federal courts to balance freedom of speech against the rights of public officials. The passages include a brief summary of the case, the text of the First Amendment, and two excerpts from the Supreme Court decision. Students will have the opportunity to analyze seminal legal texts and form opinions about complex issues.

The task consists of three parts; all parts involve student production of work. Parts 1 and 2 include options for activities that may involve group activities or may be completed independently. Parts 1 and 2 lead to the major objective of the performance task: to have the student write and support an argument that draws evidence from the primary documents.

TEACHER GUIDE

Part 1

CORE TASK

Read a short description of the *New York Times v. Sullivan* case and text from the First Amendment.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students will discuss the texts.

Option B

Students will respond to questions about the texts.

Option C

Students will write short responses to a question about the texts.

Part 2**CORE TASK**

Read an excerpt from the Supreme Court opinion in *New York Times v. Sullivan*, delivered by Justice William Brennan, Jr.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students will discuss the text.

Option B

Students will complete graphic organizers about the text.

Option C

Students will state and support opinions about the text.

Part 3**CORE TASK**

Read an excerpt from Justice Hugo Black's concurring statement in *New York Times v. Sullivan*.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students will discuss the text.

Option B

Students will complete Venn diagrams about the texts.

Option C: Planning Exercise for Extended Writing Prompt

Students will plan their extended responses.

Extended Writing Prompt

All students will respond to the writing prompt.

PART 1 Overview

Part 1 includes a short summary of the case and the text of the First Amendment, and addresses the following general objective.

OBJECTIVE: Student will show an understanding of the legal and historical context of *New York Times v. Sullivan*.

CORE TASK

Read a short description of the *New York Times v. Sullivan* case and text from the First Amendment.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students discuss the texts.

Option B

Students respond to questions about the texts.

Option C

Students write short responses to a question about the texts.

STANDARDS ALIGNMENT

The tasks in part 1 are aligned with the following standards.

PRIMARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.1	Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.	Option A, B, C
RI.11-12.3	Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.	Option A, B, C
RI.11-12.8	Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., <i>The Federalist</i> , presidential addresses).	Option A, B, C

SECONDARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.4	Determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings; analyze how an author uses and refines the meaning of a key term or terms over the course of a text (e.g., how Madison defines <i>faction</i> in <i>Federalist No. 10</i>).	Option A, B
W.11-12.1	Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.	Option C
SL.11-12.1	Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.	Option A

PROCEDURE for Part 1**CORE TASK**

Ask students to read the summary of the *New York Times v. Sullivan* case and to make notes about any terms and concepts they do not understand. Ask them to do the same with the text from the First Amendment.

PROCEDURE for Part 1: Option A

After students have finished reading, organize a classroom discussion about the texts. Ask students to take notes during the discussion. These discussion notes will be used to complete other parts of the overall task and as a work product that can be evaluated.

Use the following questions to stimulate discussion:

1. Why does the First Amendment specifically mention citizens' right to "petition the government for a redress of grievances"?

Possible Response: *The First Amendment is designed to allow people to express critical opinions about or to the government without being punished. This is intended to ensure that those in power serve the best interest of the people.*

2. How is the First Amendment significant to the news coverage of the civil rights movement in the South?

Possible Response: *The freedom of speech and press guaranteed by the First Amendment gave newspapers and other forms of media the right to report on protests taking place throughout the South. This allowed information about the movement to spread to readers across the country, gathering national attention and gaining more support.*

3. Why did the Supreme Court overturn the decision from the original trial?

Possible Response: *They decided that the original verdict failed to protect the First Amendment right of The New York Times to publish criticisms of L.B. Sullivan. They concluded that Sullivan did not have enough evidence to prove that the newspaper had intentionally attacked his reputation.*

4. Why does the author of the summary consider the case a "landmark in the fight for free speech"?

Possible Response: *It set an example for future cases. The new requirement for public figures to prove "actual malice" in libel cases meant that newspapers were free to cover politically and emotionally charged subjects without censoring themselves.*

SCORING RUBRIC for Part 1: Option A

Use the following rubric to evaluate students' responses.

