

**LSHV-444-01      Room: 202 White Gravenor**

**GEORGETOWN UNIVERSITY  
FALL 2017  
FREE SPEECH, THE FIRST AMENDMENT AND THE SUPREME COURT  
SCORPIONS IN THE CONSTITUTIONAL BOTTLE  
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**I. COURSE PRECIS**

**Free speech is very much about line-drawing.** We are generally agreed that political speech, no matter how heated, is the hallmark of an open society, and highly protected under the First Amendment. We are also generally agreed that you can't cry fire in a crowded theater when there is no fire; and that child pornography is bereft of any constitutional protection. Those are easy. What about the gray areas, where unfettered speech is a threat to safety, to reputation, to national security, to morality?

In pushing the free speech envelope, how far is too far? Where (if at all) should society -- and the Supreme Court -- draw the line? Justice Brandeis, a champion of free speech, noted that "freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth." Justice Holmes, another champion, observed that "the ultimate good desired is better reached by free trade in ideas." Justice Jackson, also a proponent, nonetheless cautioned that speech free of reasonable fetters, if unchecked, can lead to anarchy and convert the Bill of Rights "into a suicide pact." Who is right? Are they all right?

When is speech so uncivil that domestic tranquility takes precedence? What is lost and what is gained as a society in resolving these tensions? This course grapples with these issues. Through historical analysis and case study of the leading Supreme Court speech cases, we will examine the interplay between speech and censorship, liberty and order; majoritarianism and libertarianism; and the legal, societal and ethical implications of the Supreme Court's First Amendment pronouncements in this volatile, contentious /perpetually vexing area.

**II. Course Goals/Aims and Requirements**

Historical documents and Supreme Court decisions will serve as grist for the analytical mill as we assess whether the rule of law can simultaneously protect free speech and preserve a civil society. We will start with the Constitutional Convention, and progress from *Marbury v. Madison* (1803) through the most recent SCOTUS Term (Fall 2016 – ending June 2017).

Teaching Method: Class is a fast-paced mix of lecture, case analysis, discussion, and the Socratic method of teaching based on textbook and case assignments.

We place a premium on interdisciplinary inquiry, close reasoning and cogent exposition (oral and written).

- **Interdisciplinary Inquiry:** You will be pushed to develop the ability to examine issues through kaleidoscopic inquiry. History, economics, and political theory and practice all weigh heavily in a contextual understanding of the Court, Free Speech and the Constitution.

- Close/Critical Reasoning: We are of course interested in WHAT the Court decides-- the Court's answer to the question posed is our analytical destination. Our paramount interests lie elsewhere: we must identify the basis for the Court's decision -- the WHY (the analytical journey); only then can we assess whether the decision is compelling and persuasive.
- Written and Oral Exposition

Examinations: The examinations will consist of essay questions in which you will be asked to analyze and discuss the constitutional implications of hypothetical church-state scenarios. A mid-term examination will be given on October 21. The final examination will be given on December 9.

Research Paper: Each student will be assigned to research a particular topic tied to a particular free speech issue. The student will produce a scholarly research paper (not an A&E biography) of 16-20 pages (double-spaced). Assignments will be selected on September 16.

Class Attendance and Participation: Structured argumentation is an acquired skill. You will be pushed in class to reason critically, articulate a position, and defend it. Class preparation, attendance and participation are essential. Any student who misses a class is in jeopardy of expulsion. Students who know that they must miss a class must notify the professor in advance. Two absences = mandatory withdrawal.

### **III. Textbook/Supplement, Grading and Class Schedule**

Required Text: Zelezny, Communications Law: Liberties, Restraints and the Modern Media (6th Ed.) **Note: 6th Ed.** (Paper is fine). I have placed a book order at the GU Bookstore. (Also available on Amazon – new starting at \$60).

Required Course Supplement: Will be provided to students at no charge. **BUT YOU MUST OBTAIN THROUGH DEAN RIDDER'S OFFICE IN ADVANCE OF FIRST CLASS!**

Time: The class will meet Saturdays from 9AM to Noon (Sept. 9, 16, 23, 30; Oct. 14, 21, 28; Nov. 4, 11, 18; Dec. 2, 9).

