

Jour 818

Advanced Studies in The First Amendment Spring 2016

Monday, 2:30 to 5:00 pm, 303 Stauffer-Flint

Instructor: Mark Johnson

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Office Hours: Monday/Wednesday, 12:30 to 2 pm

and by appointment

To ensure success in reaching me, please use both email addresses.

Course Objectives:

- An appreciation for the First Amendment and the freedoms it represents.
- Critical thinking about expression of ideas.

Requirements:

Each student will prepare a research paper, reflecting original scholarship on a First Amendment-related topic of their choice. I will be available to discuss and approve proposed topics. Students should have an approved topic by February 15 and papers will be due by the end of April. The class format will be open discussion, and after the first class the discussions will be led/moderated by a student. Assignments for the first rotation of discussion leadership will be made at the first class. I will lead the discussion at the first class session.

Each student is expected to play an active role in all class meetings. Readings must be completed in advance of the class for which they are assigned, as they will form the basis of class discussion.

Each student must prepare at least two questions for proposed discussion in each class session. The questions must be emailed to me by 8 am on class day. I will select the questions to be discussed and email them to class members by noon. The discussion leader for the day should prepare additional questions to discuss.

Readings will consist largely of judicial decisions and scholarly articles analyzing decisions and other free expression, privacy, regulation, and/or individual rights issues. A close review and analysis of the readings will inform the discussion of relevant issues and concepts in class.

Class participation is a significant portion of the semester grade. Thus, class attendance is extremely important. If you know that you will be unable to attend class, please inform me by

email as soon as you know you will be unable to attend. However, failure to attend a class under such circumstances will not be “excused” in the sense that it will be ignored for grading purposes.

Grading:

Research Paper	50%
Class Participation	50%

Misconduct:

You are bound by the university rules on academic misconduct. If you have any questions about what constitutes cheating, please ask BEFORE your endeavor.

Policy on Plagiarism and Fabrication/Falsification

The William Allen White School of Journalism and Mass Communications does not tolerate plagiarism, fabrication of evidence and falsification of evidence. Penalties for plagiarism, fabrication or falsification can include a failing grade for the course and expulsion from the School of Journalism and Mass Communications. If you have any questions about what constitutes plagiarism, fabrication or falsification, please consult the professor of the course.

The following definitions are from Article II, Section 6, of the University Senate Rules and Regulations, revised FY98.

Plagiarism

Knowingly presenting the work of another as one's own (i.e., without proper acknowledgement of the source). The sole exception to the requirement of acknowledging sources is when the information or ideas are common knowledge.

Fabrication and Falsification

Unauthorized alteration or invention of any information or citation in an academic exercise.

Journalism School Policy on Classroom Attendance:

"The KU Office of Student Financial Aid is required by federal law to determine whether students who receive aid are attending each class in which they are enrolled. Instructors are required to report to that office absences of students who have stopped attending and names of those who have enrolled but never have attended. Students who do not attend classes may be required to repay federal and/or state financial aid."

"Students who receive any form of financial aid should learn all requirements including minimum hours of enrollment and grades to qualify for and retain that aid."

Inclement Weather and Special Needs - In the event of inclement weather, the decision to cancel classes is made by KU officials. To determine whether classes have been cancelled, call 864-7669 (864-SNOW). The Office of Disability Resources (DR), 22 Strong Hall, 785-864-2620 (v/tty), coordinates accommodations and services for KU students with disabilities. If you have a disability for which you may request accommodation in KU classes and have not contacted DR, please do so as soon as possible. Please also contact me privately in regard to this course.

Books: We will use excerpts from several books during the course, in addition to articles and other materials. All of the reading materials will be posted in the Course Documents page of the course's Blackboard site at least one class period before they are discussed.

Course Schedule (Subject to change as announced in class):

Date

January 25

Free Expression: Philosophy and Justifications.

Why do we value free expression? Where and why did the concept of free speech originate? Is it the best form of communication? What are its drawbacks?

Reading: Donald Kagan, *Pericles of Athens and the Birth of Democracy*, Ch. 3

Arlene Saxonhouse, *Free Speech and Democracy in Ancient Athens*, p. 1-54, 85-99.

William J. Brennan, Jr., "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," *79 Harv. L. Rev. 1* (Nov. 1965).

February 1

The Impact of Society on Free Expression

What conditions in society can affect the desire and need for free expression? Are there times when free expression should be suppressed due to other, more important societal concerns?

Reading: *Schenck v. U.S.*; *Abrams v. U.S. (Holmes dissent)*; Robert LaFollete, *Free Speech in Wartime*; *Nebraska Press Association v. Stuart*.

February 8

Privacy

Is privacy a value to be protected? How does our society recognize privacy? Under what circumstances should personal privacy give way to other societal considerations?

Reading: Daniel Solove, *Nothing to Hide: The False Tradeoff Between Privacy and Security*, p. 1-52.

- Louis Brandeis and Samuel Warren, *The Right to Privacy*, Harvard Law Review, 1890
- February 15 Comparing American and Europeans Notions of the Balance Between Free Expression and Privacy.
- Reading: Hughes and Richards, "The Atlantic Divide on Privacy and Free Speech"; European Commission, "Factsheet on the 'Right to be Forgotten' ruling"; Harvard Law Review, Note on case on Right to be Forgotten
- February 22 Libel: its development and status in our society
- Reading: *New York Times v. Sullivan (1964)*
- March 7 The Right of Petition: presenting our complaints and grievances to government to seek desired relief; the reliance on the right of petition to protect lobbying of government officials
- Reading: Nicholas W. Allard, "Lobbying is an Honorable Profession: the Right to Petition and the Competition to be Right," *19 Stanford Law & Policy Review 23 (2008)*
- March 21 Sedition: the right to speak out against the government -- consideration of two case studies (The Sedition Act of 1798 and the Cold War)
- Reading: Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime*, pp. 5-79, 312-426
- The Sedition Act of 1798; the Virginia and Kentucky Resolutions
- Dennis v. United States*, 341 U.S. 494 (1951)
- March 28 Free Speech in the Academy
- Reading: Woodward Report; FIRE Handbook; KU Social Media Policy
- April 4 The regulation of broadcast and non-broadcast media; federal licensing of broadcast spectrum
- Reading: *FCC v. Pacifica*
- April 11 Commercial Speech: government regulation of advertising

Reading: *Central Hudson v. NY Public Service Commission*, 447 U.S. 557 (1980); *Discount Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509 (6th Cir. 2012).

April 18

The Federal Trade Commission and regulation of commercial speech

Reading: FTC Guidelines on Endorsements and Deceptive Advertising

April 25

The Interplay of free speech, right of assembly, and the "right to be left alone": state regulation of pro-life protests at facilities providing reproductive services

Reading: *Hill v. Colorado*, 530 U.S. 703 (2000); *McCullen v. Moakley*, 708 F.3d 1(1st Cir. 2013).

May 2

The evolution of free expression protections; the broadening of journalism to include non-traditional authors

Reading: *Branzburg v. Hayes*, 408 U.S. 665 (1972); State and Federal Shield Laws.

May 8

Freedom of Religion: government regulation of expression of religious belief; The Establishment Clause and the Free Exercise Clause

Reading: excerpts from *Salazar v. Buono*, 559 U.S. 700 (2010); *Employment Division of Oregon v. Smith*, 494 U.S. 872 (1990)