4 Point Response

Student will:

- Have meaningful and organized notes for each question addressed in the discussion;
- Participate in the discussion by asking relevant questions and contributing thoughtful responses.

3 Point Response

Student will:

- Have organized notes for most questions addressed in the discussion;
- Participate in the discussion by asking relevant questions and/or contributing thoughtful responses.

2 Point Response

Student will:

- Have notes for some of the questions addressed in the discussion;
- Participate in the discussion by asking questions, which may not be relevant, and/or by contributing responses.

1 Point Response

Student will:

- Have few, if any, notes for the questions addressed in the discussion;
- Fail to participate in the discussion in a meaningful way.

0 Point Response

Student will provide no response, the response is incorrect or irrelevant, or the student simply quotes the text.

PROCEDURE for Part 1: Option B

Ask students to write short responses to the questions discussed in OPTION A. This activity can serve as a review of OPTION A or replace OPTION A.

1. Why does the First Amendment specifically protect citizens' right to "petition the government for a redress of grievances"?
2. How is the First Amendment significant to the news coverage of the civil rights movement in the South?
3. Why did the Supreme Court overturn the decision from the original trial?
4. Why does the author of the summary consider the case a "landmark in the fight for free speech"?

PROCEDURE for Part 1: Option C

Ask students to write short responses to a question about the text. This activity can replace OPTION A or OPTION B.

Tell the students to respond to the writing prompt in their test booklets.

SCORING RUBRIC for Part 1: Option C

Use the following rubric to evaluate students' responses.

4 Point Response

Student will:

- Clearly and thoughtfully explain and defend an opinion about the importance of free speech and the First Amendment;
- Use several relevant details and examples to support the opinion.

3 Point Response

Student will:

- Explain and defend an opinion about the importance of free speech and the First Amendment;
- Use some relevant details or examples to support the opinion.

2 Point Response

Student will:

- Generally refer to an opinion about the importance of free speech and the First Amendment;
- Use one or two details or examples to support the opinion.

1 Point Response

Student will:

- Provide a vague or minimal opinion about free speech and the First Amendment with little or no support.

0 Point Response

Student will provide no response, the response is incorrect or irrelevant, or the student simply quotes from existing text.

PART 2 Overview

Part 2 includes an excerpt from the Supreme Court decision in *New York Times v. Sullivan* and addresses the following general objective.

OBJECTIVE: Student will analyze the purpose, reasoning, style, and structure of an excerpt from a primary historical document.

CORE TASK

Read an excerpt from the Supreme Court opinion in *New York Times v. Sullivan*, delivered by Justice William Brennan, Jr.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students discuss the excerpt.

Option B

Students complete graphic organizers outlining the structure and central ideas of the excerpt.

Option C

Students work in groups to discuss their opinions about the effectiveness of the excerpt.

STANDARDS ALIGNMENT

The tasks in part 1 are aligned with the following standards.

PRIMARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.3	Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.	Option A, B
RI.11-12.8	Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., <i>The Federalist</i> , presidential addresses).	Option A, B, C

SECONDARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.1	Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.	Option A, B

RI.11-12.4	Determine the meaning of words and phrases as they are used in a text, including figurative, connotative, and technical meanings; analyze how an author uses and refines the meaning of a key term or terms over the course of a text (e.g., how Madison defines <i>faction</i> in <i>Federalist No. 10</i>).	Option A
RI.11-12.5	Analyze and evaluate the effectiveness of the structure an author uses in his or her exposition or argument, including whether the structure makes points clear, convincing, and engaging.	Option B, C
RI.11-12.6	Determine an author's point of view or purpose in a text in which the rhetoric is particularly effective, analyzing how style and content contribute to the power, persuasiveness, or beauty of the text.	Option A, C
SL.11-12.1	Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.	Option A, C

PROCEDURE for Part 2

CORE TASK

Ask students to read the excerpt from Justice Brennan's delivery of the court opinion and to make notes about any terms and concepts they do not understand.

OPTIONAL ACTIVITY DURING READING

RI.11-12.1 Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.

RI.11-12.3 Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.

Allow students to stop after each section to discuss the comprehension questions in pairs or small groups.

