Political Science 471: The Free Speech Clause  
Spring 2009  
Syllabus

Class Arrangements: Holton 190, Mondays 6:30-9:10 P.M.

Instructor: Bradley Bloch, J.D.

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I do not set weekly office hours because I teach and coach at UWM largely at night and on weekends. Conferences can be arranged at mutually convenient times and places using any of the contacts above. Every class session after the first will start with an open period for students to ask questions and I resume each session after its break with an additional opportunity to ask questions or raise "issues."

WARNING!!!

This course examines that case law that has been produced by the United States Supreme Court and lower courts on what was, at its time, extraordinarily controversial and typically offensive language, acts and/or symbols. While some of the facts have lost the punch of tastelessness over time, a great deal of the material we will study and focus upon remains mighty unpleasant thought to many today.

During our first session of the semester, your instructor will intentionally observe as much of the gentle social graces as he can muster just so that the unwary have advance warning before the true flavor of the course arrives. After the first session, your instructor does not hesitate to share with his students any or all of the truly disturbing attributes of the subject matter in their graphic, coarse and anything but subtle reality. Your instructor will not sanitize the message in the interest of student comfort in any

This warning has appeared on the syllabus now for decades. It simply says that the instructor is aware that strong academic performance is the bottom line. GPAs matter. Each student should carefully consider whether he or she can do his or her best work, as a student, in an environment that can be quite disturbing and offensive indeed. Since the graphic course content cannot change, your instructor suggests that, for some, it would be best to consider an alternate course offering. UWM, of course, has many courses available that have no reason to offend.

Once the warning is published and emphasized in the first class session, those who have underestimated "how bad" bad can be, will find little sympathy from the instructor. He recalls one female student, for instance, who was similarly warned and later protested that she should be able to study the First Amendment Free Speech Clause
without deeply exposing to the admittedly extreme seediness of obscenity. Your instructor effectively responded that the student who enrolls in a math course does not have the freedom to learn math without addition. It is not the student’s role to dictate the subject matter. Indeed, as the instructor views this course, it is not the instructor’s role to dictate the subject matter. The courts, most notably the United States Supreme Court, have determined all that we will study.

Course Objectives: I taught “Contemporary Problems in Freedom of Speech” as a Department of Communication course approximately 18 times since returning to UWM in 1987. In 2006, my courses and I are transitioning to the Department of Political Science. This is my third semester teaching a 471 as “The Free Speech Clause.” While I have found the transition to be smooth, I continue analyzing those enrolled to determine whether I can better serve them by redirecting my emphases.

This course is intended to be a comprehensive examination of the development of the expression clauses of the First Amendment. It combines the study of history with analyses of widely differing philosophies among members of the Bench and academic communities on classic issues that continue to challenge our democracy. It will be an opportunity for the student to immerse in the process of jurisprudence and to witness influences upon the more global law of the fundamentals of the Constitutional form of government.

It is the instructor’s hope that each student will develop his or her own notions of what Freedom of Speech means and necessarily what values underlie the notion adopted. The course should “demystify” the conducting of legal research as well as introduce the challenge of addressing the often anything but concrete rules of constitutional law.

The subject has been touched upon in a variety of course offerings on the UWM campus. This instructor, for instance, studied Freedom of Speech as a UWM student in an introductory Political Science course, in Communication courses in “Argumentation and Debate” as well as the prototype for the instant course and in a graduate level course offered by the Department of Philosophy. Parts of what we address are regularly taught in the media law courses of the Department of Mass Communication and my new department’s Constitutional Law: Civil Rights and Civil Liberties course.

