

# FREE SPEECH, MEDIA LAW & DEMOCRACY

New York University  
Gallatin School for Individualized Study

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## Syllabus

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K20.1144.001  
W. 6:20-9:00 p.m.  
Silver 405

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### I Course Description

The tension between free expression and social and political control over such expression has shadowed the Great American Conversation since the birth of democracy in this country. The Constitutional ideal that our government “shall make no law” abridging free speech, has given way, in fact, to laws that seek to limit discussion, ostensibly for the public good. At the same time, modern media technologies have given rise to a new “the marketplace of ideas,” producing cultural aftershocks that call into question our unlimited access to information and other forms of communication. This struggle over freedom is at the heart of the course.

We begin by exploring the historical and philosophical origins of free expression, guided by the ideas of Plato, Mill, Milton, Locke and others. Their ideas will inform our discussions having to do with contemporary free-speech issues and US Supreme Court decisions regarding pornography, hate speech, the college press, intellectual property, and corporate media ownership. At the same time, we examine the critical effect that new forms of media have had on our notions of freedom. Throughout the term, the course seeks to challenge students by posing a set of questions: Are there any forms of free speech that should be restricted? If so, which ones? What is the dividing line—and should there be one— between free expression and social responsibility? And, if so, who should decide?

Free Speech, Media & Democracy has three primary goals:

- 1. to provide students with a philosophical and historical understanding of free expression in America
- 2. to immerse students in the social, political and technological issues that inform free speech issues
- 3. to familiarize students with important case law (with an emphasis on those cases directly related to media and the press) that have defined American First Amendment rights.

## II Readings

### Books:

Anthony Lewis, *Freedom for the Thought We Hate: A Biography of the First Amendment*

Thomas Telford, *Freedom of Speech in the United States*

### Short Reads:

Milton, from *Areopagitica*

Plato's from *The Republic*

Hobbes, from *Leviathan*

John Locke, from *Second Treatise of Government*

Paul Thaler, "The Case of OJ Simpson" from *The Press on Trial*

\*\*Short readings will be assigned from online sites.

### Cases, Laws and Supreme Court Decisions to be discussed:

The Alien and Sedition Acts of 1798

*Schenck v. United States (1919)*

*Abrams v. United States (1919)*

*Gitlow v. New York (1925)*

*Chaplinsky v. New Hampshire (1942)*

*Cohen v. California (1971)*

*R.A.V. v. City of St. Paul (1992)*

*New York Times v. Sullivan (1964)*

*Estes v Texas (1965)*

*Chandler v. Florida (1981)*

*Roth v. United States (1957)*

*Miller v. California (1973)*

*Hustler Magazine v. Falwell (1988)*

*Hazelwood School District v. Kuhlmeier (1988)*

*Reno v. ACLU (1997)*

### Screening:

The US Supreme Court

### III Rules

Statement of Academic Freedom and Responsibility

This class will deliberately address controversial issues with the intent of challenging students' beliefs and assumptions. During our discussions, all students should feel free to speak without fear that that any idea will be penalized or disqualified. It is expected that every class member act in a respectful manner toward others in the class.

#### **Academic Honesty**

Students are expected to meet the highest standards of academic integrity and adhere to the norms of a serious intellectual community. Cheating in any form is unacceptable and will result in a failing grade. Students are required to submit their own work. Ideas, data, direct quotations, paraphrasing, or any other incorporation of the work of others must be clearly referenced. To do otherwise constitutes plagiarism. Examples of plagiarism include:

- 1. direct quotation or paraphrasing from published sources that are not properly acknowledged.
- 2. the use of other persons or services to prepare work that is submitted as one's own.

#### **Academic Courtesy.**

Some simple rules (based on common courtesy) are important to maintaining an effective learning environment for all students:

- 1. The class will start on time. If you must enter late, enter quietly and take a seat near the door;
- 2. The class will end on time. Do not interrupt the class by leaving before its conclusion. If you must depart early, coordinate with me before the class;
- 3. If you must converse with a colleague, please do so in a manner that is not disruptive to other students or the instructor;
- 4. No active electronic devices are allowed in the classroom (pager, cell phone, etc.) Students may record a class lecture with my permission.

