First Amendment Freedom of Expression
Freshman Seminar  FYSEM-UA 235
College of Arts & Science, New York University
Stephen D. Solomon, Associate Professor
Fall 2017; Monday and Wednesday, 11:00 a.m. to 12:15 a.m.
20 Cooper Square, Room XX

Draft Syllabus—Subject to Revision

Description
Political dissent and debate fills the public square at every turn. Citizens demonstrate in the streets, public figures launch libel suits, social media carries vitriolic material, and President Trump attacks the media. Although the First Amendment appears on its face to prohibit any governmental restrictions on speech and the press, the Supreme Court in fact balances free expression against other vital interests of society. This course engages students in a close study of history as well as law, emphasizing how the American commitment to freedom of expression grew during the nation’s founding period and culminated in ratification of the First Amendment. The course begins with the protests against British authority in colonial times, when the law permitted prosecution of citizens who criticized the government. We examine the conflicting meanings that the founders themselves attached to freedom of expression. In our own day, we look at how the Supreme Court has interpreted freedom of speech by examining a rich variety of contemporary conflicts, including libel of public and private persons, invasions of privacy, symbolic speech, and restrictions on speech during wartime.

Written Work
You will write five original essays during the semester. In addition, one paper will be substantially or completely rewritten, in effect making it a sixth paper. The length will be between 1,000 and 1,500 words. Generally, you will have one week to complete each assignment. The due dates follow, but may be adjusted depending on our progress through the semester:  September 25; October 4; October 25; November 15; December 6

Grading
The grades of A and A- are given for outstanding work. Your final grade will be based on the following weighting:
Essay #1:   10%
Essay #2:   20%
Essay #3:   20%
Essay #4:   20%
Essay #5:   20%
Class Participation:  10%
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 in advance if you must miss class.

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. Failure to follow these rules will result in a lowering of your final grade.

Readings: Three books are assigned. However, the class website contains many additional readings for each class, and you are responsible for accessing them. These readings are largely primary source material, including documents from the founding period as well as unabridged Supreme Court decisions. Although readings vary week by week, expect an average of about 100 pages per week.
*Revolutionary Dissent*, by Stephen D. Solomon (St. Martin’s Press)
*Make No Law*, by Anthony Lewis (Vintage)
*The Great Dissent*, by Thomas Healy (Picador)

**Office Hours:** Room 630 at 20 Cooper Square. Stop in during office hours or make an appointment. You can also reach me by email. 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

**First Things…**

1. **Wednesday, September 6**
   - **Discussion:** Introduction to the First Amendment and the Bill of Rights.

2. **Monday, September 11**
   - **Discussion:** Protected and unprotected speech; First Amendment analysis.
   - **Assignment for this class:** *Revolutionary Dissent*, Prologue

**The Founding Period**

3. **Wednesday, September 13**
   - **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:** *Revolutionary Dissent*, Prologue, Chapters 1-2

4. **Monday, September 18**
   - **Discussion:** What did the Framers have in mind? Through the prism of the Stamp Act crisis, we look at the growth of the public sphere of political speech and kind of speech that the founding generation engaged in.
   - **Assignment for this class:** *Revolutionary Dissent*, Chapters 3-5; Class presentations on colonial protest; NYU Classes

5. **Wednesday, September 20**
   - **Discussion:** What did the Framers have in mind (continued)?
   - **Assignment for this class:** *Revolutionary Dissent*, Chapters 6-7; Class presentations on colonial protest

6. **Monday, September 25**
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: Revolutionary Dissent, Chapters 8 and 9; ESSAY #1 due

7. Wednesday, September 27
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: NYU Classes: Read materials, including the majority and minority reports to the Virginia House of Delegates on the Sedition Act of 1798.

Political Dissent

8. Monday, October 2
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.

9. Wednesday, October 4
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, NYU Classes; ESSAY #2 due

Monday, October 9 Fall recess—no class

10. Wednesday, October 11
Discussion: Moot Court: Rome v. Marc Antony
Assignment for this class: Prepare debate

Libel, Satire, and the American Political Process

11. Monday, October 16
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

12. Wednesday, October 18
“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

13. Monday, October 23
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; NYU Classes

14. Wednesday, October 25
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; ESSAY #3 due

Symbolic Speech

15. Monday, October 30:
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

16. Wednesday, November 1
Discussion: Does the First Amendment protect protesters who burn the American flag, or is the flag too sacred a symbol to be desecrated?
Assignment for this class: Texas v. Johnson; NYU Classes

Forbidden Words

17. Monday, November 6
Discussion: Why is some speech proscribed, with no First Amendment protections? Considering fighting words and obscenity.
Assignment for this class: Chaplinsky v. N.H.; Miller v. California

18. Wednesday, November 8
Discussion: Obscenity and child pornography.
Assignment for this class: Ferber v. New York; NYU Classes

Embarrassing Private Facts

19. Monday, November 13
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: NYU Classes

20. Wednesday, November 15
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: NYU Classes; ESSAY #4 due

21. Monday, November 20
Discussion: Moot Court: Arthur Ashe v. USA Today
Assignment for this class: Prepare debate

Wednesday, November 22  Thanksgiving recess—no class

Censorship: Stopping the Presses

22. Monday, November 27
Discussion: Can the government stop publication to prevent great harm?
Assignment for this class: Near v. Minnesota; NYU Classes

23. Wednesday, November 29
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, NYU Classes

Words That Offend

24. Monday, December 4
Discussion: Can offensive speech be proscribed? The problem of profanity and hate speech.
Assignment for this class: Cohen v. California; NYU Classes

25. Wednesday, December 6
Discussion: Contemporary issues in offensive speech
Assignment for this class: NYU Classes, ESSAY #5 due
Broadcasting and the Internet

26. Monday, December 11  (Monday classes meet on Tuesday)
   Discussion: Why does the government have power to regulate broadcasting in ways it cannot do in the print media?
   Assignment for this class: Red Lion v. FCC; Pacifica v. FCC; NYU Classes

27. Tuesday, December 12  (Monday classes meet on Tuesday)
   Discussion: Does the Internet receive the highest level of First Amendment protection—or the same reduced protection of the broadcasting medium?
   Assignment for this class: NYU Classes

Conclusion

28. Wednesday, December 13
   Discussion: What does freedom of expression mean?
   Assignment for this class: NYU Classes