Over the years, I have monitored the other courses offered in the general area to assure that my course is not duplicating others. I am dedicated to retaining the comprehensiveness of the course. (The teacher’s guide for our textbook shares syllabi from other campuses that show that most have, in light of the volume of Speech jurisprudence, adopted a watered-down, pick-and-choose format instead.) My judgment is that it is important that my students learn, as the U.S. Supreme Court summarized in 2002, that the First Amendment offers “a vast and privileged sphere.” It can be expected to change tomorrow. Positions have been seen to come and to lose favor only to re-emerge again. So, I freely report that, as a UWM undergraduate myself, I found the topic to be challenging in 1970 and 1971. Since then, the Supreme Court opinions have tripled in number. So there’s a good deal to grasp.
Text and Other Materials: The text is ordered at the UWM Bookstore. It is the fifth edition of Tedford and Herbeck's *Freedom of Speech in the United States*. The copyright is 2005. The publisher is Strata Publications.

The text is supported by its own website which includes the authors' means of updating for cases issued since the release of the current edition. The website is also a quick route to locating the text of perhaps 50 or so of the most major cases addressed.

I expect that used copies may be readily available since our text is a very popular one and, I suspect, is nearing a sixth edition. The 471 students will find that the text is specifically geared to the undergraduate study of the subject. It is reader friendly and has several tools that are helpful to those with no experience in studying this kind of stuff.

I regularly review alternatives to this text. There is some attraction to the thought of using a casebook like those regularly used in law school courses. Unfortunately, I have found that current casebooks have inadequate coverage of our topic because their target is more generic constitutional law rather than just *Freedom of Speech*. So I report that I expect every 471 student will explore the full opinions of at least a few of the cases. There's a true difference between reading the material parts of opinions and reading either about them or excerpts from them.

Please note that your instructor disagrees with the text authors on some limited statements of First Amendment law. Where that disagreement matters, your instructor will announce the same in lecture and the correct answer will be your instructor's -- not the authors' -- position. (Welcome to the always arguable law!)

Grading: Attendance dictates the best grade a student may receive. I allow one free cut. Each additional absence reduces the final grade one level. (With three absences, the best grade will be B+.) Absences for religious observance, active military duty and while representing the University are the only ones excused. Please report your religious observances by the close of our third class session.

Final grades are then determined by my assessment of the three course requirements: a term project, a midterm take-home exam and the 160-item objective styled final examination. A superior performance on any one of the three requirements combined with adequate effort on the other two will justify the best grade as dictated by the student's attendance.

The deadline for each course requirement is literally the deadline. Anything may be submitted for early review, my critique and the student's revision. Students interested in learning where they stand as the semester progresses are encouraged to submit what they like before my deadlines.

Grade Range: With cyber-based resources, I suspect my grading has been the subject of considerable comment. I address this only because of my transitioning from Communication to Political Science.
My attitudes toward grades are simple. UWM generally requires a 2.500 GPA for a degree. That dictates that any student I see as deserving our degree should receive my final grade of B minus or better. I have known or guided more than 25 years worth of UWM students intent on securing admission to a grad or professional school. For those students, a 3.500 GPA or often better is needed to be “competitive.” That dictates that I do what’s needed, “kick butt” if necessary, to secure from that kind of student-candidate the quality and quantity of work product justifying my grades of A or A minus.

So, there must be ways for my students to deserve grades ranging from B minus to A. If I can’t get enough performance out of any undergraduate to warrant grades in that range, it is my instruction, in most cases, that is at fault. Any scuttlebutt that I’m an “easy A” is misleading indeed! I intend my course requirements to be challenging and demanding. I have awarded plenty of grades of C plus and less although students work in their own way for those grades as well.

Standards/Opportunities/Strategies: One of Wisconsin’s superstars of undergraduate education was my friend, Professor Grace Walsh of UW-Eau Claire (and that institution’s variety of other names). Gracie was the Grand Dame of College Debate for over 50 years. In one of her last contacts with students, she implored “Don’t send out junk!” Call mine “Gracie’s rule.”

