Civil Liberties: Free Speech
RPOS 336 – Fall 2018

Professor: Stephan Stohler
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Telephone: 518.442.5263
Credits: 3

Class: Tuesday 2:45-5:35PM
Classroom: Earth Science 241
Office Hours: T 12:45-2:45PM (or by appointment)
Office Hours: Humanities 016 (Faculty Contact Office)

Course Description
The First Amendment to the U.S. Constitution holds that “Congress shall make no law [. . . ]
abridging the freedom of speech, or of the press.” Needless to say, the text of the First Amend-
ment’s provision governing free expression is sparse. Perhaps because of the ambiguities in the
First Amendment’s language, various groups have advocated competing interpretations in an ef-
fort to reconstruct the Constitution’s rules in their favor. This is especially true recently. In the
past ten years, for example, the U.S. Supreme Court has issued major decisions that impact Amer-
ican elections; speech on the Internet; and the relationship between public employers and their
employees. There are additional issues which the Supreme Court has not squarely addressed, but
continue to reemerge. State universities, for example, have dismissed students who engaged in
offensive speech targeting historically disadvantaged groups and private businesses have invoked
the First Amendment in an effort to refuse service to same-sex couples. These free speech issues
raise fundamental questions about how we should interpret the Constitution. Students will ex-
explore these issues by examining judicial opinions produced in the context of First Amendment
litigation.

Student Focused Learning Objectives
Students will:
1. Analyze legal documents;
2. Organize legal rules within a theoretical framework;
3. Explain complicated legal arguments in plain language;
4. Ask relevant legal questions;
5. Apply existing legal rules to new problems;
6. Construct arguments about ongoing free speech controversies; and
7. Write a persuasive essay about an important free speech issue.

Course Structure
The course is divided into twelve units designed to help students develop the skills necessary to
achieve the course goals. As part of each unit, students will encounter a hypothetical problem
which raises an issue involving the First Amendment. Students are then asked to supply an
answer explaining whether and how the First Amendment should govern the issue.
This is a Team-Based Learning (TBL) course. Students will work in permanent teams to solve these legal problems. On the first day of class, students will be assigned to a team and students will remain on that team throughout the entire semester. Student participation and team performance will partially determine students’ success in this course.

Depending on the week, teams will either be asked to submit a legal memorandum or deliver an argument in class defending the group’s position. The assignment for each week can be found on the course schedule, below.

Class will proceed as follows:

1. Students are expected to read all of the assigned materials before class.

2. At the beginning of each class, students will receive a legal problem.

3. Students are given twenty minutes to discuss with their respective teams how they believe the case should be resolved in light of the assigned readings. The team should develop a preliminary answer. During this period, students may also generate a list of questions about the problem or assigned readings and submit them to the professor for discussion.

4. Before the twenty-minute period expires, each team should select one group member to serve as the team captain. The captain will be responsible for managing the group for a given week. Each group member must serve as captain once before any team member can serve a second time. Failure to comply with the captain rotation schedule will result in a weekly grade and peer evaluation score of ‘zero’ for the offending party. The penalty will remain in force until the error has been rectified.

5. After the twenty-minute period, students can expect a discussion period lasting one to two hours.

6. Once the discussion has been completed, teams may use the remaining class period to finalize their answers and submit or present them.

7. Depending on the weekly assignment (memorandum, oral argument) the end of the session will proceed differently. If groups are tasked with a memorandum, groups may take advantage of the remaining time to complete their written answers. The team captain will be responsible for sending the final draft to stohler@albany.edu before 10:00PM. Please note that late answers will not be accepted. Submissions must also include briefs of all cases assigned (see Novkov, Julie. 2014. “How to Brief a Case.” Unpublished memorandum. BB).

8. If the assignment calls for oral arguments, students will use the remaining time to complete and present their arguments. Groups will be called randomly to deliver their arguments. All members of a group must participate to receive credit.

9. In both circumstances, the team captain will also be responsible for evaluating team members’ performance. This information will be kept anonymous, but team captains should be prepared to defend the grades they assign. Captains can expect questions from the professor if the assigned grade seems irregular. The captain will receive the same peer-evaluation and assignment grade during the week she serves as a captain. Please send evaluations to stohler@albany.edu.

10. The two lowest peer-evaluations and the lowest assignment grade will be dropped when calculating students’ final grade.
Legal Memorandum

The legal memorandum will provide a written answer to the legal question raised by each problem students encounter in class. Assignment answers are due via email before 10:00 PM on the day of class. Assignments which arrive late or do not answer the question will not receive credit. Answers may not exceed two typed pages. Answers will be graded according to the persuasiveness of the argument; the quality of writing; and the ability of the authors to demonstrate their knowledge of the law in solving the problem.

