First Amendment Freedom of Expression
Freshman Honors Seminar
College of Arts & Science, New York University
Stephen D. Solomon, Associate Professor
20 Cooper Square

Model Syllabus

Description: Conflicts over freedom of speech and press erupt into public debate almost every week. Congress passes a law to purge indecency from online communications. A judge issues an order shutting down a website that publishes secret documents. Reporters go to jail for refusing to reveal the identity of sources. Although the First Amendment appears on its face to prohibit any governmental restrictions of speech and press, the Supreme Court in fact balances free and open expression against other vital interests of society. This course, which involves study of both history and law, begins by examining the robust debate and dissent during the founding period and the struggle during that time against prosecutions for seditious libel (the crime of criticizing the government or public officials). We will examine how the Supreme Court gave meaning of the freedom of expression by looking at a rich variety of contemporary conflicts, including libel of public and private persons, political dissent that advocates overthrow of the government, prior restraints against publication, flag burning, and restrictions on freedom of speech during wartime.

Written Work
You will write approximately five essays during the semester. The length will be assigned at between 500 and 1500 words. Generally, you will have one week to complete each of these assignments.

Grading and Assignments:
* The grades of A and A- are given for outstanding work.
* Your final grade will be based on averaging the grades you receive on your essays. Class participation will count the same as one essay.
* Class Participation: As this is a seminar, class participation will have an impact on your final grade. Participation involves attendance, discussion of readings and of concepts covered in class, and various classroom exercises. You are expected to complete your readings before class and come prepared to discuss the material. Joining the class discussion only a few times during a class period will earn a “B” for class participation. Only active intellectual engagement in the material as evidenced by contributions made in the classroom will earn a higher grade for class participation. If you rarely participate, show up late, or fail to prepare the day’s material, your grade will suffer accordingly. Missing a class without an excused absence will result in a reduction in your final grade. The university recognizes the following as excused absences: documented illness, family emergency, and religious observance. Email or call in advance if you face one of these situations.
Grading Criteria for Papers: I will grade based on the following criteria:
**Development of a clear point of view or argument**
**Use of critical reasoning skills to explore the complexities of an issue, including how you assess the strengths and weaknesses of your own arguments**
**Demonstration that you understand the underlying legal principles and precedents and how to apply them**
**Organizational structure and focus**
**Clarity of prose, including grammar, syntax, and spelling**

Late Policy: Papers are due at the beginning of class on the date specified. Late papers will not be accepted unless you have prior approval for an extension.

NYU Classes Site: The course will make extensive use of a NYU Classes site. Our site, which is accessed through NYU Home, contains a class-by-class description of the course, with assignments and readings posted. You are responsible for checking it for the materials you will need for the next class.

Academic Dishonesty: You are participating in a community of scholars in which academic integrity is a primary value. All work must be your own. Ideas and quotations of others must be properly sourced. Plagiarism and other forms of academic dishonesty will result in failure in the course and possibly expulsion from the University.

Electronic Devices: All electronic devices, including cell phones, must be off during class time. You may bring a laptop computer to class, but it must remain closed unless you need it to find material related to the course. No email, tweets, messaging, or other electronic communication during class time is permitted.

Readings: Three books are assigned. However, the class website contains many additional readings for each class, and you are responsible for accessing them.
*Make No Law*, by Anthony Lewis (Random House)
*The Great Dissent*, by Thomas Healy (Metropolitan Books)

Office Hours: Room 630 at 20 Cooper Square. Stop in during office hours or make an appointment. You can also reach me by email, as I check it throughout the day. Office hours:
Monday: 12:15 p.m. to 1:30 p.m.
Wednesday: 9:15 a.m. to 11:00 a.m. and 3:00 p.m. to 4:00 p.m.

Telephone and E-Mail:
Office: 212-998-7995
E-mail: sds1@nyu.edu
Website: www.stephendsolomon.com
First Things…

Class 1
Discussion: Introduction to the First Amendment and the Bill of Rights.

Class 2
Discussion: Protected and unprotected speech; First Amendment analysis. Introduction to Bobst Library databases.
Assignment for this class: Read ahead: *Origins of the Bill of Rights*, chapters 1 and 5.

The Founding Period

Class 3
Discussion: The experience from England—a repressive system of licensing, restraints, and prosecutions for seditious libel. The Zenger case frames the issue of freedom of the press for the American colonies.
Assignment for this class: *Origins of the Bill of Rights*, chapters 1 and 5.

Class 4
Discussion: What did the Framers have in mind? Through the prism of the Stamp Act crisis, we look at the kind of speech that the founding generation actually engaged in.
Assignment for this class: Class presentations on colonial protest.

Class 5
Discussion: What did the Framers have in mind (continued)?