#### **Conferences:**

Students are encouraged to meet with me at the Gallatin School, 715 Broadway, office 417, on Wednesdays from 5-6 p.m. (appointments are advisable).

Correspondence can also be left in my faculty box on the sixth floor of Gallatin.

All email should be sent to my personal address at [pthaler@aol.com](mailto:pthaler@aol.com).

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#### **IV Assignments**

Note: It is important to complete readings and assignments by the assigned date since they are applicable to specific sessions and class topics. Late assignments will be penalized five points; assignments more than two weeks late will not be accepted. All assignments must be handed in on hard copy (please avoid email submissions).

1. Field Assignment — 10 points
2. First Amendment Revision — 5 points
3. Critique: Lewis book — 15 points

4. Judgment Day — 20 points
5. Free Speech Conference— 30 points
6. Attendance and Participation — 20 points

**Description of Assignments:**

**1. Field Assignment**

1. Interview five New Yorkers (no friends or relatives allowed) about which rights they seek to enhance, redefine, or eliminate altogether. Provide name, gender, age, occupation. 10 points

**2. First Amendment Revision**

**How would you revise the First Amendment to make it consistent with your own worldview of “freedom”? Be sure to indicate your reasons for these changes. 5 pts.**

**3. Book Critique**

**Expand and/or challenge major points raised in Lewis’s book. Questions to consider:**

What is the author’s central argument about free speech? What kinds of evidence does he use to develop and support his argument? What are the underlying issues that relate to modern media, how they operate, and their impact on culture? What are Lewis’s major conclusions—and do you agree or disagree? In your judgment, what are the limitations, shortcomings or weaknesses in the work? **(3 pages) 15 points**

**4. Judgment Day**

**You are a U.S. Supreme Court Justice facing a docket of cases (these can be fictional or actual cases) that have come before the 2009 High Court and raise First Amendment rights issues. Choose one of these cases and write up your decision. Your ruling should cite precedent, and provide a reasoned analysis of the issues at hand leading to your final judgment. 3-4 pages. 20 points**

**5. The Free Speech and Democracy Conference**

**This assignment provides you with the opportunity to conduct research about historical and contemporary free speech issues and present your findings in a simulated conference setting. Each student is responsible for selecting a topic, submitting a report, and then presenting his/her findings within a group setting. I would encourage each group to select an interesting format (see below) to present its ideas rather than a traditional approach in which group members give a more straight presentation of their findings. The conference is scheduled for the last three weeks of the term. You are encouraged to engage in primary research activities to enhance your work. Two group meetings are scheduled during class time, but you are expected to work independently outside the class setting. A memo will be distributed with details about the paper and presentation requirements. The written report (5-6 pages) is worth 25 pts; the oral presentation. 5 pts.**

**Possible Formats:**

- a) Panel members can take on the role of being constitutional framers debating the constitutional issues raised by the founding fathers.
- b) Panel members can take on the role of free speech activists during a historical moment in time (the McCarthy era; the 1960s).
- c) Panel can simulate an actual (or fictional) US Supreme Court case involving free speech. Students can role play as justices and opposing lawyers.
- d) Panel members can take on the role of specific contemporary individuals at the forefront of redefining free expression rights.

**6. Attendance and Participation**

**Participation:** The strength of the course will depend on the readiness of each student to discuss his/her working ideas, assignments, and readings. I am looking for original thinking in both class activity and home assignments in which ideas are challenged and new thinking is formulated. You are encouraged to bring in pertinent articles that reflect issues of personal interest.

Attendance is taken each session and you should do your best to attend all meetings. If you miss class, you effectively miss the course. Three points are deducted for each unexcused absence; two latenesses are the equivalent of one absence. Missing more than three sessions may result in a failing grade for the term. Students who attend all sessions will receive full credit. 20 pts.

**Grading**

Each assignment (and class attendance and participation) has been given a set number of points that you will accumulate over the term. The final grade is computed by adding your total points; that number is then converted to a letter grade using the following scale:

<u>Grade</u>	<u>Point Total</u>
A	100-93
A-	92-89
B+	88-85
B	84-81
B-	80-78
C+	77-74
C	73-71
C-	70-68
D+	67-65
D	64-61
D-	60-57
F	56-

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## Schedule

Topics, readings and assignments are listed below for each session. While this outline sets up an overall plan of intellectual action, it may be modified at any time to take advantage of questions and issues that are of currency.

