

Communication Law (CCJN 4316)
Spring 2011
3:30-4:50 pm/TTh/Umphrey Lee, Rm. 241

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” – U.S. Constitution, First Amendment

“Stare decisis.” -- Latin for "to stand by that which is decided."



“The past is never dead. It’s not even past.” – [William Faulkner](#)

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Office Hours: 1:30—3 p.m., Monday and Wednesday. Also by appointment.

Course Objectives and Requirements

Students will demonstrate an understanding of significant U.S. Supreme Court rulings involving the First Amendment. To meet this objective, you must be prepared at each class to explain the facts of a case, the Supreme Court’s ruling and its reasoning. Students will display an ability to analyze situations with free speech ramifications and explain the legally correct course of action based on First Amendment law. To accomplish this objective, you must be able to apply your knowledge of communication law to hypothetical situations—spelled out on the midterm and final exams—involving libel, prior restraint, confidential sources and other key areas.

Textbook: Tedford & Herbeck, *Freedom of Speech in the United States*, 6thed. A related Web site, [freespeech](#), includes the texts of 100 key decisions by the U.S. Supreme Court; updates summarizing recent developments; and links to other online resources.

Class Policies and Procedures

The following policies have been adopted by the Division of Journalism. By enrolling in this class you are agreeing to the following terms and conditions.

Attendance: I take roll every day. If you miss the first day of class, I may drop you. If you have more than three unexcused absences, I may drop you or give you an “F.”

You are responsible for contacting me within 24 hours of an absence. I will consider the absence unexcused unless you provide a doctor’s note or other valid reason such as participation in a SMU-sponsored activity or observance of certain religious holidays.

The SMU Health Center's policy on giving forms for excused absences can be found at [SMUpolicy](#). There is a PDF file you can download and submit to me for consideration of an excused absence. This form must be filled out fully for me to consider your absence as excused. If you consult a physician for an illness and receive specific certification for a recovery time, absences will be excused if I am given a form from the physician's office.

Turn off cell phones and pagers before class. The SMU honor code governs course work.

Grading: Based on a midterm, a final and your participation. The final exam will primarily cover material from the second half of the course. Here's the point breakdown:

Midterm	40 percent	Participation	20 percent
Final	40 percent		

Grading Scale:	93-100=A	80-82=B-	67-69=D+
	90-92=A-	77-79=C+	63-66=D
	87-89=B+	73-76=C	60-62=D-
	83-86=B	70-72=C-	Below 60=F

Participation Grade: This will count 20 percent of your grade. I will base the grade on how well you do in several areas. Do you come to class regularly? Are you on time? Have you read homework assignments thoroughly enough that you can respond to my questions on specific cases? Do you participate in class discussions? And ask questions?

Additional grading information: As are awarded for excellent work. Very good work receives a B; average work a C; below average a D (per university regulations). I will be happy to discuss your work with you. A formal process is available to protest a grade.

Plagiarism & Fabrication: Plagiarism is stealing someone's words or ideas and passing them off as your own. Fabrication is making stuff up. Both strike at the heart of the journalistic process, where proper attribution and fact checking are paramount. If you plagiarize an assignment or fabricate information in this class, you will fail that assignment. In addition, I will refer the matter to the SMU Honors Council.

Disability Accommodations: Students needing academic accommodations for a disability must first contact Rebecca Marin, the coordinator of services for students with disabilities (214-768-4557) to establish eligibility for accommodations. Then schedule an appointment with me. (See University Policy No. 2.4.)

Excused Absences for University Extracurricular Activities: Students participating in an officially sanctioned, scheduled University extracurricular activity will be given the opportunity to make up class assignments. It is the responsibility of the student to make arrangements with the instructor prior to any missed scheduled examination or other missed assignment for making up the work. (University Undergraduate Catalogue)

Religious Observance: Religiously observant students wishing to be absent on holidays that require missing class should notify me in writing at the beginning of the semester. We will discuss ways of making up any work missed. (See University Policy No. 1.9.)

Class Schedule

This schedule may change during the semester. Any changes will be discussed in class.

Week 1—Introduction

1. Tues., Jan. 18

Course introduction. Syllabus review.

