LAW, COMMUNICATION AND FREEDOM OF EXPRESSION
Comm 114F

UCSD Department of Communication
Fall Quarter 2015
MWF 12-12:50 PM
Cognitive Science Building 005

Instructor: Ben Medeiros (bmedeiro@ucsd.edu)
Office: Sequoyah 220
Office hours: Weds 1:30-3:30 and by appointment (I will hold these outside at the Mandeville coffee cart unless it’s raining or I note otherwise).

About the course
This course examines the legal framework for freedom of expression in the United States. We analyze First Amendment law through the study of key cases in historical context. Since this is a Communication class, we also pay particular attention to the ways in which media and technology affect freedom of expression and how the law employs particular approaches to understanding language and meaning. The bulk of the course covers the fundamentals of First Amendment law, including traditional topics of prior restraint, incitement, obscenity, libel, and fighting words. We also examine complications regarding the method of expression, the type of forum and contextual factors, and the regulation of content. Along the way, you will become familiar with some of the basic analytic concepts in First Amendment jurisprudence such as tiers of scrutiny, balancing tests, vagueness and overbreadth, and the assessment of content and viewpoint neutrality.

The fundamentals are further utilized to discuss some harder cases and contemporary iterations of classic First Amendment problems. These include the expressive rights of corporations; the responsibilities of online information intermediaries like Google or Reddit; bullying and the power of schools to punish students for off-campus speech; threatening or violent speech on social media; and university speech codes aimed at discouraging “hate speech” and ensuring “safe spaces” on campus.

Course goals
By the end of the course, the hope is that you will have developed some ability to:
- Identify the competing values and claims in conflicts over speech.
- Understand the role of textual interpretation in deciding these and other legal conflicts.
- Explain to someone why free speech is an important democratic principle.
- Understand categorical exceptions to freedom of expression and when they apply in US law.
- Use the analytical frameworks that courts employ in evaluating the constitutionality of laws.
- Argue for or against extending constitutional protection to certain kinds of speech.
- Observe how the structure of media and communications systems relates to the rules governing freedom of expression.
**Required texts (available at University Bookstore)**
- A number of assigned readings will be available on the web – the URLs are listed in the syllabus; others will be in the “content” section on the Ted website for the course. It is your responsibility to check that you have access to the Ted page on the first day of the course and to notify me if you do not. The Eastland text will be on reserve at Geisel Library.

**Course requirements and policies**

**Reading:** The most important requirement is to complete all the reading when it is assigned. Despite its size, the course is designed to be a cross between a seminar and a lecture class. I expect class discussion and I will engage in “Socratic method” to stimulate it. That means I call on students. You may take a “pass” if you are unprepared that day. But two passes in a row (which includes an absence) will result in an automatic half-grade penalty (e.g., from a B to a B minus). If you have done the reading but do not fully understand it, this will not count against you. You will, however, be expected to give your best shot at a response.

**Attendance:** Regular attendance is required, and attendance will be taken at every class meeting. If you are more than 10 minutes late then you will be counted absent. You can miss 3 class sessions for any reason without penalty (i.e. no extra “sick days”). Students with 4 absences will be docked a full grade (e.g., from a B to a C); students with 5 absences will be dropped two full grades; students with 6 absences cannot pass the course. Please do not email me to tell me you aren’t coming or ask if you “will miss anything important” unless there is an emergency that requires further discussion.

**Email:** I try to respond to email within 24 hours. I will respond on Monday to email received after noon on Friday. I particularly welcome questions about the substance of the course (e.g. “I don’t fully understand the concept of ___” or “why were these cases decided differently if their facts seem similar?”). Don’t expect a response if you ask me a logistical question that you clearly could have answered on your own by looking at the syllabus, reviewing previous email correspondence, or by asking someone sitting next to you in class.

**Written work and grades:** There will be four types of assignments: a “brief” of a case due during week 2 (10%); three pop quizzes on basic aspects of the reading(s) assigned for a particular day (5% each for a total of 10%; drop lowest grade, no make-ups); an in-class midterm (35%) and a take-home final essay exam due on the day of the scheduled final exam (45%). Class participation will be used to award or deny the benefit of the doubt in computing final grades (meaning extraordinary participation might get you bumped up if you’re between two grades numerically; no participation and/or conspicuous unpreparedness will get you bumped down).
On grade disputes: if you think you can make a real case for why your answer was more effective than I gave you credit for then you are more than welcome to do so. There is a non-zero chance that I will adjust the grade. But the burden is on you to make a specific and coherent argument up front. In other words, don’t email me to simply say “I don’t think I deserve the grade that I got and I’d like you to reconsider it.” This alone will not help you get your grade reconsidered.

