

## Freedom of Speech & Association Syllabus

Professor Wells  
Spring 2020  
TR 11:30-12:45 p.m., Room 332A

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### **Texts:**

KROTOSZYNSKI, WELLS, LIDSKY & CORBIN, FIRST AMENDMENT: CASES & THEORY (Aspen Publishing 3D ED. 2017) & occasional handouts

### **Course Goals, Objectives and Expected Learning Outcomes:**

This course explores the theory and doctrine associated with First Amendment of the U.S. Constitution. It is structured to accomplish the following goals, objectives, and outcomes:

- Increase your understanding of the basic building blocks of free speech theory and doctrine, primarily focusing on Supreme Court cases but also reviewing emerging issues.
- Provide you with the analytic tools to assess the complex free speech issues that arise in various social and political interactions.
- Improve your oral presentation skills necessary to present a complicated topic quickly, concisely and coherently in a short amount of time and to respond to questions about that topic.
- Improve your research and writing skills as well as your synthetic and analytic legal skills in the context of writing a research paper with a thesis that you must defend.

### **Grading and Assignments:**

This semester your grade derives primarily from writing a legal research paper on a free speech issue and on a related oral presentation. The final two weeks of class will involve these brief presentations of that paper. Class attendance and participation in “hot topics” discussions round out the remainder of your grade.

#### **1. The Paper**

Seventy percent (70%) of your final grade involves a research paper on a topic of your choice related to free speech law. Your paper should be an original work that is well-researched, well-written and of sufficient quality that it could be sent to an academic conference for consideration for presentation. It should demonstrate a clear understanding of the primary issues at stake. This means you must review the recent case law, statutory or regulatory enactments, and scholarly/trade literature on your topic. However, your paper should not just be a review. It should also suggest how to resolve the problem you have highlighted. The litmus test of a good paper is whether it makes a contribution to the body of knowledge on a topic rather than merely distills what is already available.

There is a separate memo setting forth the technical requirements of the paper that I will discuss on the first day of class. As for due dates, the following are important dates to keep in mind. You must submit to me a topic, first draft, and a final draft of your paper. The due dates for these items are listed below. Failure to meet the due dates will result in substantial deductions from your grade on a daily basis. All items are due as indicated on their respective due dates.

Topic:	2/13/20 (beginning of class – hard copy or upload through TWEN)
First Draft:	3/19/20 (beginning of class – upload through TWEN)
Final Draft:	5/4/20 (by 5pm – upload through TWEN)

The first draft will count for thirty percent (**30%**) of your paper grade. The final draft will count for seventy percent (**70%**) of your paper grade. The topic is not graded but I reserve the right to deduct up to two points from your final paper grade if you fail to turn it in or turn it in late.

## 2. Oral Presentation of Paper

Each of you will be responsible for presenting your paper to the class. These presentations will take place in the last two weeks of class and each presentation will be approximately 15 minutes. ***You should devote about 8 minutes to presenting and leave 7-8 minutes for questions.*** No bells and whistles here. Just talk. You can hand out a one-page abstract of your talk before your scheduled presentation.

These presentations are designed to help you present your thoughts on a complex subject in a very short period of time. I've heard such talks called "elevator summaries" and that's a good way to think of them. Everybody needs to develop the skill of orally communicating complex thoughts as clearly and concisely as possible (e.g., to their boss in an elevator on the way to a meeting).

Because this talk is so short, it forces you to consider what is truly important to mention, what your audience is already likely to know from class discussion (thus, need not be repeated) and the most concise way to communicate information. You'll want to practice this one more than once before presenting.

This presentation is worth fifteen (15) percent of your final grade. Failure to attend class on the day of your paper presentation will result in a failing grade for your presentation.

## 3. Class Attendance and Participation

Beginning January 28, 2020, I will pass around an attendance sheet each day; students who are present should sign their initials next to their names. The attendance sheet will be considered final; if your name is not initialed by the end of class, you will be considered absent. Students missing more than eight (8) classes will be dropped from the course. Signing in any student as present other than yourself is strictly prohibited and is a violation of the Honor Code on the part of all students involved. I will warn students prior to their possible removal from class as a result of their absences. I expect every student to be prepared to participate in class discussion. Failure to be prepared when called on failure to participate in class discussion may affect your final grade. I reserve the right to adjust your final grade two (2) points in either direction based upon attendance and class participation.

As part of your class participation grade, will also participate in two online discussions, which together will account for fifteen (15) percent of your course grade. Discussions will be posted on TWEN at certain points during the course of the semester. All students are expected to participate in the discussions and must make

at least two (2) postings for each discussion that are to include one (1) original substantive response to a question posted by the professor and one additional substantive response to other students' original postings. I will hand out more detailed criteria for postings later.