Grading: The grade for the course will be based upon the mid-term (30%) the research paper (35%), the final examination (30%). The quality of class preparation and classroom presentation will be factored into the final grade (5%).

**NO TAPING OR RECORDING OF CLASSES!!**

# SYLLABUS

## INTRODUCTION AND OVERVIEW

### CLASS SCHEDULE

Textbook and Supplement (Handout) must be brought to all classes.

#### I. NUTS AND BOLTS OF FREE SPEECH ANALYSIS

##### Session 1 -- September 9: THE CONSTITUTIONAL SKUNK AT THE GARDEN PARTY

- INTRODUCTION -- SEMESTER PREVIEW
  
- THE CONSTITUTION AND U.S. LEGAL SYSTEM -- AN OVERVIEW  
Supp: Stein Article; Hentoff Article; Constitution--Excerpts; Supreme Court Justices -- Biographies; Glossary
  
- WHY FREE SPEECH AT ALL?  
Supp: Abrams, Whitney, Schwimmer, Near, Terminiello, NYT v. Sullivan, Cohen
  
- THE FIRST AMENDMENT -- SCOPE OF PROTECTED SPEECH  
Text: 34-47
  
- THE FIRST AMENDMENT -- CONTENT-BASED REGULATION OF SPEECH  
Text: 47-57  
Supp: Near

##### Session 2 -- September 16: TENUOUS BALANCING: CIVIL SOCIETY - UNCIVIL SPEECH

- THE FIRST AMENDMENT -- CONTENT-NEUTRAL REGULATION OF SPEECH (TIME, PLACE AND MANNER RESTRICTIONS)  
Text: 57-59  
Supp: Krishna, Lakewood, Schenck, Chicago Park District
  
- THE FIRST AMENDMENT -- RESOLVING CONFLICTS BETWEEN UNCIVIL SPEECH AND CIVIL RESTRAINTS (LEVELS OF SCRUTINY)  
Text: 59-69  
Supp: Cohen
  
- THE FIRST AMENDMENT -- CASES WITH A DIFFERENT SPIN  
  
Text: 72-73  
Supp: Southworth, Rumsfeld, Morse, Summum  
*Research Topics Distributed*

## II. HOT BUTTONS: CONTEMPORARY FREE SPEECH ISSUES

### Session 3 -- September 23: ISSUE #1: SPEECH AND VIOLENCE

- INCITEMENT

Text: 86-93

Supp: Abrams, Whitney, Terminiello

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- HATE SPEECH

Text: 51-52

Supp: R.A.V., Wisconsin v. Mitchell, VA v. Black

- SPEECH ENDANGERING NATIONAL SECURITY

Text: 93-97

Supp: Unabomber Article

*Sample Exam Question Distributed*

### Session 4 – September 30: ISSUE #2: SPEECH AND SAFETY

#### SPEECH ENDANGERING INDIVIDUAL SAFETY

Text: 99-113

Case Supp: Paladin (Hit Man) (4th Cir.)

### NO CLASS OCTOBER 7

### Session 5 -- October 14: ISSUE #3: SPEECH ENDANGERING REPUTATION

#### LIBEL

Text: 116-154; 156-162

Supp: NYT v. Sullivan, Oprah Article, Westmoreland v. CBS Packet

### Session 6 -- October 21: MIDTERM EXAMINATION

### Session 7 -- October 28

#### : ISSUE #4: SPEECH AND PERSONAL PRIVACY

#### INVASION OF PRIVACY

- Public Disclosure of Embarrassing Private Facts

- Intrusion

- Intentional Infliction of Emotional Distress

Text: 176-178; 190-200; 204-Top208; 214-217

Supp: Favish

Session 8 -- November 4: ISSUE #5: SPEECH AND MORALITY

OBSCENITY AND NON-OBSCENE SEXUAL EXPRESSION

- Obscenity

Text: 446-460

- Child Pornography

Supp: Ferber, Williams

"Virtual" Child Pornography

Supp: Ashcroft v. Free Speech Coalition

- Regulating Non-Obscene Sexual Expression (Books-Film-Live Entertainment)