Class 6
Discussion: The First Amendment is proposed and ratified. But what did it mean? The infamous Sedition Act of 1798 challenges the meaning of freedom of speech and press in America.
Assignment for this class: Class website.

Class 7
Discussion: The First Amendment at a crossroads: After passage of the odious Sedition Act, Madison and Lee dispute the fundamental meaning of the freedom of the press.
Assignment for this class: Class website: Read materials, including the majority and minority reports to the Virginia House of Delegates on the Sedition Act of 1798.
Political Dissent

Class 8
Discussion: The government jails socialists during World War I. The Court formulates the “clear and present danger” test.
Assignment for this class: *The Great Dissent*, entire book; *Schenck v. U.S.*

Class 9
Discussion: In *Brandenburg v. Ohio* (1969), the Court reverses course and protects extreme dissent, adopting the Holmes and Brandeis approach.
Assignment for this class: *Brandenburg v. Ohio*

Class 10
Discussion: Mock trial of Marc Antony
Assignment for this class: Prepare debate

Libel, Satire, and the American Political Process

Class 11
Discussion: The civil rights struggle in the South frames the critical issue under the First Amendment. Will the Supreme Court choose the way of Madison or Lee? New York Times v. Sullivan ends the nation’s long struggle against seditious libel. The Times case defines the central meaning of the First Amendment.
Assignment for this class: *Make No Law*, chapters 1-5 and 11-16

Class 12
Discussion: *The New York Times* rule” is extended to public figures. Why protect the press in its coverage of public figures?
Assignment for this class: *A.P. v. Walker*, *Make No Law*, chapter 17

Class 13
Discussion: The strange case of Elmer Gertz: Why is he a private person? Why does the press have less protection in libel suits by private persons?
Assignment for this class: *Gertz v. Welch*

Class 14
Discussion: The First Amendment protection of opinion and satire. Why did Larry Flynt’s ugly portrayal of Rev. Falwell deserve First Amendment protection from a lawsuit alleging emotional distress?
Assignment for this class: *Hustler Magazine v. Falwell*
Forbidden Words

Class 15
Discussion: Why is some speech proscribed, with no First Amendment protections? Considering fighting words and obscenity.
Assignment for this class: Chaplinsky v. New Hampshire; Miller v. California

Class 16
Discussion: Obscenity and child pornography.
Assignment for this class: Ferber v. New York

Censorship: Stopping the Presses

Class 17
Discussion: Can the government stop publication in order to prevent great harm?
Assignment for this class: Near v. Minnesota

Class 18
Discussion: President Nixon asks the Supreme Court to stop The New York Times and The Washington Post from publishing the Pentagon Papers. And: Could the government stop the publication of an article that explains how to build an atomic bomb?
Assignment for this class: New York Times v. United States (Pentagon Papers case)

Words That Offend

Class 19
Discussion: Can offensive speech be proscribed? The problem of profanity and hate speech.
Assignment for this class: Cohen v. California

Symbolic Speech

Class 20
Discussion: Tales from the Vietnam War protests: Why O’Brien went to jail for burning his draft card, but students in Des Moines could defy authority by wearing black armbands.
Assignment for this class: United States v. O’Brien; Tinker v. Des Moines
Class 21
Discussion: Does the First Amendment protect protesters who burn the American flag, or is the flag too sacred a symbol to be desecrated? The proposed constitutional amendment to protect the flag.
Assignment for this class: Texas v. Johnson

Broadcasting and the Internet

Class 22
Discussion: Why does the government have power to regulate broadcasting in ways it cannot do in the print media? Why do “wardrobe malfunctions” on television draw fines from the FCC, when such depictions in print would be fully protected?
Assignment for this class: Red Lion v. FCC; Pacifica v. FCC

Class 23
Discussion: Does the Internet receive the highest level of First Amendment protection—or the same reduced protection of the broadcasting medium?

Class 24
Discussion continued

Embarrassing Private Facts

Class 25
Discussion: The press sometimes publishes private information of a sensitive nature. Does the First Amendment protect the press and private citizens when they publish embarrassing private facts about people without their consent? The right of privacy was invented in 1890 as the press became more intrusive into private matters.
Assignment for this class: Class website

Class 26
Discussion: In the age of social networking sites, is there any information that is still private? And can the press be punished for publishing the name of a rape victim?
Assignment for this class: Class website
Constitutional Rights in Conflict: Freedom of the Press versus Right to a Fair Trial

Class 27

Discussion: An aggressive press can harm a defendant’s Sixth Amendment right to a fair trial. Whose rights prevail?

Assignment for this class: Sheppard v. Maxwell; Richmond Newspapers v. Virginia; wrongful convictions—Class website

Class 28

Discussion: Do journalists have a First Amendment right to withhold the names of their confidential sources from prying prosecutors?

Assignment for this class: Branzburg v. Hayes