

RACE AND THE FIRST AMENDMENT
UNIVERSITY OF FLORIDA LEVIN COLLEGE OF LAW
FALL 2024 SYLLABUS – LAW 6936 – 30309 2 CREDITS

Professor Maru Smith-Opabola
Holland Hall 342
Office Phone: (352) 273-0811
Email: opabola@law.ufl.edu
Office Hours: Wednesday 10-12

MEETING TIME: Thursday 1:15 PM –3:15 PM

LOCATION: HOL 355A

COURSE DESCRIPTION AND OBJECTIVES:

This course explores the core principles of First Amendment law through the lens of the Civil Rights Movement, which significantly shaped American jurisprudence on freedom of speech, the right of assembly, and the free press. As media technology, regulation, and ownership have undergone profound changes in the past fifty years, this course will also delve into vulnerabilities in First Amendment doctrine. With increasing privatization and digitization of the “public square”, we will examine the role of the FCC, media deregulation, and how technological advancements have affected First Amendment protections for marginalized groups and dissenting voices. Course materials will be posted on Canvas and will include cases, academic articles, and book excerpts.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- Identify foundational issues and categories of First Amendment law governing freedom of speech, association, assembly, and the press
- Understand and explain the impact of race on First Amendment jurisprudence
- Analyze significant legal cases and understand their effects on civil rights and First Amendment liberties
- Develop and present well-reasoned legal arguments and counterarguments for contemporary race and First Amendment scenarios
- Make sound arguments based on the policy issues underlying the First Amendment issues we study in this class;
- Read cases carefully and identify important legal rules and policy issues;
- Improve your ability to summarize cases clearly, succinctly, and accurately both orally and in writing.

REQUIRED READING MATERIALS:

Please be sure to register for the Canvas course and have any required materials with you in print or easily accessible electronic form in class. You are responsible for checking your Canvas page and the e-mail connected to the page on a regular basis for any class announcements or adjustments.

COURSE EXPECTATIONS AND GRADING EVALUATION:

The seminar will be centered on interactive discussions. Each week, student discussion leaders and I will present the main themes from the readings. We will collaboratively tackle complex questions and consider multiple viewpoints on the protection of First Amendment rights. The reading materials will include landmark cases, recent case law, scholarly articles, books, and podcasts. Each student is expected to sign up to co-lead at least one session during the semester. Additionally, students must write at least two brief responses to the readings to help stimulate class discussions.

For the final assignment, students can choose between writing a comment-length paper (5,000-7,500 words) or preparing an amicus brief for a past or current case (6,000 words). Students will give 5–10-minute presentations on their final paper topics. Topics for these final projects will be determined in consultation with the instructor.

Students will be evaluated based upon the following:

- Discussion participation (30%)
- Discussion co-leadership (20%)
- Two short reading response papers (20%) Each response papers should be 1-3 pages, 12-point font, single-spaced
- Response papers should include reflections on two or more readings and questions for group discussion
- Reading responses are due 24 hours before class (via email or Canvas)
- Final Paper: Comment or amicus brief (30%)

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed **two** absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school’s policy on attendance can be found [here](#). Please let me know if you will miss class, have missed class or must leave early. Please turn off your cell phone during class and focus on what is happening in the classroom. I reserve the right to lower your final grade if you engage in behavior that disrupts the learning environment for your classmates.

COMPLIANCE WITH UF HONOR CODE:

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Law Honor Code located [here](#). The UF Law Honor Code also prohibits use of artificial intelligence, including, but not limited to, ChatGPT and Harvey, to assist in completing quizzes, exams, papers, or other assessments unless expressly authorized by the professor to do so.

INFORMATION ON UF LAW GRADING POLICIES:

The Levin College of Law’s mean and mandatory distributions are posted on the College’s website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent	Letter Grade	Point Equivalent
A (Excellent)	4.0	C (Satisfactory)	2.0
A-	3.67	C-	1.67
B+	3.33	D+	1.33
B	3.0	D (Poor)	1.0

B-	2.67	D-	0.67
C+	2.33	E (Failure)	0.0

The law school grading policy is available [here](#).

OBSERVANCE OF RELIGIOUS HOLIDAYS:

UF Law respects students' [observance of religious holidays](#).

- Students, upon prior notification to their instructors, shall be excused from class or other scheduled academic activity to observe a religious holy day of their faith.
- Students shall be permitted a reasonable amount of time to make up the material or activities covered in their absence.
- Students shall not be penalized due to absence from class or other scheduled academic activity because of religious observances.

EXAM DELAYS AND ACCOMMODATIONS:

The law school policy on exam delays and accommodations can be found [here](#).

STATEMENT RELATED TO ACCOMODATIONS FOR STUDENTS WITH DISABILITIES

Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester. Students may access information about various resources on the UF Law Student Resources Canvas page, available at <https://ufl.instructure.com/courses/427635>.

STUDENT COURSE EVALUATIONS

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students [here](#).

RECORDINGS OF CLASS

Students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. A "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or guest lecturer during a class session. Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third-party note/tutoring services. A student who publishes a recording without

written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor and Student Conduct Code.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Each weekly class is approximately 2 hours in length, requiring at least **4 hours of preparation** outside of class including reading the assigned materials, writing critical analyses, and developing your final paper.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

This syllabus is offered as a guide to the direction of the course. Our pace will depend in part on the level of interest and the level of difficulty of each section and is subject to change.