I do not tolerate academic “junk.” All submissions must meet my quality requirements or I do not grade them. The quality requirements dictate that all work be typed, double-spaced, except that quotation of three lines or more will be indented and single-space with full source attribution. There will be margins of at least one inch on all sides of all pages. Nothing will be submitted in less than 12-point font. All pages will be mechanically punched for easy disposal in a standard three hole binder. The submission will be secured by a paper clip not a staple. There will be no title pages. Names, instead, may be reported on the certification that will conclude all submissions.

The student submitting material for grading bears the responsibility to proofread thoroughly. Each submission will be concluded with the student(s) signature(s) following this paragraph:

(I)(We) certify that (I) (we) have proofread these materials and offer them as reasonably free of all typographical, grammatical and spelling errors.

(s)__________________________

The dossier attending me on resources like Pickaprof.com, Ratetheprofessor.com and Panther Prof ought to have reported that I am a stickler on my beloved quality requirements. “Tools” of word processing like Spell Check don’t cut it. Passing the EPT at UWM says only that I can expect the effort since you are proficient in the proofreading discipline should you choose to exercise that discipline. If the new-arrival faculty at UWM (defined as all that are not our alumni and reached the Great University after 1969)
applied the standards imposed on my Class of 1973, UWM’s body of written communication would be universally sound. “McPapers” are a cancer that have too long spread here at the Motherland due to aliens arriving from “the flagship,” “the Ivies” and those campuses with such good PR offices that their name carries “rep.”

Poli Sci 471 students who submit the “junk” of the Golden Eagle Warriors (GEWs – which has a hard “G” and rhymes with booze) or the BADgers will have their junk returned with notations of “NC-P” (the anagram for “absolutely no credit proofread”) or “NC-F” (my abbreviation of “absolutely no credit form” appropriate when, for example, I see a staple after demanding a paper clip). The notation “NC-C,” on the other hand, indicates that the content deserves absolutely no credit since it fulfilled a requirement of this course. “NC-Cs” always remind me of a dude who tried to impress me by self-describing as “a temporary transfer from the University of Wisconsin.” The guy obviously continued to be intoxicated by the Lake Mendota waters. The copy of his tax return – trust me on this! – was not what I had in mind as a term project!

The “NC” Notations and My Revision Policy: If, at the end of the semester, a student has a “NC-P,” “NC-F” or “NC-C” where a letter grade should be instead, the notation says that the student has not exercised adequate effort. His or her final grade will, therefore, decline. I lower the final grade one complete grade (from A to B, for example) for each standing “NC” notation.

When I was recruited to resume teaching at the Great University in January of 1987, my syllabus included my revision policy in its broadest state. That policy simply says that I allow students to submit any course requirement or part thereof for my critique before its deadline date. The broad policy said that my students could submit and revise as often as they liked in pursuit of the final grade they desired. My policy continues to say that that opportunity ends only when one of my superiors (the Department Chair or a dean) reject the change of grade form.

But, but, but you’ve enrolled too late to enjoy the broadest version of my revision policy! The policy now says that the student may be permitted to revise one time only once the student has received a “NC” notation for any assignment of the semester. Thus you will receive a warning which should alert you to return to this syllabus and refresh your recollection on this instructor’s demands. After that warning, the instructor becomes the proofreader if he allows unlimited and unregulated revisions. The Old Bald Fat Man will never deprive his students of the proofreading exercise that distinguishes the learned scholar from all others who deal “junk.”

The three course requirements permit my student to demonstrate mastery of the subject matter in alternate ways. When I received my degree from the Great University in 1973, I was convinced and I remain convinced that students differ as to how they can demonstrate mastery. I was trained to debate using a critically analytical mind. If my instructor permitted me to make my argument, the instructor observed my mastery. I had a tremendous grade point in courses requiring term papers and using essay exams. But my critically analytical mind tended to debate items on so-called “objective” exams and,
where items were and are debatable, the “objectivity” often penalizes the master of the subject.

