

FIRST AMENDMENT RIGHTS

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Office Hours: TTh 11-12 & 2:30-4:00

Autumn 2019
TTh 1:00-2:30
Arts & Letters 108

This course will examine Supreme Court decisions interpreting the First Amendment to the U.S. Constitution. We will read and discuss cases on freedom of speech, freedom of assembly, and freedom of the press.

The required reading for the course consists of two volumes of cases and other materials: (1) First Amendment Rights: Volume I: Seditious Libel and Incitement and (2) First Amendment Rights: Volume II: Provocative Speech.

Reading assignments will consist of one or more cases per class meeting. Reading assignments include the material in any "Note" which follows a case or set of cases.

Class Meetings and Briefs: The class will meet twice a week for lectures and discussions of the readings. Students are expected to do the readings in advance of class and be prepared to participate in the class discussions. On the days on which cases will be discussed, members of the class will be asked to "brief" each case, that is, to prepare a set of notes describing the facts of each case and identifying the questions decided by the Supreme Court in its opinion. I will collect your briefs, look them over, and return them at the next class meeting. Briefs will not be "graded," as such, but timely and consistent submission of briefs will be taken into account in calculating the class participation component of your grade.

Briefs must be submitted on the day on which the cases that they cover will be discussed in class. On rare occasions, belated submission of briefs will be acceptable. Under ordinary circumstances, however, I will be collecting the briefs on the

day of the discussion to which they relate and not at some future time. I would prefer to receive briefs in hardcopy form---either typewritten or handwritten---rather than by email. I recommend preparing your briefs on a computer, however, which will enable you to edit them following our class discussions and as the class proceeds.

Attendance: Each day we meet will consist of a discussion of a major portion of the course. I would not expect anyone to miss any class without a good reason. If you must miss class, please inform me before the fact or as soon as possible after the class you have missed.

Plagiarism: Plagiarism is a serious academic offense and is punishable by expulsion from the class and in some cases from the University itself. Do not even think of submitting any written work that is not entirely your own. When writing your term paper, be careful to put quotation marks around any passage taken from the cases or other materials and to accurately cite the source from which the passage has been taken.

Grading: Grading will be based on a midterm exam (counting 20%), a term paper (counting 30%), a cumulative final exam (counting 40%), and class participation (counting 10%).

Readings

I. INTRODUCTION

Thu. 9/12: Discussion of the American Judicial System

II. SEDITIOUS LIBEL AND FREEDOM OF THE PRESS

Tue. 9/17: Seditious Libel and Incitement, I/1
Seditious Libel in the Twentieth Century, I/13
Near v. Minnesota (1931), I/15

Thu. 9/19: New York Times v. Sullivan (1964), I/23

III. SEDITIOUS INTENTION: DEFINING THE CONTENT OF PUNISHABLE
SPEECH

Tue. 9/24: Masses Publishing Co. v.
Patten (S.D.N.Y. 1917), I/31
Masses Publishing Co. v.
Patten (2d Cir. 1917), I/34
[Bond v. Floyd (1966)], I/38
[United States v. Spock (1st Cir. 1969)], I/39
[Watts v. United States (1969)], I/40
Yates v. United States (1957), I/41

IV. THE CLEAR AND PRESENT DANGER TEST

Thu. 9/26: Schenck v. United States (1919), I/48
Frohwerk v. United States (1919), I/49
Debs v. United States (1919), I/50

Tue. 10/1: Abrams v. United States (1919), I/52

Thu. 10/3: Gitlow v. New York (1925), I/58
Whitney v. California (1927), I/62

Tue. 10/8: Dennis v. United States (1951), I/67

Thu. 10/10: Brandenburg v. Ohio (1969), I/73
[Hess v. Indiana (1973)], I/79
[NAACP v. Claiborne Hardware Co. (1982)], I/80

Tue. 10/15: **Midterm Exam**

Thu. 10/17: **Return of Midterm**

V. FIGHTING WORDS AND OTHER PROVOCATIVE SPEECH

Tue. 10/22: Introduction, II/1
Feiner v. New York (1951), II/4
Edwards v. South Carolina (1963), II/8
[Cox v. Louisiana (1965)], II/11
[Tinker v. Des Moines Indep. School Dist.
(1969)], II/12
Gregory v. Chicago (1969), II/13

VI. PRIOR RESTRAINTS ON PROVOCATIVE SPEECH

Thu. 10/24: Introduction, II/18
Kunz v. New York (1951), II/21
Wise v. Dunning (King's Bench, 1901), II/25
~~[Carroll v. President & Commissioners of Princess
Anne (1968)], II/30~~

VII. PUNISHABLE PROVOCATIVE SPEECH

A. Personally Abusive Epithets

Tue. 10/29: Cantwell v. Connecticut (1940), II/33
Chaplinsky v. New Hampshire (1942), II/35

B. Offensive Speech

Thu. 10/31: Cohen v. California (1971), II/49

C. Violence-Provoking Political Speech

Tue. 11/5: United States v. O'Brien (1968), II/56
Street v. New York (1969), II/64
~~[Smith v. Coguen (1974)], II/69~~
~~[Spence v. Washington (1974)], II/69~~

Thu. 11/7: Texas v. Johnson (1989), II/71

D. Group Vilification/Hate Speech

- Tue. 11/12: Reread: Kunz v. New York (1951), II/21
Reread: Wise v. Dunning (1901), II/25
Beauharnais v. Illinois (1952), II/83
Terminiello v. Chicago (1949), II/92
Jordan v. Burgoyne (Queen's Bench, 1963), II/95
- Thu. 11/14: Note: The Skokie Litigation: An Introduction,
II/100
Village of Skokie v. National Socialist Party
of America (Ill. App. Ct. 1977), II/101
Village of Skokie v. National Socialist Party
of America (Ill. Sup. Ct. 1978), II/107
- Tue. 11/19: Bible Believers v. Wayne County (6th Cir. 2015),
II/115

Final Examination:

Thursday, Nov. 21 (11:30-1:30)

Term Paper Due:

Monday, Nov. 25 (Noon)