PART 1: INTRODUCTION	
<p>1 8/22</p>	<p><i>Class 1: Introduction to the First Amendment and Race</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • A Testament of Hope; The Essential Writings and Speeches of Martin Luther King, Jr.-Pg. Strive Towards Freedom 417-490 • Frederick Douglass & Kurt T. Lash, Frederick Douglass's "Plea for Freedom of Speech in Boston," Law & Liberty (Aug. 21, 2019), https://lawliberty.org/frederick-douglass-plea-for-freedom-of-speech-in-boston/ • Frederick Shauer, The First Amendment as Ideology, 33 Wm. & Mary L. Rev. 853 (1992), https://scholarship.law.wm.edu/wmlr/vol33/iss3/5 • Brandenburg v. Ohio 395 U.S. 444 (1969) <p><i>Optional</i></p> <ul style="list-style-type: none"> • Whitney v. California 274 U.S. 357 (1927)
<p>2 8/29</p>	<p><i>Class 2: Freedom of Speech Unprotected and Regulated</i></p> <p><i>Required Readings:</i></p>

	<ul style="list-style-type: none"> • Schmidt, Christopher, The Sit-Ins: Protest and Change in the Civil Rights Era p.1-46 (Intro and The Students) • Cox v. Louisiana (1965) • NY Times v. Sullivan
<p>3 9/5</p>	<p><i>Class 3: Freedom of Assembly and Racial Protests</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Case Study: Edwards v. South Carolina (1963) • The First Amendment Freedom of Assembly as a Racial Project 127 Yale L.J. F. 685 (2018) • Ford v. McKesson, Civil Action 16-00742-BAJ-RLB
<p>4 9/12</p>	<p><i>Class 4: State Action Doctrine</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Schmidt p. 102-179 • Marsh v. Alabama, 326 U.S. 501 (1946) • Adderley v. Florida, 385 U.S. 39 • Boynton v. Virginia, 364 U.S. 454
<p>5 9/19</p>	<p><i>Week 5: Freedom of Association</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • NAACP v. Alabama (1958) - • Zahra N. Mian Note, “Black Identity Extremist” or Black Dissident?: How United States v. Daniels Illustrates FBI Criminalization of Black Dissent of Law Enforcement, from

	<p>COINTELPRO to Black Lives Matter 21 Rutgers Race & L. Rev. 53 (2020)</p> <ul style="list-style-type: none"> • Alice Speri, “The FBI Spends A Lot of Time Spying on Black Americans,” The Intercept (Oct. 29, 2019) https://theintercept.com/2019/10/29/fbi-surveillance-black-activists/.
<p>6 9/26</p>	<p><i>Week 6: Freedom of the Press and Racial Advocacy</i></p> <p><i>Required Readings:</i></p> <p>New York Times Co. v. United States (1971)</p> <ul style="list-style-type: none"> • Racializing Media Policy: The Problems of US Broadcasting Policy: Race, Rights and Regulation by Allison Perlman • Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966)
<p>7 10/3</p>	<p><i>Week 7: Race and Hate Speech</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Andrew Marantz, “Free Speech is Killing Us,” N.Y. Times (Oct. 4, 2019),https://www.nytimes.com/2019/10/04/opinion/sunday/free-speech-social-media-violence.html. • Nadine Strossen, The Interdependence of Racial Justice and Free Speech for Racists, Journal of Free Speech, Vol.1:1 (2021)

	<p>https://www.journaloffreespeechlaw.org/strossen.pdf</p> <ul style="list-style-type: none"> • Richard Delgado, Words that Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling, Harvard Civil Rights-Civil Liberties Law Review, Vol. 17, p. 133, (1982), https://ssrn.com/abstract=2000918. [Book on reserve and .pdf on Brightspace.] <p><i>Optional</i></p> <ul style="list-style-type: none"> • Emerson Sykes, In Defense of Brandenburg: The ACLU and Incitement Doctrine in 1919, 1969, and 2019, 85 Brook. L. Rev. (2019), https://brooklynworks.brooklaw.edu/blr/vol85/iss1/3/. • Jeremy Waldron, The Harm in Hate Speech (Harvard University Press 2012). [Chapters 1, 3, and 5] [Book on reserve and .pdf on Brightspace.] • Optional: Jacob Mchangama’s review “The Harm in Hate Speech Laws,” Policy Review (Dec. 1, 2022): https://www.hoover.org/research/harm-hate-speech-laws
<p>8 10/10</p>	<p><i>Week 8: Race and Academic Freedom</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Pernell v. Lamb • Island Trees School District v. Pico, 457 U.S. 853 (1982) • <i>Speech First v. Sands (cert petition pending):</i> https://www.scotusblog.com/case-files/cases/speech-first-inc-v-sands/.

<p>9 10/17</p>	<p><i>Week 10: New media and Internet</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Free Speech in Age of Social Media <p>https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/in-the-age-of-social-media-first-amendment/</p>
<p>10 10/24</p>	<p><i>Week 11: Race and Current First Amendment Issues before the Court</i></p> <p><i>Required Readings:</i></p> <p><i>TBD</i></p>
<p>11 10/31</p>	<p><i>Week 9: Race and Current First Amendment Issues before the Court</i></p> <p><i>Required Readings:</i></p> <p><i>TBD</i></p>
<p>12 11/7</p>	<p><i>Week 12: Students will give 5-10 minute presentations about their final papers or amicus briefs followed by Q&A</i></p>
<p>13 11/14</p>	<p><i>Week 13: Final Paper Presentations, summary reflections, course evaluations</i></p>