

THE FIRST AMENDMENT: FREE SPEECH

Coordinators: Jonathan Gaines and Michael Switzer

Is burning the American flag “protected speech”? Must we allow extremists’ protests at fallen soldiers’ funerals? Is distributing an anti-Moslem video or burning a Koran “protected speech”? Should Nazis be allowed to march in Skokie? May “Occupy Wall Street” occupy Wall Street? The Founding Fathers wrote: “Congress may make no law...abridging the freedom of speech, or of the press...”. We discuss and debate Supreme Court decisions regarding these First Amendment rights. Topics include “fighting words” and hate speech, prior restraint (e.g., the Pentagon Papers and Wikileaks), symbolic speech (burning flags, crosses and draft cards), obscenity and blasphemy, political dissent and campaign finance. Participants provide short presentations on major Supreme Court speech/press cases. This study group has been given in two prior semesters.

Readings and other Required Materials:

Thomas L. Tedford and Dale A. Herbeck, *Freedom of Speech in the United States*, { 6th Edition, 2009; Strata Publishing; ISBN: 978-1-891136-214;} Please note: Acquire the 6th Edition not the 7th Edition.

There will be a coursepack. Cost approx. \$20

Jonathan Gaines is a corporate lawyer and has coordinated a study group on Constitutional Civil Liberties. **Michael Switzer** was a commercial real estate lawyer and has a long term interest in civil liberties issues. He has co-coordinated this study group twice before.

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“Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as publick Liberty, without Freedom of Speech: Which is the Right of every Man, as far as by it he does not hurt and controul the Right of another; and this is the only Check which it ought to suffer, the only Bounds which it ought to know”.

(Thomas Gordon and John Trenchard, writing in 18th Century England under the name of the Roman Cato. “Cato’s Letters” were widely known in Colonial America and had an extraordinary influence on the authors of the Constitution).

Below is the assigned reading for each of the sessions from the Text and the Coursepack. In addition, we are listing the key cases that will be the primary areas of that session’s discussion. Finally, in most of the sessions we will be asking study group participants to make brief (approximately 10-15 minutes) presentations about a selected case for that session (the cases to be presented are marked with an asterisk below).

Session 1 - Introduction.

Text: Pps. 12 and 13 (box inserts), 14 (Conclusion), 17-28, 37-39 and 432-34.

Coursepack: (1) Geoffrey Stone: A First Amendment Exam Question (will be discussed in class); (2) Justice Potter Stewart: The Constitution of the United States is not a self-executing document; (3) Robert Wagman: First American Freedoms: No Easy Way To Be An American; (4) Darien McWhirter: Freedom of Speech, Press, and Assembly Today.

Session 2 - Political Heresy, Sedition.

Text: Pps. 20-21 (Seditious Libel in the colonies), 29-33 (Seditious Libel in the new nation), 43-65 and 68-72.

Coursepack: E. Alderman and C. Kennedy: In Our Defense (KKK case).

Cases: Schenck v. U. S. ; Gitlow v. New York; Brandenburg v. Ohio*

Session 3 - Provocation to Anger and Words that Wound.

Text: Pps. 161-80.

Cases: Chaplinsky v. New Hampshire*; Cohen v. California; R.A.V. v. St. Paul; Campus Codes.

Session 4 – Free Speech Relating to College Campus Protests.

Coursepack: To Be Determined.

Session 5 – Defamation.

Text: Pps. 75-81 (optional), 81 (Group Libel) – 101 and 109 (The Special Issue of Emotional Distress) – 111.

Coursepack: Anthony Lewis: Freedom for the Thought That We Hate.

Cases: New York Times v. Sullivan*; Gertz v. Welch.

Session 6 – Prior Restraint.

Text: Pps. 213-20 and 225-33.

Coursepack: Robert Wagman: First American Freedoms: No Easy Way To Be An American.

Cases: Near v. Minnesota; U.S. v. Progressive; New York Times v. U.S. (Pentagon Papers)*; Wikileaks.

Session 7 – Obscenity.

Text: Pps. 125-45 and 153-54 (Nude Dancing as Free Expression).

Cases: Roth v. U.S.; Miller v. California*; Barnes v. Glen Theatre.

Session 8 - Blasphemy.

Text: Pps. 117-20, 154 (“Decency” Standards) and 327-28 (Organizations That Receive Government Funds).

Coursepack: Floyd Abrams: Speaking Freely, Chapter VII, The Brooklyn Museum Case; Constitutional Rights Foundation: Battle Over the National Foundation of the Arts.

Session 9 – Speech That Invades Privacy.

Text: Pps. 101-111.

Coursepack: E. Alderman and C. Kennedy: The Right to Privacy, Hall v. Post; Miller v. NBC; Braun v. Flynt.

Cases: Cox Broadcasting v. Cohn; and the three cases in Coursepack above.

Session 10 – Constraints of Time, Place and Manner.

Text: Pps. 259-64 and 270-77.

Coursepack: F. Friendly and M. Elliot: The Constitution: That Delicate Balance (Skokie case)*; Snyder v. Phelps (protests at soldiers' funerals).

Cases: Hague v. CIO; Madsen v. Women's Health Center; Collin v. Smith (Skokie case)*; Snyder v. Phelps.

Session 11 - Campaign Finance

Text: To Be Determined.

Coursepack: To Be Determined.

Session 12 – Symbolic Expression.

Text; Pps. 279 (“Speech Plus”) - 87.

Cases: Texas v. Johnson*; U.S. v. O'Brien; West Virginia State Board of Education v. Barnette