Homework: Read chap 1 (“Freedom of Speech: The English Heritage”) & chap 2 (“Freedom of Speech in America to World War I”). Be prepared to discuss the following:

- a. What was licensing?
 - b. What were the penalties in the United Kingdom for violating the licensing laws?
 - c. In colonial America, what were some of the punishments handed down for those found guilty of violating laws regarding political and religious expression?
 - d. What were taxes on knowledge? (to answer, you must do some outside reading)
- Also, read a speech by [Judge William Wayne Justice](#). Be prepared to discuss these:
- e. What is the subject of the speech?
 - f. The judge cites 3 reasons why lawyers choose to represent the poor. What are they?
 - g. Judge Justice says representing the poor is fun. Do you agree? Why or why not?
 - h. Look at the quote from the novelist William Faulkner on the first page of your syllabus. What does it mean? What does it have to do with the law?

2. Thurs., Jan. 20

Not so free—freedom of speech in England and the early United States.

Homework: Read chapter 3 (“Political Heresy: Sedition in the U.S. since 1917”). Be prepared to discuss [Schenk v US](#) (1919); [Abrams v US](#) (1919); *Gitlow v New York* (1925); *Whitney v California* (1927); and [Brandenburg v Ohio](#) (1969).

Week 2—Sedition/Libel

3. Tues., Jan. 25

Evolution of the “clear and present danger” concept. The USA Patriot Act.

Homework: Read chapter 4 (“Defamation and Invasion of Privacy”), pp. 75-97. Be prepared to discuss [New York Times v Sullivan](#) (1964) and [Gertz v Welch](#) (1974).

4. Thurs., Jan. 27

Libel in the U.S. vs the U.K. The five points of libel.

Homework: I will email you a case study involving libel. Be prepared to discuss.

Week 3—Libel/Privacy

5. Tues., Feb. 1

Libel (cont.)

Homework: Read chap 4, pp. 101-104. Be prepared to discuss *Cox Broadcasting Corp v Cohn* (1975); *Florida Star v BJF* (1989); and *Bartnicki v Vopper* (2001).

6. Thurs., Feb. 3

Privacy.

Homework: Read chapter 4, pp. 104-109. Be prepared to discuss *Cantrell v Forest City Publishing* (1974); *Zacchini v Scripps-Howard Broadcasting* (1977); *Dietmann v Time* (9th Cir. 1971); *Wilson v Layne* (1999); and *Hustler v Falwell* (1988).

Week 4—Privacy/Fighting Words/Prior Restraint

7. Tues., Feb. 8

Privacy (cont.)

Homework: Read chapter 6 (“Provocation to Anger and Words that Wound”). Be prepared to discuss *Chaplinsky v New Hampshire* (1942); *Terminiello v Chicago* (1949); *Cohen v California* (1971); and *RAV v St. Paul* (1992).

Also, read chapter 8 (“Prior Restraint”). Be prepared to discuss *Near v. Minnesota* (1931) and the Pentagon Papers aka *New York Times v U.S* (1971).

8. Thurs., Feb. 10

Fighting words. Prior restraint. Discuss handout: “Does the government act or law violate the First Amendment?”

Homework: Read chapter 10 (“Constraints of Time, Place, and Manner”). Be prepared to discuss *Hague v CIO* (1939); *U.S. v O’Brien* (1968); and *Texas v Johnson* (1989). Be prepared to apply the chart (“Does the government act or law violate the First Amendment?”) to *U.S. v O’Brien* and *Texas v Johnson*.

Week 5— Free Speech in Public Places

9. Tues., Feb. 15

Free speech in public places.

Homework: There is no class on Thurs., Feb. 17 as my daughter has a medical appointment. On Tues., Feb. 22, we will begin watching [American Violet](#), a 2009 movie based on actual events in Hearne, Texas that led to a landmark civil rights lawsuit.

10. Thurs., Feb. 17 – No class.

Homework: At the next class, we will begin watching [American Violet](#).

Week 6— American Violet

11. Tues., Feb. 22

Begin watching [American Violet](#).

Homework: TBA

12. Thurs., Feb. 24

Finish watching [American Violet](#). Discuss.

Homework: Read chapter 11 (“Freedom of Speech in Schools”), pp. 295-306. Be prepared to discuss *Tinker v Des Moines Independent School District* (1969); *Hazelwood School District v Kuhlmeier* (1988); *Kincaid v Gibson* (6th Cir. 2001); *Hosty v Carter* (7th Cir. 2005); and *Abington School District v Schempp* (1963).

Week 7—Student Expression/Midterm Review

13. Tues., March 1

Student expression. Religious expression in schools.

Homework: Begin studying for midterm exam.

14. Thurs., March 3

Review for midterm exam.

Homework: Continue review for midterm exam.

