**Free Speech, Hate Speech, and the College Campus**

Arts & Sciences 1138.\*\*, Freshman Seminar

1 Semester-hour Credit

Day/Time Room

##### Professor Matthew Birkhold Office Hours: Monday 11:00am-1:00pm

**Course Description**

Is hateful speech protected by law? Should obscenity be treated differently than other forms of speech? Are some ideas so offensive that no protection for their expression should be afforded? Does First Amendment protection extend to speech that encourages illegal activity?

In this course, we will answer all of these questions and more, further focusing on the college campus. Can a university shut down a student newspaper based on its content? Must a university allow religious student groups to use its student center? Do students have the right to distribute offensive texts and images campus?

In addition to considering why we protect freedom of expression, we will learn the fundamentals of the constitutional right of freedom of speech in the United States. We will examine a variety of issues, including: racist and hateful speech; extremist speech; obscenity and pornography; fighting words. Along the way, we will analyze foundational judicial decisions, debate contemporary events, and act as judges. No previous knowledge of the law required!

**Texts**

All texts available online

Stone, Geoffrey, et al. Constitutional Law, Sixth Edition

**Required Activities:**

1. Students are expected to attend each class, read all the assigned materials, and – most importantly – participate in class discussions. If we aren’t debating, we’re doing something wrong.
2. Students will chose one week to lead discussion. This will entail summarizing the relevant facts of a case, highlighting the debates, and asking thought-provoking questions.
3. In the final two weeks of class, students will form courts and adjudicate a variety of difficult First Amendment cases.
4. As a final written assignment, students will a short judicial opinion deciding one of the cases.

# Grading

Satisfactory/ Unsatisfactory

Class participation: 50%

Oral presentation: 20%

Final opinion: 30%

To earn a satisfactory grade, students should earn a 70%. A mid-term progress report will be given to track class participation.

**Course Objectives:**

* To understand the fundamentals of the First Amendment and contemporary debates about the freedom of expression on campus and in the United States
* To develop skills in oral presentation and civil discourse
* To enhance critical thinking and writing

# Academic Misconduct

**It is the responsibility of the Committee on Academic Misconduct to investigate or establish**

**procedures for the investigation of all reported cases of student academic misconduct. The term**

**“academic misconduct” includes all forms of student academic misconduct wherever**

**committed; illustrated by, but not limited to, cases of plagiarism and dishonest practices in**

**connection with examinations. Instructors shall report all instances of alleged academic**

**misconduct to the committee (Faculty Rule 3335-5-487). For additional information, see the**

**Code of Student Conduct** [**http://studentlife.osu.edu/csc/**](http://studentlife.osu.edu/csc/)**.**

**Students with Disabilities**

**Students with disabilities that have been certified by the Office for Disability Services will be appropriately accommodated and should inform the instructor as soon as possible of their needs. The Office for Disability Services is located in 150 Pomerene Hall, 1760 Neil Avenue; telephone 292-3307, TDD 292-0901; http://www.ods.ohio-state.edu/.**

**Biographical Statement**

Matthew Birkhold is an assistant professor of German literature and law. His research focuses on the intersection of law, culture, and the humanities and his writing covers a range of subjects – from literature and copyright to pornography and Native American artifacts. Matthew teaches undergraduate courses on: fan fiction; literary adaptations; and law and literature. Prior to joining the faculty, he worked as an attorney-adviser to the U.S. Department of State, where he advised on issues related to international law, ethics, and political activity restrictions on government employees.

**Weekly Readings:**

1. **Introduction to Free Speech and the Free Speech Clause**

* Kerr, “How to read a legal opinion,” p. 51-61

1. **What is “Speech”? How do we analyze it? Why should we protect it?**

* Thomas Scanlon “A Theory of freedom of expression”, in *The Difficulty of Tolerance, Essays in Political Philosophy* (2003), p. 6-25.
* Ronald Dworkin, “Why must speech be free?” in *Freedom’s Law*, p. 195-213.
* Kent Greenawalt, “Free Speech Justifications”, Columbia Law Review, vol. 89, 1989, p. 119-55.

1. **Advocacy of Illegal Conduct**

* Stone, p. 1038 – 1076

1. **Hostile Audience and Fighting Words**

* Stone, p. 1076 – 1091

1. **Obscenity**

* Stone, p. 1172 – 1201

1. **Pornography**

* Gewirtz, “On ‘I Know It When I See It’” *Yale Law Journal*, vol. 105
* Greenawalt, *Fighting Words, Individuals, Communities and Liberties of Speech*, p. 47-98.
* Catherine A. MacKinnon, “Pornography, Civil Rights and Speech,” *Harvard Civil Rights, Civil Liberties Law Review*, vol. 20 (1985).

1. **Lewd and Indecent Speech**

* Stone, p. 1201 – 1223

1. **Hate Speech**

* Stone, p. 1223 – 1254

1. **Hate Speech and Campus Life**

* Tomothy C. Shiell, *Campus Hate Speech on Trial*, chapter 4 “See You in Court: The Campus Hate Speech Cases,” p. 71-94.
* Hinds, “A Campus Case”
* Daniel Solove, “School Discipline for Off-Campus Speech and the First Amendment,” Huffington Post Education blog, June 20, 2011.
* Sam Favate, “Court: Student’s Facebook Messages Are Protected Speech,” WSJ.com, September 18, 2012.

1. **Public Nuisance or Public Space?**

* *Collin v. Smith; Smith v. Collin*
* *International Society for Krishna Consciousness, Inc. v. Lee*
* Laura Beth Nielsen, *License to Harass: Law, Hierarchy, and Offensive Public Speech*, pp. 3, 20-31,168-80.

1. **Current Issues**
2. **Current Issues**
3. **Court Simulation**
4. **Court Simulation**