First Amendment Freedom of Expression
First-Year Seminar       FYSEM-UA 235
College of Arts & Science, New York University
Stephen D. Solomon, Associate Professor
Fall 2019
Room 657 at 20 Cooper Square
11:00 a.m. to 12:15 p.m.

NOTE: This is a draft syllabus. It is subject to change.

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. We apply those principles to contemporary conflicts, and discuss how new media raise questions that will test the boundaries of freedom of expression in the future.

Learning Objectives
* Strengthen your intellectual development in these ways: (1) critical thinking ability; (2) understanding of challenging primary and secondary source material; (3) skill in carrying out research; and (4) ability to speak publicly.
* Learn free speech history, especially of the founding period
* Learn principles of First Amendment law
* Learn how First Amendment principles apply to contemporary conflicts.
**Written Work**
You will write five essays during the semester. The length will usually 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: September 18, October 7, November 4, November 20, December 9.

**Readings**
Two books are assigned. In addition, you will find readings on NYU Classes and First Amendment Watch (see the descriptions below). These readings are largely primary source material. 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)

**NYU Classes Site:**
The course will make extensive use of our NYU Classes site. Accessed through NYU Home, it contains a class-by-class description of the course, with assignments and readings. Materials posted include court opinions and a variety of historical documents. You are responsible for checking NYU Classes before each class meeting.

**First Amendment Watch:** The class will read and analyze materials posted on First Amendment Watch (FirstAmendmentWatch.org), the Carter Journalism Institute’s website documenting free speech conflicts. Reading assignments on First Amendment Watch include published news articles on free speech controversies, court opinions and other court documents, and historical materials.

**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 a 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.

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.

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.

Disability Disclosure Statement
Academic accommodations are available for students with disabilities. The Moses Center website is www.nyu.edu/csd. Please contact the Moses Center for Students with Disabilities (212-998-4980 or mosescsd@nyu.edu) for further information. Students who are requesting academic accommodations are advised to reach out to the Moses Center as early as possible in the semester for assistance.

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.
Mondays and Wednesdays: To be announced

Telephone and E-Mail
Office: 212-998-7995
E-mail: sds1@nyu.edu
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 they are listed.

First Things...

1. Wednesday, September 4
   Discussion: Introduction to the First Amendment and the Bill of Rights. We look at the website First Amendment Watch.

2. Monday, September 9
   Discussion: Introduction to the First Amendment.
   Assignment for this class: Revolutionary Dissent, Prologue and Chapters 1-3, pages 1-87; NYU Classes and First Amendment Watch

The Founding Period

3. Wednesday, September 11
   Discussion: The experience from England—a repressive system of licensing, restraints, and prosecutions for seditious libel. The Zenger case frames the issue of press freedom for the American colonies.
   Assignment for this class: Revolutionary Dissent, Chapters 4-7, pages 89-217; NYU Classes and First Amendment Watch

4. Monday, September 16
   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: Class presentations on colonial protest; NYU Classes and First Amendment Watch

5. Wednesday, September 18
   Discussion: What did the Framers have in mind (continued)?
   Assignment for this class: Class presentations on colonial protest; NYU Classes and First Amendment Watch.
   Written Assignment #1 Due: Free Speech in the Founding Period

6. Monday, September 23
   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 and Epilogue, pages 219-302; NYU Classes and First Amendment Watch

7. **Wednesday, September 25**  
   **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 and First Amendment Watch

**Fighting Words**

8. **Monday, September 30**  
   **Discussion:** Why is some speech proscribed, with no First Amendment protections? Considering fighting words and threats.  
   Assignment for this class: *Chaplinsky v. N.H.*; NYU Classes and First Amendment Watch

**Political Dissent**

9. **Wednesday, 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.*; NYU Classes and First Amendment Watch

10. **Monday, October 7**  
    **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 and First Amendment Watch  
    Written Assignment #2 Due: Sedition Act

11. **Wednesday, October 9**  
    **Discussion:** Moot Court debate  
    Assignment for this class: Prepare debate; NYU Classes and First Amendment Watch

Monday, October 14  
Fall Recess—No Class

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

12. **Tuesday, October 15** (Note: NYU Follows Monday Schedule)

*Assignment for this class:* *New York Times v. Sullivan*, NYU Classes and First Amendment Watch

13. Wednesday, October 16

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*; NYU Classes and First Amendment Watch

14. Monday, October 21

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 and First Amendment Watch

15. Wednesday, October 23

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*; NYU Classes and First Amendment Watch

16. Monday, October 28

Discussion: Libel suit by Sandy Hook parents against Alex Jones and InfoWars 

*Assignment for this class:* First Amendment Watch and NYU Classes

**Censorship: Stopping the Presses**

17. Wednesday, October 30

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 and First Amendment Watch

**The Public Forum**

18. Monday, November 4

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
Written Assignment #3 Due: Libel

Symbolic Speech

19. Wednesday, November 6  
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; NYU Classes and First Amendment Watch

20. Monday, November 11  
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 and First Amendment Watch

21. Wednesday, November 13  
Discussion: The NFL taking-a-knee protest and other controversies.  
Assignment for this class: NYU Classes and First Amendment Watch

Words That Offend

22. Monday, November 18  
Discussion: Can profanity and hate speech be proscribed?  
Assignment for this class: Cohen v. California; Snyder v. Phelps; NYU Classes and First Amendment Watch

23. Wednesday, November 20  
Discussion: Can hate speech be proscribed?  
Assignment for this class: Collin v. Smith; Matal v. Tam; NYU Classes and First Amendment Watch  
Written Assignment #4 Due: Public Forum

Embarrassing Private Facts

24. Monday, November 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: Virgil v. Time Inc.; Sipple v. Chronicle Publishing; Sidis v. F-R Publishing; NYU Classes and First Amendment Watch

Wednesday, November 27: Thanksgiving Break—No Class

25. Monday, December 2
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: Sandler v. Calcagni; Hulk Hogan v. Gawker;
NYU Classes and First Amendment Watch

New Frontiers: Speech Problems in Social Media

26. Wednesday, December 4
Discussion:
Assignment for this class: NYU Classes and First Amendment Watch

Broadcasting and the Internet

27. Wednesday, December 9
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: FCC v. Pacifica; Packingham v. North Carolina; NYU Classes and First Amendment Watch
Written Assignment #5 Due: Private Facts

Forbidden Words—Obscenity

28. Monday, December 11
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 and First Amendment Watch