The answer should also include a case brief for each case assigned for that week (these do not count against the page limit). If groups do not submit briefs for all of the assigned cases, they will receive exactly one-half of the earned credit for the week.

The team captain should also send a separate email grading each teammate’s contributions to the assignment. Evaluations should be assessed on a 0-100 point scale.

Oral Defense

For these assignments, groups will be expected to provide an in-person defense of their answers lasting no more than five minutes. Students can expect questions throughout this five minute session, including questions about the cases assigned. Answers will be graded according to the persuasiveness of the argument; and the ability of the advocates to demonstrate their knowledge of the law as it relates to the legal question. Each student must participate for the group to receive a grade.

The team captain should also send a separate email grading each teammate’s contributions to the assignment. Evaluations should be assessed on a 0-100 point scale.

Midterm Exam

To complete this course, students must submit a midterm legal memorandum. Similar to the weekly assignments, students will be presented with a hypothetical free speech issue. Students will submit a two-page legal memorandum containing an answer to the legal question posed in the hypothetical. Students will use cases to defend their answer to the legal issue. Unlike the weekly assignments, however, students will not work in groups for the midterm.

Memoranda will be graded according to the persuasiveness of the argument; the quality of writing; and the ability of the authors to demonstrate their knowledge of the law in solving the problem. Memoranda which do not answer the question will not receive credit. Moreover, memoranda should be restricted to First Amendment free speech issues. In the event of any irregularities, students will be expected to defend their answers in person.

The midterm question will be emailed to you after class on October 11th. Students will have one week to submit their answers, via email (sstohler@albany.edu). Answers submitted after 8:35 PM on Tuesday, October 18th will be penalized two letter grades every day. Students will not meet on October 18th; they should use the reserved time to finalize their answers. Students must not work in groups. Failure to adhere to this rule will result in a failing grade and expulsion from the course.

Final Paper

To complete this course, students must submit a persuasive essay about a free speech issue. Unlike the in-class assignments, students will be required to write and submit their own papers.
Nonetheless, students are encouraged to share ideas, arguments, and feedback with colleagues. Students may proofread one another’s papers, but ultimately the work must reflect students’ own efforts.

Final papers will be graded according to the quality of the argument and the quality of the writing. Topics are not restricted to the American context. Nor are students required to write about an ongoing case, though there are some interesting issues currently pending before the U.S. Supreme Court. Students should not feel reluctant to ask for guidance when selecting a topic or an argument. Moreover, students should be engaged in the research and drafting of their papers throughout the semester.

Students must submit a final draft the paper before 2:45 PM on December 4th. Late papers will be penalized one letter grade for each day they remain outstanding.

**Grading & Evaluations**

You will be evaluated according to your progress toward the goals of this course. Evaluations will occur regularly in class and on students’ written work. The relative weights of each portion of the evaluation are listed below:

- **Peer Evaluation:** 5%
- **Midterm Paper:** 25%
- **In-Class Tasks:** 30%
- **Final Paper:** 40%

Please notice that there is no attendance or participation grade *per se*. Instead, students’ performance in class is captured in the “Peer Evaluation” and “In-Class Tasks” component of the grade. For each unit, captains will be asked to evaluate teammates’ performance and contributions (as described above). Failure to attend class will result in low peer evaluation grades and will likely result in low grades on written assignments. If a student encounters a longer-term medical issue, the professor may develop alternative accommodations but only if the medical absence receives university approval.

Students are expected to attend class on December 4th for one final group evaluation. Failure to submit a group evaluation will result in a reduction of the student’s peer evaluation score.

The grading scale (z-score, normalized at 1.667 or higher) will be as follows:

- **A** 3.667+
- **A-** 3.334 - 3.666
- **B+** 3.000 - 3.333
- **B** 2.667 - 2.999
- **B-** 2.334 - 2.666
- **C+** 2.000 - 2.333
- **C** 1.667 - 1.999
- **C-** 1.334 - 1.666
- **D+** 1.000 - 1.333
- **D** 0.667 - 0.999
- **D-** 0.334 - 0.666
- **E** 0.333 or below

If you feel you have been awarded an unfair grade, you may contest it. However, if you want to do so, it must be done in writing and no sooner than 48 hours after you have received the grade.
In your written complaint you need to provide a specific account of what in particular you are concerned about.

Materials & Resources

We will rely mostly on the following textbook: Steven H. Shiffrin and Jesse H. Choper, *The First Amendment* (5th ed. 2011). Please do not purchase any of the supplements. We will not use them.

Law textbooks tend to be expensive. I highly encourage students to buy or rent a used copy online. I have not ordered copies of the textbook at the bookstore because they are too expensive. If necessary, purchase a used version of the fourth or sixth editions. Additional materials will be made available via the course Blackboard website.