1. If the original judgment were left standing, what would be the most likely effect on newspapers?

Possible Response: *Newspapers would be less willing to publish articles criticizing powerful officials for fear that the officials would retaliate by suing for enormous amounts of money.*

2. Why would the need to prove the truth of all information prevent newspapers from publishing valid criticisms?

Possible Response: *It would be difficult and expensive to prove the truth of a statement in court, even if the information were accurate.*

3. What is the "federal rule" that Justice Brennan believes the Constitution calls for?

Possible Response: *Public officials cannot be awarded compensation in libel cases without proving that the publisher actively intended to spread false and damaging information.*

4. How does Justice Brennan compare "the citizen-critic" and "the official"?

Possible Response: *He writes that both must be protected from libel cases in order to serve their purposes to their full extent.*

PROCEDURE for Part 2: Option A

After students have finished reading, organize a classroom discussion about the text. Ask students to take notes during the discussion. These discussion notes will be used to complete other parts of the overall task and as a work product that can be evaluated.

Use the following questions to stimulate discussion:

1. Why does Justice Brennan compare the monetary award in *New York Times v. Sullivan* to other related fines?

Possible Response: *This reveals the Court's opinion that the amount of the award is excessive. OR By showing how extravagant Sullivan's claims are, the comparison emphasizes the plight of the newspaper.*

2. What effect does the phrase "the pall of fear and timidity" create?

Possible Response: *The dark and oppressive imagery makes the libel accusations and the government officials behind them seem threatening.*

3. In the third paragraph, why does Brennan include quotes from another case about the privileges granted to public officials?

Possible Response: *This points out the parallels between the officials, such as people like L.B. Sullivan, and their critics, such as The New York Times. OR It shows the reader how the case also applies to citizens, who must be allowed to debate their government in the same way elected authorities must be allowed to serve the public.*

4. What does Justice Brennan mean by the term "actual malice"?

Possible Response: *He is describing the standard against which all future libel accusations should be measured. Requiring a public official to prove "actual malice"—the intention to deliberately spread lies about a person—eliminates cases that are based on mere criticism and minor oversights.*

SCORING RUBRIC for Part 2: Option A

Use the following rubric to evaluate students' responses.

4 Point Response

Student will:

- Have meaningful and organized notes for each question addressed in the discussion;
- Participate in the discussion by asking relevant questions and contributing thoughtful responses.

3 Point Response

Student will:

- Have organized notes for most questions addressed in the discussion;
- Participate in the discussion by asking relevant questions and/or contributing thoughtful responses.

2 Point Response

Student will:

- Have notes for some of the questions addressed in the discussion;
- Participate in the discussion by asking questions, which may not be relevant, and/or by contributing responses.

1 Point Response

Student will:

- Have few, if any, notes for the questions addressed in the discussion;
- Fail to participate in the discussion in a meaningful way.

0 Point Response

Student will provide no response, the response is incorrect or irrelevant, or the student simply quotes the text.

PROCEDURE for Part 2: Option B

Ask students to reread the excerpt and then complete their graphic organizers.

Possible student responses:

Paragraph 1

Central idea: *Libel cases could cost newspapers so much that they would be forced out of business.*

Supporting detail: *There is no limit to how many times this kind of lawsuit could be brought against the same paper.*

Paragraph 2

Central idea: *Forcing newspapers to prove the truth of every statement they publish would suppress important information and opinions.*

Supporting detail: *Many publishers would rather avoid printing anything that could be considered offensive than face the threat of expensive lawsuits.*

Paragraph 3

Central idea: *People and institutions who criticize the government must be given the same protections that public officials are granted.*

Supporting detail: *Citizens have as much right and responsibility to criticize the government as public servants have to do their jobs.*

PROCEDURE for Part 2: Option C

Ask students to reread the text before discussing their opinions about the excerpt. This activity can replace OPTION A or OPTION B.

Instruct students to work in small groups of 2-4 people. Each student should state and support an opinion related to the text.

Ask the students to discuss this question in pairs or groups:

- Does Justice Brennan provide an effective argument that the First Amendment protects *The New York Times*? How does he accomplish or fail to accomplish his purpose?

SCORING RUBRIC for Part 2: Option C

Use the following rubric to evaluate students' responses.

