Civil Liberties: Free Speech
RPOS 336 – Spring 2017

Professor: Stephan Stohler
Milne Hall 203
Email: sstohler@albany.edu
Telephone: 518.442.5263

Tu 2:45-5:35PM
Milne Hall 203
Office Hours: Tu 1:05-2:45PM (or by appointment)

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 Amendment’s provision governing free expression is sparse. Perhaps because of the ambiguities in the First Amendment’s language, various groups have advocated competing views of the First Amendment in an effort to restructure the Constitution’s rules in their favor. This is especially true recently. Even in the past ten years, for example, the U.S. Supreme Court has issued major decisions that impact American elections; speech on the Internet; and the relationship between 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. These varied free speech cases raise fundamental questions. Why, for example, are certain types of speech protected by the First Amendment, while others are not? Why can governments abridge speech sometimes, but not others? Students will explore these issues – and many more – by examining judicial opinions produced in the context of First Amendment litigation.

Goals
After taking this course, students will be able to:
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 thirteen units designed to help students develop the skills necessary to achieve the course goals. As part of each unit, students will encounter a legal case or 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.
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.

For each unit, students can expect a similar process:

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 submitting the final draft of the answer before midnight on the day of class. Group members are only allowed to serve as captain twice during the semester. 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 peer evaluation score of ‘zero’ for the offending party and will persist 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. Rough drafts of the answer should be completed at this time.
7. The team captain will be responsible for sending the final draft to sstohler@albany.edu before midnight. 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. The team captain will also be responsible for evaluating team members’ performance (A-E). 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.
9. The two lowest peer-evaluations and the lowest assignment grade will be dropped when calculating students’ final grade.

Legal Memoranda

Assignment answers will address the legal question raised by each problem students encounter in class. Assignments which do not answer the question will not receive credit. Assignment answers are due via email from the team captain before midnight on the day of class. (The team captain should also send a separate email grading each teammate’s contributions to the assignment). Late answers will not be accepted. 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.
Midterm Exam
To complete this course, students must submit a midterm exam. Much like weekly group assignments, students will be assigned a handful of cases on a relevant free speech issue. Students will then receive a hypothetical legal scenario governed by the cases assigned (and previous cases). Unlike other weekly assignments, however, students will not work in groups to complete this assignment. Instead, each student will submit her own memorandum which will describe the best arguments available to the plaintiff and defendant. Each student will also explain which argument prevails and why it is more persuasive than the alternative. The midterm must be submitted via email before 4:15PM on Thursday, March 10th. The midterm exam should not exceed two pages.

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.

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. Moreover, students should begin writing final papers shortly after completing the midterm paper.

Students must submit a final draft the paper by 4:15PM on April 28th, 2016. 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 Thursday, April 28th for one final group evaluation. Failure to submit a group evaluation will result in a reduction of the student’s peer evaluation score.
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 the 2014 supplement.

Law textbooks tend to be expensive. I highly encourage students to buy 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

The policies in this class will not change. The due dates might and they will be announced in class.

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 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. The midterm and final papers will be penalized one letter grade per day for every day the paper is late. Longer-term medical absences must receive University approval before accommodations can be made.
# Course Schedule

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<thead>
<tr>
<th>Date</th>
<th>Topic</th>
<th>Materials</th>
<th>Due</th>
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| 1/24  | The Poisoned Bottle | *Schneider v. Irvington*  
*Novkov, “How to Read a Case” (BB)* | Email |
| 1/31  | 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* | Answer 0 |
| 2/7   | Rapper’s Delight    | *Virginia v. Black*  
*Chaplinski v. New Hampshire*  
*Watts v. United States (BB)* | Answer 1 |
| 2/14  | You Don’t Sae?      | *Terminiello v. Chicago*  
*Feiner v. New York*  
*Cohen v. California*  
*Elonis v. United States*  
*Christian Legal Society v. Martinez*  
*Collin v. Smith* | Answer 2 |
| 2/21  | Federal Holiday     | *West Virginia State Bd. of Educ. v. Barnette*  
*Nat’l Endowment for the Arts v. Finley (BB)*  
*Sullivan v. Rust*  
*Legal Services Corp. v. Velazquez*  
*Rumsfeld v. F.A.I.R.* | Answer 3 |
| 2/28  | 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* | Answer 4 |
<p>| 3/7   | Midterm             |                                                                           | Exam  |
| 3/14  | Spring Break        |                                                                           | –     |</p>
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| 3/21   | Cheese                 | *Burson v. Freeman*  
*Hill v. Colorado*  
*Lehman v. Shaker Heights*  
*United States v. O’Brien* | Answer 5 |
| 3/28   | Kids These Days        | *Tinker v. Des Moines School District*  
*Hazelwood School District v. Kuhlmeier*  
*Morse v. Frederick* | Answer 6 |
| 4/4    | Presentation           | *Sotomayor, My Beloved World* (excerpts)                                  |          |
| 4/11   | Baker                  | *Wooley v. Maynard*  
*Pacific Gas & Electric v. Public Utilities Comm’n*  
*Roberts v. United States Jaycees*  
*Dale v. Boy Scouts of America*  
*Wooley v. Maynard*  
*PruneYard Shopping Center v. Robins*  
*Hurley v. Irish-American GLB Group of Boston*  
*N.A.A.C.P. v Claiborne Hardware Co.*  
*Johanns v. Livestock Marketing Assoc.* | Answer 7 |
| 4/18   | Effing Up the Scenery  | *Boos v. Barry*  
*Ward v. Rock Against Racism*  
*Virginia State Board of Pharmacy v. Virginia*  
*Central Hudson Gas & Electric*  
*Zauderer v. Office of Disciplinary Counsel* | Answer 8 |
| 4/25   | Campaign Finance I     | *Buckley v. Valeo*  
*Randall v. Sorrell*  
*First Nat’l Bank of Boston v. Bellotti (BB)*  
*Austin v. Michigan Chamber of Commerce (BB)*  
*Citizens United v. F.E.C.* | Answer 9 |
| 5/2    | Campaign Finance II    | *Republican Party of Minn. v. White (BB)*  
*Caperton v. A.T. Massey Coal Co. (BB)* | Oral argument |
| 5/9    | Course Review          |                                                                           | Final Paper |

Last updated: January 23, 2017
Suggested Answer Template

[Paragraph 1: Issue & Holding] In this case, the Court was asked whether . . . [include the question being asked]. We hold . . . [state your legal conclusion].

[Paragraph 2: Facts] The case arose when . . . [Describe the facts which gave rise to the case. Be sure to include the impugned law or state action.]

[Paragraph 3: Petitioner’s Argument] [Summarize the petitioner’s argument; be sure to cite any relevant case law].

[Paragraph 4: Respondent’s Argument] [Summarize the respondent’s argument; be sure to cite any relevant case law].

[Paragraph 5: Court’s Answer Defended]

[Paragraph 6: Alternative Argument Criticized]