Policies

Plagiarism is 1) the act of duplicating another person’s ideas or language and 2) claiming ownership over those ideas or language. Any written submissions you make in this course are deemed to be your own unless you attribute them to someone else. In each of those assignments, you will find it useful – if not necessary – to invoke the ideas of others to further your own arguments. Students are expected to do so, but students must indicate which ideas they have ‘borrowed’ from other sources. Students are expected to complete the University’s online course if they have not done so already. The course is available here:

http://library.albany.edu/infolit/integrity.

Failure to attribute others’ ideas constitutes plagiarism and will result in a failing grade, dismissal from the course, and further disciplinary action. One easy way to avoid any plagiarism is to use quotation marks to signal that students have used someone else’s language. In a paper, for example, in which a student defines the so-called ‘clear and present danger test,’ she may assert that governments cannot “forbid or proscribe advocacy of the use of force or of law violation except were such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action” (Brandenburg v. Ohio, 395 U.S. 444, 447 (1969)). Students are not expected to learn proper legal citation style in this course. A simple citation to the casebook will suffice if a student asserts the same proposition above (Shiffrin & Choper 2011, 43). Students are highly encouraged to use a similar citation style if they paraphrase someone’s idea and you do not have any need for quotation marks. If you have questions about this, do not hesitate to ask.

More generally, student participation in this course is governed by the University’s Standard of Academic Integrity. Those standards are outlined here. Failure to comply with the Standard of Academic Integrity can result in dismissal from the course and other academic discipline by the University. It will certainly result in a failing grade.

Reasonable accommodations will be provided to students who required them, but I ask that you notify me early in the semester. In addition, please request that the Disabilities Resource Center contact me regarding your situation to provide documentation.

Requests for deadline extensions will be granted 1) only in the most compelling and rare circumstances; and 2) only if the extension is requested in advance of the deadline. Medical absences must receive University approval before accommodations can be made. Please contact the Undergraduate Dean to initiate this process.
## Course Schedule

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<th>Date</th>
<th>Topic</th>
<th>Materials</th>
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| Aug. 28 | Introduction           | *Schneider v. Irvington*  
Novkov, “How to Read a Case” (BB)  
Groups                             |             |
| Sept. 4  | Danger, Danger         | *Schenck v. United States*  
*Debs v. United States*  
*Masses Publishing v. Patten*  
*Abrams v. United States*  
*Gitlow v. New York*  
*Whitney v. California*  
*Dennis v. United States*  
*Brandenburg v. Ohio*  
*Hess v. Indiana*  
Memo 1                             |             |
| Sept. 11 | Yogurt                | *New York Times v. Sullivan*  
*Gertz v. Robert Welch* (BB)  
*Time v. Firestone*  
*Hustler Magazine v. Falwell*  
*Dun & Bradstreet v. Greenmoss*  
Memo 2                             |             |
| Sept. 18 | You Don't Sae?        | *Terminiello v. Chicago*  
*Feiner v. New York*  
*Cohen v. California*  
*Collin v. Smith*  
*Beauharnais v. Illinois*  
*Chaplinsky v. New Hampshire*  
Memo 3                             |             |
| Sept. 25 | No Backsies           | *W. Va. State Bd. of Ed. v. Barnette*  
*Nat'l Endowment for the Arts v. Finley* (BB)  
*Rust v. Sullivan*  
*Rosenberger v. Rector & Visitors of UVA*  
*Legal Services Corp. v. Velazquez*  
*Rumsfeld v. F.A.I.R.*  
Memo 4                             |             |
| Oct. 2   | License to Speak      | *Wooley v. Maynard*  
*Hague v. CIO*  
*Cox v. New Hampshire*  
*Int'l Soc. for Krishna Consciousness v. Lee*  
*Police Dept. of City of Chicago v. Mosley*  
*Grayned v. City of Rockford*  
*Perry Educ. Assoc. v. Perry Local Educators’ Assoc.*  
*Pleasant Grove City, Utah v. Summum*  
Memo 5                             |             |
| Oct. 9   | Cheese                | *Burson v. Freeman*  
*Hill v. Colorado*  
*Lehman v. Shaker Heights*  
*United States v. O’Brien*  
Defense 1                           |             |
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<td>Topic</td>
<td>Midterm Examination</td>
<td>Exam</td>
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<td>Nov. 20</td>
<td>Begging</td>
<td>TBD</td>
<td>Defense 6</td>
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<tr>
<td>Nov. 27</td>
<td>Omarosa</td>
<td><em>Garcetti v. Ceballos</em>&lt;br&gt;<em>Near v. Minnesota</em></td>
<td>Defense 7</td>
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<tr>
<td>Dec. 4</td>
<td>Review Session</td>
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