My courses include “objective” final exams solely for the reasons that I suspect my instructing colleagues at UWM have so thoroughly gone “objective.” Regulations say we must administer a written final examination. We are also told by when final grades must be reported. The time between the administration and the reporting is definitely much shorter now than when I was a student. The system has plainly dictated the testing format, a fact that is regrettable.

It is a combination of my “alternate ways” philosophy and my revision policy that has, in fact, caused some to criticize my approach. The revision policy had fixed the common practice of scheduling events and percentages over the course of a semester. The “pop quiz worth 10% at Week 3 and mid-term exam worth 30% at Week 7” thing makes no sense to me. Maybe the rationale lies in what needs to be taught. For me, the final grade should reflect what the student leaves the course knowing. Even “pathetic” in Week 7 may rebound to “brilliant” by Week 14. It seems to me that that simply describes “education.” The instructor has finally discovered how to pique the pathetic student’s interest and, with interest piqued, the student shines. The revision policy announces my focus upon each student’s final product.

**Deadlines/Dates:** The final exam will be administered on the Monday evening of exam week. Two weeks before that Monday evening, the student will submit the term project.

When I first returned to UWM to teach this course in 1987, the deadline for the mid-term exam was the Monday before Spring Break. Since the midterm covers “Track One,” I was then comfortable addressing Track One comprehensively by Spring Break or so and Track Two after Spring Break. The additions to Track One case law no longer allow that tidy split. Since volume compels selection, the comprehensiveness I desire is preserved with more sessions on Track One. So the midterm deadline will be set as I gauge our progress in Track One lectures. Midterms will be due no earlier than the Monday after Spring Break.

The penalty for submission after the deadline(s) is that the tardy student risks that I will not reach the tardy submission by the time final grades are due. (I usually plan my law practice and life so that I have enough time to fully assess everything that I expect to receive at the times I expect to receive the deluge. The fact that tardiness saves me time at one point does not mean I am willing to dedicate other time inconveniently.)

**Make-Up and Incomplete Policies:** I do not accept “make-up” work in the sense that the student can do something more to make up for something the student did not do. I’ve never been sure what “make-up” means. I do not, for instance, allow students to change my screens to storms in exchange for my dedication of time to review other than what my courses require.
I will freely award the grade of "I" if the student requests I do so. UWM policies are clear as to the time limits that govern the student in resolving an incomplete. Since I invite every student to share his or her rationale for a specific final grade, those requesting an incomplete have the forum to report that request.

Course Requirement 1: A Term Project.

The function of the term project is to allow the student to explore in greater depth a narrow aspect of the course subject that we cannot address comprehensively. Originally, the requirement was an 8 to 12 page library research styled term paper. One approach was to locate five related First Amendment cases, brief them separately and then compare and contrast them.

The important point to note is that I demand that the project focus on the subjects which this course addresses and that the topic be treated comprehensively. A common error is for the student to select a topic that is too broad that it cannot be treated comprehensively through the project. Students should be concerned whether they have selected an appropriate topic or project approach. They may resolve that concern either by submitting a paragraph for review or by asking me about it during our open question/comment periods.

Course Requirement 2: The Midterm Examination.

The midterm will likely have three components: (1) Track One rule quotation: the Application to hypothetical facts; (2) Critique of one judge's, justice's or academic's theory of Freedom of Speech.

My practice, while teaching the course for the Department of Communication, was to distribute the midterm's text with the syllabus. While I contemplate very early release of the midterm text, I do not append it here so that those enrolled as Political Science students can have some input on how I can best prepare for their needs.

Course Requirement 3: The Final Examination

The final examination will be 160 "objective-styled" items. No more than 160 minutes will be permitted to complete the examination. This final has been called "the most impossible exam on campus." It will be open book, open note. Examinees may bring anything except another human being or an old version of this final.

Notices/Accommodations: This syllabus has been prepared to be in conformity with UWM's Uniform Syllabus Policy. Students are expected to be familiar with the University policies accessible at http://www.uwm.edu/Dept/SecL/SyllabusLinks.pdf.