Text: 468-473

ISSUE #6: ELECTRONIC SPEECH AND MORALITY I:  
BROADCAST, CABLE AND CYBERSPEECH

Introduction

Text 379-88; 433-Middle 436

Session 9 -- November 11: ISSUE #6: ELECTRONIC SPEECH AND MORALITY II:  
BROADCAST, CABLE AND CYBERSPEECH

Broadcast and Cable: Content Controls on Indecency

Text: 473-483

Supp: Fox v. FCC Packet (2d Cir. Opinion and SCOTUS Remand)

- Cyberspeech: Content Controls on Indecency

Text: 484-487

Supp: Ashcroft v. ACLU I and II, United States v. ALA

Session 10 -- November 18: ISSUE #7: RECENT SCOTUS OPINIONS ON SPEECH I

Supp: Fall 2009 – Fall 2012 Terms Packet

NO CLASS NOVEMBER 25

Session 11 – December 2: ISSUE #7: RECENT SCOTUS OPINIONS ON SPEECH II AND  
SEMESTER IN REVIEW

Supp: Fall 2013 Term Packet, Fall 2014 Term Packet, Fall 2015 Term Packet

Session 12 -- December 9: FINAL EXAMINATION

DECEMBER 16 IS SET-ASIDE FOR ON-YOUR-OWN COMPLETION OF YOUR  
SEMESTER PAPER -- DUE DECEMBER 17

**IV. Honor Code**

This course is governed by the University Honor Code -- I commit myself to respect and uphold the Georgetown University Honor System: To be honest in my academic endeavor; and to conduct myself honorably, as a responsible member of the Georgetown Community.

**V. Disabilities Statement**

If you believe you have a disability that affects academic performance, then you should contact the Academic Resource Center ([arc@georgetown.edu](mailto:arc@georgetown.edu)) for further information. The Center located in the Leavey Center, Suite 335. The Academic Resource Center is the campus office responsible for reviewing documentation provided by students with disabilities and for determining reasonable accommodations in accordance with the Americans with Disabilities Act (ADA) and University policies.

**VI. Instructional Continuity Due to Unforeseen Disruptions**

If weather or other unforeseen events prevent on-site classroom instruction, we will “convene” by telephone and/or add time to regularly scheduled classes, to compensate.

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**SUPPLEMENT**  
**FREE SPEECH, THE CONSTITUTION, AND THE SUPREME COURT**  
**SCORPIONS IN THE CONSTITUTIONAL BOTTLE**  
**FALL 2017**

STEIN ARTICLE  
HENTOFF ARTICLE  
CONSTITUTION -- EXCERPTS  
SUPREME COURT JUSTICES -- BIOGRAPHIES  
GLOSSARY

ABRAMS  
WHITNEY  
SCHWIMMER  
NEAR  
TERMINIELLO  
NEW YORK TIMES V. SULLIVAN  
COHEN

KRISHNA  
LAKEWOOD  
SCHENCK  
CHICAGO PARK DISTRICT

SOUTHWORTH  
RUMSFELD  
GARCETTI  
MORSE  
SUMMUM

R.A.V.  
WISCONSIN V. MITCHELL  
VIRGINIA v. BLACK  
Hate Crimes Article  
Unabomber Article

HIT MAN (4th Circuit)  
Oprah Article  
Westmoreland v. CBS Packet  
FAVISH

FERBER  
WILLIAMS  
ASHCROFT V. FREE SPEECH COALITION

FOX v. FCC Packet (2nd Circuit Op and SCOTUS remand)  
ASHCROFT V. ACLU I AND II  
UNITED STATES V. ALA

FALL 2009 – FALL 2012 TERMS Packet  
FALL 2013 – FALL 2016 TERMS

**Academic Standards:** MALS and DLS students are responsible for upholding the Georgetown University Honor System and adhering to the academic standards included in the Honor Code Pledge stated below:

*In the pursuit of the high ideals and rigorous standards of academic life, I commit myself to respect and uphold the Georgetown University Honor System: To be honest in any academic endeavor; and to conduct myself honorably, as a responsible member of the Georgetown community, as we live and work together.*

**Disability Notice:** If you believe you have a disability, you should contact the Academic Resource Center—Suite 335, Leavey Center ([arc@georgetown.edu](mailto:arc@georgetown.edu))—for further information. This office is responsible for reviewing documentation provided by students with disabilities and for determining reasonable accommodations in accordance with the Americans with Disabilities Act (ADA) and University policies.