

100.433 – Fall 2022
Free Speech and Censorship in the United States
Peter Jelavich

This course examines the expanse and the limits of speech (broadly defined) in the United States over the past hundred years. During the first half of the course, we will read scholarly articles and Supreme Court rulings on selected topics, both historical (constraint of “radical” political speech; “morality” campaigns against “indecent” and popular media) and contemporary (debates over censoring pornography and racist hate speech). During the last half of the course, students will give oral presentations of the research project that they have chosen, and submit a research paper at the end of the semester.

This course will give students an opportunity to study an ongoing civic issue—free speech—in legal, political, and social contexts. Skills to be gained include: how to analyze legal and scholarly texts; how to conduct research using relevant legal and policy documents; how to orally discuss and debate controversial issues of public concern; and how to present such topics in writing.

Sept 6: Foundational arguments for free speech; political speech

Thomas Emerson, “Toward a General Theory of the First Amendment,” in: *Yale Law Journal* 72/5: 877-893.

Anthony Lewis, *Freedom for the Thought We Hate: A Biography of the First Amendment* (New York: Basic Books, 2007), ix-58 [library e-book].

Schenck v. United States (1919): 47-53

Abrams v. United States (1919): 616-631

Whitney v. California (1927): 372-379

New York Times Co. v. Sullivan (1964): 254-259, 267-283, 293-297

Sept 13: The McCarthy era

Ellen Schrecker, *The Age of McCarthyism: A Brief History with Documents*, third edition (Boston: Bedford, 2017), 1-90, 194-225 [canvas].

Stephen Vaughn, “Political Censorship During the Cold War: The Hollywood Ten,” in Francis Couvares, ed., *Movie Censorship and American Culture* (Washington: Smithsonian Institution Press, 1996), 237-257 [canvas].

Dennis v. United States (1951): 494-511, 579-591

Sept 20: Campaigns against indecency, film, comic books, popular music

Margaret Blanchard, “The American Urge to Censor: Freedom of Expression versus the Desire to Sanitize Society—From Anthony Comstock to 2 Live Crew,” in: *William and Mary Law Review* 33/3 (1991-1992): 741-851.

Mutual Film Corporation v. Industrial Commission of Ohio (1915): 230-232, 241-245

Joseph Burstyn, Inc. v. Wilson (1952): 495-508

Roth v. United States (1957): 476-496, 503-514

Miller v. California (1973): 15-37

Sept 27: Harmful speech I: Pornography

Gloria Steinem, "Erotica and Pornography: A Clear and Present Difference," in:
Ms. Magazine, November 1978, 53-54, 75, 78 [canvas].

Catherine MacKinnon, "Pornography, Civil Rights, and Speech," in: *Harvard Civil Rights-Civil Liberties Law Review* 20/1 (1985): 1-2, 20-68.

Andrea Dworkin, "Against the Male Flood: Censorship, Pornography, and Equality," in:
Harvard Women's Law Journal 8/1 (1985): 1-29.

Nadine Strossen, "A Feminist Critique of 'the' Feminist Critique of Pornography," in
Virginia Law Review 79/5 (1993): 1099-1113, 1137-1187.

October 4: Harmful speech II: Racist hate speech

Richard Delgado, "Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling," in: *Harvard Civil Rights-Civil Liberties Law Review* 17/1 (1982): 133-181.

Charles R. Lawrence III, "If he hollers let him go: Regulating Racist Speech on Campus," in: *Duke Law Journal* 1990/3: 431-438, 449-466, 482-483.

Nadine Strossen, "Regulating Racist Speech on Campus: A Modest Proposal?" in: *Duke Law Journal* 1990/3: 484-495, 549-573.

Beauharnais v. Illinois (1952): 250-267

Brandenburg v. Ohio (1969): 444-457

R.A.V. v. City of St. Paul (1992): 377-396, 428-436

Wisconsin v. Mitchell (1993): 476-490

Virginia v. Black (2003): 343-368, 388-400

October 11: NO CLASS: 8-page essay due**Oct 18, 25: Individual meetings to discuss research projects****Nov 1, 8, 15, 29: Presentations of research projects****December 6: Research essay due**

Supreme Court rulings are available via the Library of Congress website; see

<https://www.loc.gov/collections/united-states-reports/>

Your final grade for the course will be based upon class participation and oral presentation of your research project (25%), one 8-page essay on an assigned topic based on the common readings (25%), and a 15- to 20-page research essay on a topic to be determined by you and the instructor (50%). No extensions or incompletes will be granted, except for medical reasons.

My office hours are Mondays 2:00-3:30 in Gilman Hall 394.