

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

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Office Hours: Tuesday and Wednesday 10:30-11:30

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, dissenting voices, and democratic stability.

Course materials will be posted on Canvas and will include cases, academic articles, and book excerpts. Please note: while racial epithets will be contained in some of the readings, we will not use epithets in class discussions.

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
- Develop and present well-reasoned legal arguments and counterarguments for contemporary challenges related to race and the First Amendment
- Apply First Amendment doctrine to digital media policy issues

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. This is a discussion-based class and reading assignments may be modified accordingly. Students are advised not to read more than one week ahead. 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. 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 will satisfy the Advanced Writing Requirement (defined below) by choosing between writing a comment-length paper or preparing an amicus brief for a past or current case. Students will give 5-minute presentations on their final paper topics.

Students will be evaluated based upon the following:

- Discussion participation (40%)
- Two short reading response papers (20%) Each response paper should be 1 page, 12-point font, single-spaced and 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 (40%)

ADVANCED WRITING REQUIREMENT:

This seminar is structured in such a way as to satisfy the College of Law’s Advanced Writing Requirement. According to the Faculty Handbook, “All J.D. candidates must complete—under close faculty supervision—a major, written product that shows evidence of original scholarship based on individual research. Students often satisfy this requirement in a seminar course. If fulfilled in an advanced course, the required writing may take the form of one or a number of finished written products that together demonstrate these qualities. The general standard for fulfillment of the advanced writing requirement is one or more papers that are cumulatively at least 25 pages of double-spaced, 12-point text or the equivalent.”

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](#). Students should not rely on AI for substantive analysis or for drafting written assignments.

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.

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 Race and First Amendment</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • U.S. Const. amend. I, https://constitution.congress.gov/constitution/amendment-1/ • Frederick Douglass & Kurt T. Lash, <i>Frederick Douglass's "Plea for Freedom of Speech in Boston,"</i> Law & Liberty (Aug. 21, 2019), https://lawliberty.org/frederick-douglass-plea-for-freedom-of-speech-in-boston/ • Excerpts from Shiell, Timothy C., African Americans and the First Amendment: the case for liberty and equality (On Canvas) <p><i>Listen:</i></p> <ul style="list-style-type: none"> • <u>We The People: Free Speech (Podcast)</u>
<p>2 8/29</p>	<p><i>Class 2: Freedom of Expression, Content Based v. Content-Neutral</i></p> <p><i>Required Readings:</i></p>

	<ul style="list-style-type: none"> • Schmidt, Christopher, <i>The Sit-Ins: Protest and Change in the Civil Rights Era</i>, Intro and Chapter 1 • <i>Brandenburg v. Ohio</i> 395 U.S. 444 (1969) • Steven Shiffrin, <i>What's Wrong With The First Amendment</i> (2016) Introduction (On Canvas) <p><i>Optional</i></p> <ul style="list-style-type: none"> • <i>Whitney v. California</i> 274 U.S. 357 (1927)
<p>3 9/5</p>	<p><i>Class 3: Freedom of Assembly (Part 1); Right to Protest & Overbreadth</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Schmidt, Chapter 2 • <i>The First Amendment Freedom of Assembly as a Racial Project</i> 127 <i>Yale L.J. F.</i> 685 (2018) • <i>Edwards v. South Carolina</i> (1963) <p><i>Optional:</i></p> <ul style="list-style-type: none"> • <i>Adderley v. Florida</i>, 385 U.S. 39 (1966)
<p>4 9/12</p>	<p><i>Class 4: Freedom of Assembly (Part 2); Right to Protest & Types of Speech</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Schmidt, Chapter 3 • <i>NAACP v. Claiborne Hardware</i>, 458 U.S. 886 (1982) • Ford v. McKesson, Civil Action 16-00742-BAJ-RLB <p><i>Listen</i></p> <ul style="list-style-type: none"> • Lessons From Charlottesville American Civil Liberties Union (aclu.org) (podcast)

<p>5 9/19</p>	<p><i>Class 5: Freedom of the Press and Racial Advocacy</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Schmidt Ch 6. • New York Times Co. v. Sullivan, 376 U.S. 254 (1964) • Racializing Media Policy: The Problems of US Broadcasting Policy: Race, Rights and Regulation by Allison Perlman <p><i>Optional</i></p> <ul style="list-style-type: none"> • Office of Communication of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) <p>Final Paper Topic Due</p>
<p>6 9/26</p>	<p><i>Week 6: State Action Doctrine</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Schmidt, Chapter 5 • Marsh v. Alabama, 326 U.S. 501 (1946)
<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) https://www.journaloffreespeechlaw.org/strossen.pdf

	<ul style="list-style-type: none"> • Steven Shiffrin, What's Wrong With The First Amendment (2016), Race (On Canvass)
<p>8 10/10</p>	<p><i>Week 8: Free Speech and Media Ownership</i></p> <ul style="list-style-type: none"> • Control, Creators, and Content: The Past, Present, and Future of Diversity in Media Ownership (georgetown.edu) • WRITING IN RACE: CULTURAL DEMOCRACY IN THE DIGITAL AGE.: EBSCOhost <p>Final Paper Outline Due</p>
<p>9 10/17</p>	<p><i>Week 9: Free Speech in Social Media Age</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • 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/ • The Revolution Will Not Be Moderated: Examining Florida and Texas's Attempts to Prohibit Social Media Content Moderation (american.edu) • The First Amendment Implications of Regulating Political Deepfakes.: EBSCOhost
<p>10 10/24</p>	<p><i>Week 10-11: Race Speech and Academic Freedom</i></p> <p><i>Required Readings:</i></p> <p><i>Required Readings:</i></p> <ul style="list-style-type: none"> • Pernell v. Lamb • <i>Speech First v. Sands (cert petition pending):</i> https://www.scotusblog.com/case-files/cases/speech-first-inc-v-sands/.

	<ul style="list-style-type: none"> • untitled (harvard.edu) The Anti-“Critical Race Theory” Campaign – Classroom Censorship and Racial Backlash by Another Name Leah M. Watson
<p>11 10/31</p>	<p><i>Week 10-11: Race and Current First Amendment Issues</i></p> <ul style="list-style-type: none"> • Honeyfund.com, Inc. v. DeSantis, 622 F. Supp. 3d 1159 • Olivier Sylvain, A NEW TELECOMMUNICATIONS ACT: PRIORITIZING CONSUMER PROTECTION AND EQUALITY
<p>12 11/7</p>	<p><i>Week 12: Review and Revisit Discussion Topics</i></p>
<p>13 11/14</p>	<p><i>Week 13: Final Paper Presentations, summary reflections, course evaluations</i></p>