<p>4 Point Response</p> <p>Student will:</p> <ul style="list-style-type: none"> • Participate in the discussion by asking relevant questions and contributing meaningful responses; • State and support a thoughtful opinion that indicates a thorough understanding of the ideas and significance of the case.
<p>3 Point Response</p> <p>Student will:</p> <ul style="list-style-type: none"> • Participate in the discussion by asking relevant questions and contributing meaningful responses; • State an opinion that indicates a general understanding of the ideas and significance of the case.
<p>2 Point Response</p> <p>Student will:</p> <ul style="list-style-type: none"> • Participate in the discussion by asking questions, which may not be relevant, and/or by contributing responses; • Attempt to state an opinion that indicates a partial understanding of the case.
<p>1 Point Response</p> <p>Student will:</p> <ul style="list-style-type: none"> • Fail to participate in the discussion in a meaningful way; • Offer a vague opinion with little or no support.
<p>0 Point Response</p> <p>Student will provide no response, the response is incorrect or irrelevant, or the student simply quotes the text.</p>

Part 3 Overview

Part 3 contains an excerpt from Justice Hugo Black's concurring statement in the *New York Times v. Sullivan* decision and addresses the following general objective.

OBJECTIVE: Student will analyze a primary historical document before using evidence from all the texts to write an argument about freedom of speech and the *New York Times v. Sullivan* decision.

CORE TASK

Students will read an excerpt from Justice Hugo Black's concurring statement.

In addition to performing the CORE TASK, select one or more of these options:

Option A

Students will respond to questions about the excerpt.

Option B

Students will compare and contrast the two excerpts by completing Venn diagrams.

Option C: Planning Exercise for Extended Writing Prompt

Students will plan their extended responses.

Writing Prompt

All students will write extended responses that state and support an argument about the decision.

STANDARDS ALIGNMENT

The tasks in part 3 are aligned with the following standards.

PRIMARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.1	Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.	Option A, B, Writing Prompt
RI.11-12.3	Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.	Option A, B, Writing Prompt
RI.11-12.8	Delineate and evaluate the reasoning in seminal U.S. texts, including the application of constitutional principles and use of legal reasoning (e.g., in U.S. Supreme Court majority opinions and dissents) and the premises, purposes, and arguments in works of public advocacy (e.g., <i>The Federalist</i> , presidential addresses).	Option A, B, Writing Prompt
W.11-12.1	Write arguments to support claims in an analysis of substantive topics or texts, using valid reasoning and relevant and sufficient evidence.	Writing Prompt

SECONDARY STANDARDS ALIGNMENT

Standard ID	Standard Description	Where Addressed
RI.11-12.6	Determine an author's point of view or purpose in a text in which the rhetoric is particularly effective, analyzing how style and content contribute to the power, persuasiveness, or beauty of the text.	Option A, B
SL.11-12.1	Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12 topics, texts, and issues, building on others' ideas and expressing their own clearly and persuasively.	Option A

PROCEDURE for Part 3**CORE TASK**

Ask students to read the excerpt from Justice Hugo Black's concurring statement. Tell them to make notes of any terms or concepts they do not understand.

OPTIONAL ACTIVITY DURING READING

RI.11-12.1 Cite strong and thorough textual evidence to support analysis of what the text says explicitly as well as inferences drawn from the text, including determining where the text leaves matters uncertain.

RI.11-12.3 Analyze a complex set of ideas or sequence of events and explain how specific individuals, ideas, or events interact and develop over the course of the text.

Allow students to stop after each section to discuss the comprehension questions in pairs or small groups.

1. Who are the "outside agitators" mentioned by Justice Black?

Possible Response: *People and institutions from places outside the South, such as The New York Times, who oppose segregation and actively participate in the struggle to end it.*

2. What could make other newspapers "easy prey" for more libel lawsuits?

Possible Response: *If public opinion of a newspaper is negative for any reason, a court is likely to come to a prejudiced and unfair verdict.*

3. Why is criticism of the government different from "obscenity" and "fighting words"? **Possible Response:** *Criticism of the government and public affairs is the kind of speech that the First Amendment was made to protect. The other types of speech mentioned fall outside of constitutional protection.*

PROCEDURE for Part 3: Option A

After students have finished reading, organize a classroom discussion about the texts. Ask students to take notes during the discussion. These discussion notes will be used to complete other parts of the overall task and as a work product that can be evaluated.