**Week One - 1/21 & 1/23**

**Introduction; Supreme Court Doctrine - the Early Years**

*Readings:* Krotoszynski et al., pp. 5-20, 27-43

**Week Two - 1/28 & 1/30**

**Early Supreme Court Doctrine, cont'd (the evolution of law regulating dangerous speech)**

*Readings:* Krotoszynski et al., pp. 43-66

**Week Three – 2/4 & 2/6**

**Pillars of the Supreme Court's Jurisprudence - Low Value Speech (Threats and Fighting Words)**

*Readings:* Krotoszynski et al., pp. 69-88, 523-32 (from Chapter 10)

**Week Four – 2/11 & 2/13**

**Pillars of the Supreme Court's Jurisprudence - Low Value Speech (Hostile Audiences and Methodology)**

*Readings:* Krotoszynski et al., pp. 88-98

*NOTE: Paper topics due by the beginning of class today. Upload to TWEN or hand in a hard copy at the beginning of class.*

**Week Five – 2/18 & 2/20**

**Pillars of the Supreme Court's Modern Free Speech Framework – Content Discrimination Principles**

*Readings:* Krotoszynski et al., pp. 99-114, 134-151

**Week Six – 2/25 & 2/27**

**Pillars of the Supreme Court's Jurisprudence – Does it Involve Speaker Access to Government Property or Government Speech**

*Readings:* Krotoszynski et al., pp. 157-75, 182-85, 635-48 (from Chapter 12)

**Week Seven – 3/3 & 3/5**

**Topics – Symbolic Speech and Association**

*Readings:* Krotoszynski et al., pp. 199-238

**Week Eight – 3/10 & 3/12**

**Topics – Anonymous and Compelled Speech**

*Readings:* Krotoszynski et al., pp. 243-57, 271-85

**Week Nine – 3/17 & 3/19**

**Topics – Libel, Privacy and IIED**

*Readings:* Krotoszynski et al., pp. 455-99

*NOTE: First Drafts due Thursday 3/19 at the beginning of class. Upload to TWEN.*

**Week Ten – 3/24 & 3/26**

**No Class – SPRING BREAK**

**Week Eleven – 3/31 & 4/2**

**Topics - Commercial Speech**

*Readings:* Krotoszynski et al., pp. 299-332

**Week Twelve – 4/7 & 4/9**

**Topics - Obscene and Sexually Explicit Speech**

*Readings:* Krotoszynski et al., pp. 557-70, 579-85, 590-99

### Week Thirteen – 4/14 & 4/16

#### Topics – Regulation of Press Access and Disclosure

Readings: Krotoszynski et al., pp. 364-404

### Week Fourteen – 4/21 & 4/23

#### Student Presentations

### Week Fifteen – 4/28 & 4/30

#### Student Presentations

*Paper Drafts due on Monday 5/4 by 5 pm!!!! Upload them to class TWEN site.*

#### Policies:

**Statement of Intellectual Pluralism:** The University and this instructor welcome intellectual diversity and respect student rights. I encourage free discussion, inquiry, and expression in this course. Student performance will be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards. Students who have questions concerning the quality of instruction in this class may address concerns to either the Dean of the Law School or the Director of the Office of Student Rights and Responsibilities (<http://osrr.missouri.edu>). All students will have the opportunity to submit an anonymous evaluation of the instructor at the end of this course.

**Academic honesty:** Academic integrity is fundamental to the activities and principles of the School of Law. All members of the law school community must be confident that each person's work has been responsibly and honorably acquired, developed, and presented. Any effort to gain an advantage not given to all students is dishonest whether or not the effort is successful. The law school community regards breaches of the School of Law's Honor Code as extremely serious matters. Sanctions for such a breach may include academic sanctions from the instructor, including failing the course for any violation, to disciplinary sanctions ranging from probation to expulsion. I will follow university procedures on cases of academic dishonesty; in such cases it may be necessary not only to report such dishonesty to the Associate Dean but also to assign a failing grade for the assignment or even the entire course. When in doubt about plagiarism, paraphrasing, quoting, collaboration, or whether something might be seen as a form of cheating, feel free to consult me.

**Statement for ADA - Students with Disabilities:** If you anticipate barriers related to the format or requirements of this course, if you have emergency medical information to share with me, or if you need to make arrangements in case the building must be evacuated, please let me and/or the Associate Dean know as soon as possible. If disability related accommodations are necessary please register with the Office of

Disability Services (<http://disabilityservices.missouri.edu>), S5 Memorial Union, 882-4696 and then notify the Associate Dean of the Law school of your eligibility for reasonable accommodation. For other resources for students with disabilities, click on "Disability Resources" on MU homepage.

**Technology in the Classroom:** NOTEBOOK COMPUTERS, PHONES, PAGERS, ETC.: You may use computers and smart phones in class only for purposes directly related to the class such as note taking, reading course materials, or accessing the course TWEN site. Social networking, reading or sending email messages, surfing the Internet, game playing, or any work unrelated to this class is not permitted and will affect your class participation grade. Similarly, students must silence any cell phones or pagers during class. If you have an extraordinary situation that might require you to answer your cell phone during class, please let me know before class.

**AUDIO OR VIDEO RECORDINGS:** Students may not record classes except in cases of special need with the instructor's express permission. To foster a safe environment for learning, the university prohibits redistribution of audio or video recordings of statements or comments from the course to individuals who are not students in the course without the express permission of the instructor and any students who are recorded. In accordance with Executive Order #38, the unauthorized distribution of such materials is a violation of academic standards and may violate copyright laws and/or privacy rights. Students found to have violated this policy are subject to discipline in accordance with the provisions of Section 200.020 of the Collected Rules and Regulations of the University of Missouri.