This instructor "breathes" his conviction that the UWM education is second to none. One of the Great University's profound advantages is that we are not intended to be "selective" and that, as a result, we educate all corners within the body politic. One of our
strengths is that some students will arrive with burdens requiring accommodation. I am prepared to craft appropriate accommodations for whatever challenges I become aware. That some in my classes started their post-secondary educations a bit behind others in some respect is my institution's badge of honor.

**Interpretations:** The UWM policies and accommodation notice adopt important notions that I support and that I have enforced in my courses, my coaching and my other relations with students and the academic community.

Since 1978, I have been under oath to support the Constitution. Since 1989, I have served on the Board of Directors of the American Mock Trial Association. On the Board, I have been a consistent voice on recurring issues that reflect the differences between public education and the standards that govern private institutions. For instance, I have, so far, fought a losing battle on AMTA accommodating those whose faith dictates the Sundown Sabbath. But I was successful in opposing a policy that would have said that a student with physical limitations could not portray a witness character posed materially as without those limitations.

The UWM policies and accommodation notice bring a couple of relevant thoughts to my mind. The first are the notions of academic dishonesty in the context of studying law. When making the legal argument, it is important to apply the language of the law. Attribution is smart when citing as binding precedent or persuasive precedent. But often the language of the law is used without citing a source. That is neither plagiarism nor other dishonesty. It is better to use that language than to attempt to couch it in different vernacular. On the other hand, it is dishonest to claim precedent exists that does not exist. The student who invented a Massachusetts published case comes to mind.

I have never viewed this course as a forum to advance my views on how the First Amendment should be interpreted. Much of my 30+-year law practice has included cases where I have challenged criminal statutes, ordinances and other code provisions on First Amendment grounds. I have recently prosecuted such challenges to Wisconsin's disorderly conduct, bomb scare, stalking and (Dateline MSNBC-like) "to catch a predator" crimes. I have challenged Wisconsin's harassment statutes. I regularly argue that much of the Juvenile Justice Code must be totally invalidated until the legislature honors constitution-based commands that it narrowly draw statutes that encroach upon First Amendment rights.

That I have a well-deserved reputation as a criminal defense attorney, who often invokes lengthy First Amendment arguments as strategic weapons in the defenses developed, does not say that I expect my UWM students to adopt the views on the First Amendment that I advance to courts. My job as an instructor is to open minds and I consider it a strength of my teaching that I from semester-to-semester, sometimes from week-to-week, articulate inconsistent views that challenge preconceived notions or theories. So, my students should be aware of two material comments...
As the instructor, I am the State of Wisconsin. As government, there is absolutely no question but that I may be criticized and that I will never penalize because I am the target of another’s criticism. A recurring example in my courses is the students’ report that I talk too fast in lecture. I expect them to use their freedom to speak and demand I slow down. Because I have invited and listened to my student critics, I think I have become a better instructor.

Another recurring example is that there is no expectation that any student will agree. Debate on theory and debate on values is what makes terrific “toddler” for a course in Freedom of Expression. Our nation has grappled with these difficult issues since World War I. You will see that rules of constitutional law have changed dramatically over time. While there are matters that seem to be “settled law,” the next thing one knows that settled law may change or may be applied in an unexpected manner. Some will be surprised to see how Supreme Court Justices themselves have changed and refined their views on the First Amendment. Of course, there is ongoing difference on the Court as to what the judicial function is or should be on such cases.

While I am government, other partakers in this service of this government, like your classmates, are likely not government. When government does not care to restrict itself, it often abbreviates its powers to eliminate what limits it. A classic example is harassment. The Constitution protects behaviors that annoy or intimidate when those behaviors have any legitimate purpose. But our State routinely ignores one’s purpose and abbreviates to mere “harassment” which is merely something that offends or annoys someone.