Use the following questions to stimulate discussion:

1. Why does Justice Black consider "widespread hostility to desegregation" relevant to the case?

Possible Response: *He is describing the feelings of many Southerners toward publishers like The New York Times, who could be seen as outsiders attempting to meddle with Southern affairs. This made Alabama courts more sympathetic toward Sullivan, which contributed to the unjust original ruling.*

2. What is the author's attitude toward Sullivan and other "libel verdict seekers"?

Possible Response: *He describes them as dangerous threats to the freedoms guaranteed to Americans. He condemns their tactic of "harassing and punishing" publishers and others who would speak out against those in power.*

3. What does the author feel is the main purpose of the First Amendment?

Possible Response: *Justice Black writes that the First Amendment is intended to protect people and publishers who criticize the government and debate its policies. He argues that the freedom of the United States relies on the ability of such critics to express their opinions and complaints.*

SCORING RUBRIC for Part 3: Option A

Use the following rubric to evaluate students' responses.

4 Point Response

Student will:

- Have meaningful and organized notes for each question addressed in the discussion;
- Participate in the discussion by asking relevant questions and contributing thoughtful responses.

3 Point Response

Student will:

- Have organized notes for most questions addressed in the discussion;
- Participate in the discussion by asking relevant questions and/or contributing thoughtful responses.

2 Point Response

Student will:

- Have notes for some of the questions addressed in the discussion;
- Participate in the discussion by asking questions, which may not be relevant, and/or by contributing responses.

1 Point Response

Student will:

- Have few, if any, notes for the questions addressed in the discussion;
- Fail to participate in the discussion in a meaningful way.

0 Point Response

Student will provide no response, the response is incorrect or irrelevant, or the student simply quotes the text.

PROCEDURE for Part 3: Option B

Ask students to reread both excerpts from the Supreme Court decision and then complete the graphic organizer.

Probable student response:

Supreme Court opinion by Justice Brennan	Intersection	Concurring statement by Justice Black
<i>A previous ruling gave public officials protection from libel accusations, which is an unfair advantage.</i>	<i>Freedom of speech and press is impossible if publishers must fear this kind of punishment.</i>	<i>Southern resistance to desegregation made the Alabama court biased against The New York Times.</i>
<i>Requiring publishers to defend every statement in court is an unfair and almost impossible burden to bear.</i>	<i>Many more similar trials could await the Times, and could possibly bankrupt it.</i>	<i>The advertisement likely actually helped Commissioner Sullivan's career and reputation.</i>

PROCEDURE for Part 3: Planning Exercise

Tell students they will now have a chance to plan their extended responses. They should follow the directions in their booklets.

PROCEDURE for Part 3: Extended Writing Prompt

Tell the students to respond to the writing prompt in their test booklets.

SCORING RUBRIC for Part 3: Extended Writing Prompt

Use the following rubric to evaluate students' responses.

4 Point Response

Student will:

- Precisely and thoughtfully state an argument about freedom of speech and press;
- Use well-chosen, relevant, and sufficient details from the texts that clearly support the argument;
- Create a cohesive organization that includes a concluding section which supports the argument.

3 Point Response

Student will:

- Clearly state an argument about freedom of speech and press;
- Use relevant details from the texts that clearly support the argument;
- Create an organization that includes a concluding section.

2 Point Response

Student will:

- State an argument about freedom of speech and press that lacks clarity;
- Use details from at least one text;
- Fail to provide organization or a conclusion.

1 Point Response

Student will:

- Provide a vague or minimal argument or statement about the texts with some support.

0 Point Response

Student provides no response, or the response is off topic.

OPTIONAL EXTENSION ACTIVITY

W.11-12.5 Develop and strengthen writing as needed by planning, revising, editing, rewriting, or trying a new approach, focusing on addressing what is most significant for a specific purpose and audience.

Ask the students to revise and edit their responses to the extended prompt based on teacher or peer reviews.