1 (Jan. 21) Introduction—7 Dirty Words and other ideas to consider about the American democratic experiment  
Question: What is Free Speech?  
Reading for Jan. 28: Telford, chapter 1, 15; Milton, Areopagatica

### FRESS SPEECH: FROM PLATO TO CLASSICAL LIBERAL THOUGHT

Class 2 (Jan. 28) Historical and Philosophical Underpinnings of Free Speech  
Question: Why is freedom important?  
**Field Assignment for Feb. 4: What do Americans think about free speech?**  
Reading for Feb. 4: Plato. From The Republic, Locke, from Second Treatise; Hobbes from Leviathon

Class 3 (Feb. 4) Political Communities  
Question: Who was right— Plato, Hobbes or Locke?  
Discussion: What do Americans think about free speech?  
**Assignments for Feb. 11: Revising the First Amendment**  
Reading for Feb. 11: Telford, Chapter 2, 3  
Case Law:  
**The Alien and Sedition Acts of 1798**  
***Schenck v. United States (1919)***  
***Abrams v. United States (1919)***  
***Gitlow v. New York (1925)***  
***Chaplinsky v. New Hampshire (1942)***  
***Cohen v. California (1971)***  
***R.A. V. v. City of St. Paul (1992)***

Class 4 (Feb. 11) The First Amendment and the Hierarchy of Rights  
Question: How protected is free speech?  
Discussion: Revising the First Amendment  
**Assignment for February 18: Critique of Lewis Book**

Class 5 (Feb. 18) Critique: Free Freedom for the Thought We Hate  
Question: How far should we go to protect speech that we hate?  
Screening: From the "U.S. Supreme Court" (1)

Reading for Feb. 25: Telford, chapter 4  
Case Law:  
*Sullivan v. New York Times* (1964)

## **CONFLICT: THE PRESS, THE MEDIA, AND THE RIGHT OF FREE EXPRESSION**

Class 6 (Feb. 25) The American Press Model and Privacy Rights  
Question: What is the American press—and how is it different from other models. . . how did *Sullivan v. NY Times* impact journalism?  
Assignment for March 4: Preliminary Conference Ideas  
Reading for March 4: Telford, chapter 9; Thaler, “The Case of OJ Simpson”  
Case Law:  
*Estes v Texas*  
*Chandler v. Florida*

Class 7 (March 4) Free Press-Fair Trial  
Question: Can television and the American courtroom coexist?  
Discussion: Preliminary Conference Ideas  
Reading for March 11 Telford, Chapter 5  
Case Law:  
*Roth v. United States* (1957)  
*Miller v. California* (1973)  
*Hustler Magazine v. Falwell* (1988)  
*Reno v. ACLU* (1997)

Class 8 (March 11) Obscenity and Pornography  
Question: Do we know it when we see it. . .and what should we do about it?  
**Assignment for March 25: Judgment Day**

### **SPRING BREAK – NO CLASS MARCH 18**

Class 9 (March 25) Judgment Day  
Question: How do you rule on First Amendment rights?  
Screening: “The U.S. Supreme Court” (11)  
Reading for April 1: Telford, pgs. 302-22  
Case Law  
*Hazelwood School District v. Kuhlmeier* (1988)

Class 10 (April 1) The Limits of Student Dissent  
Student Rights and the University  
Question: What are student press limits?  
**Assignment for April 8: Title and Abstract for Conference Paper**

Reading for April 8: Telford, Chapter 14

Class 11 (April 8) The Internet and The First Amendment  
Question: What are the dangers of unlimited information access?  
Handout on conference rules  
Final conference meetings; titles/abstracts due  
**Assignment: Conference Papers due April 15**

### **THE CONFERENCE ON FREE SPEECH AND DEMOCRACY**

Class 12 (April 15) THE FREE SPEECH AND DEMOCRACY CONFERENCE  
Conference Papers Due  
Groups A, B

Class 13 (April 22) THE FREE SPEECH AND DEMOCRACY CONFERENCE  
Group C, D

Class 14 (April 29) THE FREE SPEECH AND DEMOCRACY CONFERENCE  
Group E  
A final thought from Robert Kennedy. . .

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