I am satisfied that the “well defined and narrowly limited” classes of proscribable speech that have evolved in now over sixty years of First Amendment speech litigation reflect the balance that should prevail in the classroom. There’s no place at UW-M. for instance, for words that have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed. Nor may one direct a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death. The “fighting words” and “true threats” doctrines are sufficient to protect classmates from the kind of announcements that unduly burden the educational opportunity. But those classmates must equally understand that enrollment in an open marketplace of ideas classroom will expose the student to ideas that are disturbing.

Reading Assignments/Lecture Coverage: I steadfastly refuse to dissect the text into reading assignments. You will soon learn that I reject the “assign-a-reading-lecture-on-what-was-just-read-then-test-on-what-was-just-read” mode. I will identify the chapters that are material to each of the two exams. The text should otherwise be used as a reference. The text’s authors chose to broaden the appeal of their books an edition or two ago. Thus, there is stuff now in the text that has little to nothing to do, in my opinion, with the First Amendment. Read it all if you like.

I’ll throw in a response to some student evaluations here as well. For reasons unclear to me, some students appear enamored with “power point.” Why? I will not use it
as I have seen way, way too many students note only what is on a power point screen. That is not the students thinking and I suspect that little education occurs without students thinking.

_Underview:_ One of my alumni mockers, who I know was a Political Science major, recently told me that my syllabi were the longest he experienced at the Great University. The current models are, for sure, longer than those I received as a UWM student. I defend the length because a syllabus is "the Bible of the course." My intent is to identify all of the "Thou shalt nots" so that the Panther Cubs can readily adapt. If I've missed a "shall not," my inadver tence will be corrected because I expect students to be wise consumers in the educational service. (If you're a recent transfer from a Big 10 or Big East school, that means that, at the Great University, you ought to speak up when you have a question that may impact the service you should expect to receive.)

This instructor is the one that passionately contends that the UWM education is second to none. I've visited colleges and universities nationwide every year since 1967. They're okay places but I wouldn't trade one of them for the Great University.

I approach teaching and coaching at UWM as an honor for a very proud alumnum. It is my job to continue the wonderful education that goes on nowhere like it does on the glorious Eastside. It is plain, indisputable fact that I was served at UWM and could not get the equivalent anywhere else. I've relied on that education daily ever since. If others wish to compete with us, all that's needed is a fair competitive forum. But don't ask me to acquiesce to silly designations like "the flagship." Where's that armada heeling? Is it set sail on a Great Lake or only one of those puddles near the Capitol? What's this "mid-major" vernacular? Take the damned "mid-" part, come visit the Great University and see our productivity!

Now, some of the Panther Cubs will read the 471 syllabus and wonder what they got themselves into. "Oh my, he wants me, no expects me, no requires me to provide. He talks 'grammar' and I don't think he's speaking of a parent of a parent?" That's right Cub, you've certainly enrolled in a course where you're expected to study, learn and perform. But there can be enjoyment to be had when we old Panthers with the seasoned growl do the job you've paid us to do. Your first assignment is to build a little chip on the shoulder, approach the task with confidence and never, ever buy into any rationale for mediocrity. The UWM education will remain second to none so long as the UWM students demand it to be.

Midterm "Proposal:"

Q1. For each Track One category, identify two arguably significant U.S. Supreme Court cases and accurately quote the complete standard established in each case. (7 x 4 = 28 points) (Page limit: 3.5)

Q2. Select three Track One categories plus either of the Due Process implications we have addressed. For each create a hypothetical fact situation with all necessary facts to constitute a justiciable First Amendment case and controversy. Then for each, demonstrate how the First
Amendment’s protection has changed over time. (5 points per hypo, 8 points for demonstration of change x 4 = 52 points) (Page limit: 6).

Q3. Select the First Amendment theory of any single U.S. Supreme Court Justice other than one of the Bench or academic theorist with whom you most thoroughly disagree. In an essay limited to 4 pages, argue why the theory isolated should be rejected. (20 points).