

**First Amendment
(Speech and Press in the Twenty-first Century)**

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Note From Professor Linzer:

This is last year's syllabus, offered just to give you a rough idea of where we'll go. I will write you later this summer to give you better information.

-P. L.

The casebook is Steven H. Shiffren and Jesse H. Choper, *The First Amendment* (5th ed. 2011) ("S&C") and 2012 Supplement ("Supp"). Some material will be distributed on line. (This syllabus is a replica of the previous year's syllabus. It is here to give you an example of what the assignments for the present calendar year will entail. However, Professor Linzer always tinkers, so the following information will probably not be exactly the same as this year's. In addition to this, Professor Linzer is currently in the process of composing a casebook, which will be made available to student for free sometime in the near future.)

Monday, August 27, 2012: Liberty and Free Speech. Please read the following in the order listed. Lochner v. New York (1905) (via email); Meyer v. Nebraska ((1923), S&C 401(beginning at n.6)- 402; Pierce v. Society of Sisters (1925), S&C 398-400; Nebbia v. New York, (1934) (via email); United Stqes v. Carolene Prods. Co. (1938) (via email); excerpt from *The Volokh Conspiracy* (via email); excerpt from Kennedy, J., dissenting in Troxel v. Granville (2000).

Wednesday, August 29, 2012: The Bedrock Cases (herein of Clear and Present Danger). S&C 2-27.

Monday, September 3, 2012: No class – Labor Day.

Wednesday, September 5, 2012: From Dennis to Brandenburg and beyond. S&C 28-49. A problem.

II

Seditious Libel, Modern Defamation and Disclosure of Personal Information

Monday, September 10, 2012: New York Times v. Sullivan, Public Officials and

Seditious Libel; But What About Non-Governmental Plaintiffs?. S&C 50-74.

Wednesday, September 12, 2012: Who is a Private Figure? What About Nasty “Satire” of Clearly Public Figures? What About Disclosure of Personal Matter About Clearly Private People? S&C 75 - 92. Supp. 2-7 (*Snyder v. Phelps*). *Hill v. Scientology Church of Toronto* (Canadian view of libel and speech rights) (distributed by email).

Monday, September 17, 2012: The Impact of Technology on Current Law. On line handouts: Krinsky v. Doe 6, 72 Cal. Rptr. 3d 231 (Ct. App. 2008); Obsidian Fin. Group v. Cox, (U.S.D.C., D. Ore. 2011); T.V., a minor child v. Smith-Green Community School Corp.; “Sixth Grader Has Right to Privacy . . .” from BNA Electronic Commerce & Law Report (Blumberg). All sent by email.

III

Obscenity and Other Things That Are Said To Be Outside the First Amendment

Wednesday, September 19, 2012: Obscenity and the Beginning of Vagueness and Overbreadth. S&C 102-26.

Monday, September 24, 2012: Fighting Words, Dirty Words, and Porn As a Threat to Women. S&C 127-39. Review Beauharnais v. Illinois, S&C 50-53. Read S&C 150-65.

Wednesday, September 26, 2012: Nazis and the Klan. S&C 165-75, 260-76.

Monday, October 1, 2012: True Threats and Stolen Valor. S&C 276-84. “True Threat” Rap Video (United States v. Jeffries (6th Cir. 2012) (by email)). Supp. 14-21 (United States v. Alvarez (U.S. 2012)).

IV

Prior Restraint and Other Procedural Protections, Much Involving Freedom of the Press

Wednesday, October 3, 2012: The Foundations of Prior Restraint Jurisprudence and Some Contemporary Wrinkles. S&C 284-306.

Monday, October 8, 2012: The Pentagon Papers and Wikileaks. S&C 306-24. Material on Wikileaks and the Internet to be supplied by email.

Wednesday, October 10, 2012: What Does the Press Clause Add to the Speech Clause? Is the Press Different From the Rest of Us? Who or What Is the Press? S&C 324-49.

Monday, October 15, 2012: Shield Laws and the Internet. Of Bloggers and Reporters. TX Civil Practice and Remedies Code Article 38.11 (Texas Shield Law – Criminal); TX CPRC Art. 22.021 (Texas Shield Law – Civil); Letter Opinion and Order of Trey E. Loftin, J., in Lipsky v. Durant, Carter, Coleman, LLC (43rd Dist. Court, Parker County, TX, May 15, 2012) ; Obsidian Fin. Group v. Cox (Obsidian II); Too Much Media, LLC v. Hale (N.J. 2011), all supplied by email.

V

Time, Place and Manner Restrictions

Wednesday, October 17, 2012: The O'Brien Test: Draft-card Burning, Flag Burning and Sleeping as First Amendment Rights. S&C 176-205.

Monday, October 22, 2012: Nuisance Laws and “Erogenous Zoning” Laws. S&C 205-27.

VI

Some Pigs Are More Equal Than Others: Areas With Limited First Amendment Protection

Wednesday, October 24, 2012: Commercial Speech. S&C 227-52. Supp. 22. New York Times article from October 18, 2012 on fake listings on Yelp, Internet site with product reviews (sent by email).

Monday, October 29, 2012: Government-Subsidized Speech; Government As Educator. S&C 383-409.

Wednesday, October 31, 2012: Trick or Treat. Happy Hallowe'en. Punishing Student Publishers and Troublesome Government Employees. S&C 409-22. Supp. 23. Material on Internet stuff by kids (to be distributed by email).

VII

The Public Forum

Monday, November 5, 2012: The Basic Cases. S&C 350-71.

Wednesday, November 7, 2012: Privacy and the Public Forum. S&C 371-82. Material on Internet privacy to be distributed by email.

VIII

Access to Media

Monday, November 12, 2012: Access to Traditional Mass Media. S&C 423-46.

Wednesday, November 14, 2012: Content Regulation of Electronic Media: From the Seven Dirty Words to Cable and the Internet. S&C 446-66. Supp. 24.

Monday, November 19, 2012: Net Neutrality. Materials to be distributed by email.

Wednesday, November 21, 2012: No class for Thanksgiving.

IX

The Right Not To Speak; the Right Not To Associate?

Monday, November 26, 2012: Flag Salutes, License Plates and Homosexual Scoutmasters. S&C 467-94. Supp. 25-26.

X

Money as Speech

Wednesday, November 28, 2012: Wealth and the Political Process: Equality and Democracy vs. Speech? S&C 495-526. Supp. 27.

XI

Intellectual Property and the First Amendment

Monday, December 3, 2012: Does Copyright Protection Unduly Restrict Speech and Press? S&C 92-102. Additional material to be sent via email. (Media Products, Inc. v. John Does 1-10, ___ F. Supp. 2d ___ (S.D.N.Y. September 4, 2012) (Baer, J.); WPIX, Inc. v. IVI, Inc., ___ F.3d ___ (2d Cir. August 27, 2012) (Chin, J.); Viacom Int'l v. YouTube, Inc., ___ F.3d ___ (2d Cir. April 5, 2012) (Cabranes, J.); John Wiley & Sons, Inc. v. Kirtsaeng, 654 F.3d 210 (2d Cir. 2011) (Cabranes, J.)).