First Amendment Freedom of Expression
Freshman Seminar FRSEM-UA.235-001 Class #xx
College of Arts & Science, New York University
Stephen D. Solomon, Associate Professor
Spring 2019
Assumes Monday and Wednesday Schedule, 11:00 a.m. to 12:15 p.m.

Draft Syllabus—This syllabus is a draft and is subject to revision.

Description
Political dissent and debate fills the public square at every turn. Citizens demonstrate in the streets, social media carries vitriolic material, speakers are disinvited on college campuses, and President Trump attacks the media. This course will enhance your understanding of these conflicts. You will study the First Amendment freedoms of speech and press, and the role that they play in a democratic society.

To gain this understanding, the 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 speech and press. In our own day, we learn how the Supreme Court has interpreted freedom of expression by studying the Court's opinions in key cases and how they affect contemporary conflicts.

Written Work
You will write five original essays during the semester. 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: February 13, March 6, March 25, April 15, May 1.

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.

**Attendance**
Students are responsible for attending all classes and doing so on time. Missing a class without an excused absence, or entering classes late, 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.

**First Amendment Watch:** The class will read and potentially contribute to First Amendment Watch, the Carter Journalism Institute’s new website documenting free speech conflicts. firstamendmentwatch.org

**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 and put away 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 computer work unrelated to class is permitted. Failure to follow these rules will result in a lowering of your final grade.

Readings
Two 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 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)
*The Great Dissent, by Thomas Healy (Picador)

Office Hours
My office is Room 630 at 20 Cooper Square. Stop in during office hours or make an appointment. You can also reach me by email. Days and times of office hours to be determined.

Telephone and E-Mail
Office: 212-998-7995
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Class-By-Class Description
Note: The subject for each session may change depending on our progress and events in the news. Listed assignments are for the class in which it’s listed, not the next class.

First Things...

1. Monday, January 28
   **Discussion:** Introduction to the First Amendment and the Bill of Rights. We look at the website First Amendment Watch.

2. Wednesday, January 30
   **Discussion:** Protected and unprotected speech; First Amendment analysis.
   **Assignment for this class:** Revolutionary Dissent, Prologue, and chapters from Distant Heritage on NYU Classes

The Founding Period

3. Monday, February 4
   **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. Wednesday, February 6
   **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. Monday, February 11
   **Discussion:** What did the Framers have in mind (continued)?
   **Assignment for this class:** Revolutionary Dissent, Chapters 6-7; Class presentations on colonial protest
6. Wednesday, February 13  
**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

**Monday, February 18**  
Holiday

7. Wednesday, February 20  
**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, February 25  
**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, February 27  
**Discussion**: In *Brandenburg v. Ohio* (1969), the Court reverses course and protects strong dissent, adopting the Holmes/Brandeis approach.  
**Assignment for this class**: *Brandenburg v. Ohio*, NYU Classes; ESSAY #2 due

10. Monday, March 4  
**Discussion**: Moot Court debate  
**Assignment for this class**: Prepare debate

**Libel, Satire, and the American Political Process**

11. Wednesday, March 6  
**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**: *New York Times v. Sullivan*
12. **Monday, March 11**
   
   **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*

13. **Wednesday, March 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; NYU Classes*

**Monday, March 18 and Wednesday, March 20**

14. **Monday, March 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*

**Forbidden Words**

15. **Wednesday, March 27**
   
   **Discussion:** Why is some speech proscribed, with no First Amendment protections? Considering fighting words.  
   **Assignment for this class:** *Chaplinsky v. N.H.*

**Symbolic Speech**

16. **Monday, April 1:**
   
   **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*

17. **Wednesday, April 3**
   
   **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*
Words That Offend

18. Monday, April 8
Discussion: Can profanity and vulgarity be proscribed?
Assignment for this class: Cohen v. California; Virginia v. Black; NYU Classes

19. Wednesday, April 10
Discussion: Can hate speech be proscribed?
Assignment for this class: Collin v. Smith; Matal v. Tam; NYU Classes

20. Monday, April 15
Discussion: Contemporary issues—Campus speakers and speech codes
Assignment for this class: NYU Classes, ESSAY #4 due

The Public Forum

21. Wednesday, April 17:
Discussion: Traditional, limited purpose, and nonpublic forums. How do these distinctions determine the extent of First Amendment protection in controversies over public officials blocking Twitter followers and closing press conferences to journalists they don’t like?
Assignment for this class: NYU Classes and FirstAmendmentWatch

The Problem of Regulating Obscenity

22. Monday, April 22
Discussion: The problem of regulating obscenity—the Comstock Law (1873) and censored art and books. Guest: Amy Werbel, Associate Professor of Art History, State University of New York Fashion Institute of Technology, and author of Lust on Trial (Spring 2018)
Assignment for this class: NYU Classes

23. Wednesday, April 24
Discussion: Does the accessibility of the Internet make obscenity prosecutions untenable? The focus moves to child pornography.
Assignment for this class: Miller v. California, Ferber v. New York; NYU Classes
Embarrassing Private Facts

24. **Monday, April 29**
   
   **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

25. **Wednesday, May 1**
   
   **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 #5

Censorship: Stopping the Presses

26. **Monday, May 6**
   
   **Discussion:** Can the government stop publication to prevent great harm?
   
   **Assignment for this class:** Near v. Minnesota; New York Times v. United States; NYU Classes

Leak Investigations

27. **Wednesday, May 8**
   
   **Discussion:** Are journalists subject to prosecution in government leak investigations?
   
   **Assignment for this class:** Bartnicki v. Vopper; NYU Classes

Broadcasting and the Internet

28. **Monday, May 13**
   
   **Discussion:** Why does the government have power to regulate broadcasting in ways it cannot do in the print media? What level of First Amendment protection goes to the Internet?
   
   **Assignment for this class:** NYU Classes