Policy on Integrity of Scholarship: Students are responsible for reading, understanding, and adhering to the UCSD “Policy on Integrity of Scholarship,” to be found online in the UCSD General Catalog 2015-16 at http://www.ucsd.edu/catalog/front/AcadRegu.html. Academic dishonesty will not be tolerated and will be dealt with according to this policy.

Students with Different Needs: If you are a student with a disability, please contact the Office of Students with Disabilities (OSD) and advise the Instructor in advance to arrange appropriate accommodations to meet your needs.

CALENDAR

September 25
Introduction to the course

September 28
Introduction to the American judicial system and the First Amendment:

September 30
Birth of modern free speech law: sedition, incitement, and political dissent:
(Note: these readings are all very short)
WEB: Alien and Sedition Acts of 1798
http://www.bc.edu/bc_org/avp/cas/comm/free_speech/seditionact.html
Espionage Act of 1917
http://www.bc.edu/bc_org/avp/cas/comm/free_speech/espionageactof1917.html
Schenck v. United States (1919)
http://www.bc.edu/bc_org/avp/cas/comm/free_speech/schenck.html
EASTLAND: Abrams v. United States (1919)

October 2
Birth of modern free speech law: political theory foundation
October 5
The evolution of “clear and present danger” and the incitement standard:
EASTLAND: Brandenburg v. Ohio (1969)

October 7 [BRIEF]
National security, the press, and prior restraints part 1:
EASTLAND: Near v. Minnesota (1931).

October 9
National security, the press, and prior restraints part 2:

October 12
Introduction to content regulation and the “heckler’s veto”:
http://www.villagevoice.com/issues/0210/hentoff.php

October 14
Symbolic speech, expressive conduct, and “speech-plus” part 1:
EASTLAND: West Virginia Board of Education v. Barnette (1943); United States v. O’Brien (1968)

October 16
Symbolic speech, expressive conduct, and “speech-plus” part 2:

October 19
Public forum and right of assembly part 1:

October 21
Public forum and right of assembly part 2:
http://www.amconmag.com/12_15_03/feature.html

**October 23**
**Public forum and right of assembly part 3:**

**October 26**
**Midterm Exam** — bring your own blue book.

**October 28**
**Defamation part 1:**

**October 30**
**Defamation part 2 and emotional distress:**

**November 2**
**Obscenity, indecency, and sexually explicit speech:**
EASTLAND: *Roth v. United States* (1957); *Miller v. California* (1973)

**November 4**
**Sexually explicit speech — commercial issues:**

**November 6**
**Regulating offensive and assaultive speech:**
http://www.bc.edu/bc_org/avp/cas/comm/free_speech/cohen.html

**November 9**
**Assaultive speech on campus:**

**November 11**
NO CLASS — Veterans Day Holiday.

November 13
Commercial Speech:
EASTLAND: Virginia Pharmacy Board v. Virginia Consumer Council (1976)

November 16
Campaign finance part 1:
EASTLAND: Buckley v. Valeo (1976)

November 18
Campaign finance part 2:
http://www.law.cornell.edu/supct/html/08-205.ZS.html
Chris Good, “Don’t Blame Citizens United,” The Atlantic October 20, 2010:

November 20
The expansion of corporate expressive rights:

November 23
Is the internet more like a newspaper or a television station?:
EASTLAND: Reno v. ACLU (1997)

November 25
Threats on the web:
http://biotech.law.lsu.edu/cases/reproduction/Nuremberg_Files.htm
TED: Elonis v. United States (2015) syllabus only:

November 27
NO CLASS — Thanksgiving Holiday

November 30
Privacy and reputation revisited:
December 2
Speech Regulation by online platforms:
WEB: Digital Media Law Project, “Immunity for Online Publishers Under the Communications Decency Act”
Jeffrey Rosen, “The Delete Squad,” The New Republic April 29, 2013:
http://www.newrepublic.com/article/107404/when-censorship-makes-sense-how-youtube-should-police-hate-speech

December 4
Cyberbullying:

December 10
**Final papers due on Ted by 10 PM**