Week 8—Midterm Exam

15. Tues., March 8

Review for midterm exam.

Homework: Continue studying for midterm.

16. Thurs., March 10

Midterm exam.

Homework: None. Enjoy spring break.

Week 9---Spring Break

Mon., March 14—Fri., March 18 -- No class (spring break)

Week 10—Midterm Exam Revisited/Obscenity/Secrecy at SMU

17. Tues., March 22

Return and review midterm exam.

Homework: Read chapter 5 (“Religio-Moral Heresy: From Blasphemy to Obscenity”). Be prepared to discuss *Roth v US* (1957); *Miller v California* (1973); and *Ginsberg v New York* (1968).

Also, each of you will read one story from the 2010 series in the *Daily Campus*, “Hidden on the Hilltop: SMU’s Culture of Secrecy.”

18. Thurs., March 24

Obscenity. Secrecy at SMU.

Homework: Read chapter 7 (“Commercial Speech”). Be prepared to discuss *Valentine v Chrestensen* (1942); *Bigelow v Virginia* (1975); *Virginia State Board of Pharmacy v Virginia Citizens Consumer Council* (1976); *Central Hudson Gas & Electric v Public Service Commission of NY* (1980); *Florida Bar v Went for It* (1995); *Rubin v Coors* (1995); *44 Liquormart v Rhode Island* (1996); and *Lorillard v Reilly* (2001).

Week 11—Commercial Speech/Copyright/Media Ownership

19. Tues., March 29

Commercial speech.

Homework: Read chapter 12 (“Copyright”). Be prepared to discuss *Harper & Row v The Nation* (1985); *Campbell v Acuff-Rose Music* (1994); *Sony Corp. v Universal City Studios* (1984); and *Community for Creative Non-Violence v Reid* (1989).

I also will email you a case study involving commercial speech.

20. Thurs., March 31

Copyright. Media ownership.

Homework: Read pp. 90-91 and chapter 9, pp. 244-254 (confidential sources). Be prepared to discuss *Branzburg v Hayes* (1972); *Herbert v Lando* (1969); *Cohen v Cowles* (1991); *U.S. v Libby*; and the federal Freedom of Information Act.

Week 12—Confidential Sources/Access to Records/Marc Fuller

21. Tues., April 5

Confidential sources. Access to records.

Homework: TBA. At the next class, Marc Fuller, an attorney specializing in media law, will discuss confidential sources focusing on *Branzburg*.

22. Thurs., April 7

Guest speaker Marc Fuller, an attorney specializing in media law.

Homework: Read chapter 13 (“Broadcasting, Cable, & Access Theory”), pp. 359-377 and 393-395. Be prepared to discuss *Red Lion v FCC* (1969); *Miami Herald Pub Co v Tornillo* (1974); and *FCC v Pacifica* (1978).

Also, read pp. 400-407 in chapter 14 (“The Internet”) and pp. 145-147. Be prepared to discuss *Reno v ACLU* (1997); *Ashcroft v ACLU* (2002 & 2004); *US v American Library Assoc* (2003); and *Ashcroft v Free Speech Coalition* (2002).

Week 13—Broadcast & the Internet/Access to the Courts

23. Tues., April 12

Regulating broadcast. Regulating the Internet.

Homework: Read chapter 9 (“Special Problems of a Free Press”), pp. 235-244. Be prepared to discuss *Sheppard v Maxwell* (1966); *Shepherd v Florida* (1951); *Estes v Texas* (1965); *Richmond Newspapers v Virginia* (1980); and *Nebraska Press Association v Stuart* (1976).

24. Thurs., April 14

Access to the courts.

At the next class, we will begin watching [The Thin Blue Line](#), a documentary about the questionable conviction of a man for the murder of a Dallas police officer.

Week 14—The Thin Blue Line

25. Tues., April 19

Begin watching [The Thin Blue Line](#).

Homework: TBA

26. Thurs., April 21

Finish watching [The Thin Blue Line](#). Discuss.

Homework: Read chapter 13, pp. 378-385 (campaign finance). Be prepared to discuss *Buckley v Valeo* (1976); Campaign Reform Act of 2002; *McConnell v FEC* (2003); and *Citizens United v FEC* (2010).

Week 15—Campaign Finance/ Review for final exam/Adios

27. Tues., April 26

Campaign finance.

Homework: Begin studying for final exam.

28. Thurs., April 28

Review for final exam.

Homework: Continue studying for final exam.