

Communication Studies 188 : Sex, Politics and Race: Free Speech on Campus
University of California, Los Angeles
(Summer 2009)

Time and Location: TBD

Instructor: Professor Keith A. Fink

Course Objectives:

This course will focus on the concept of Freedom of Expression on campus during post secondary education. Primary focus will be on how the First Amendment, case law and federal and state statutes affect both students' and teachers' ability to speak on and off campus. The course will spend a good deal of time focusing on harassment and campus speech codes; campus demonstrations; student publications; student conduct regulations; restrictions on displays of art and academic freedom.

The course is aimed to stimulate debate as we cover many novel and controversial topics. Here are some illustrative issues to be discussed:

- Can a student be prohibited from carrying a sign that says:
 "Bombing for peace is like f*cking for virginity."
- Can a university prohibit students protesting affirmative action from conducting a bake sale where a pastry is sold to a white student for a dollar and to minority students for less?
- Can students who write for the school newspaper be prohibited from publishing pictures of religious figures in compromising positions?
- Does a university have the right to preclude a campus organization from having a guest speaker come and speak on campus? What if the guest speaker's lecture is likely to lead to a violent demonstration?
- Does a university abridge both a student's and teacher's rights by precluding them from dating?
- Can a university discipline a student based on information contained on a student's Facebook page? What if the student posts violent or racist material on his social networking page?
- Can a college professor tell his students without fear of being disciplined that the Holocaust never happened? Can a professor state on campus that the 9-11 attacks were a good thing for this country? If the professor made the above statements as a private citizen and not as a Professor, can the University fire the Professor for such statements?

Grading and Attendance:

The grade for this course will be based on a midterm (33% of the grade) and a final examination (67% of the grade). The exams will consist solely of multiple choice questions. Students who participate in class can earn extra credit points that may increase the final grade by one grade higher. Extra credit points means if your final grade is a B and you participated in class and earned the minimum extra credit points, your grade will

have gone from a B to a B+. If you earned the maximum extra credit points, your grade will have gone from a B to an A. Extra credit points can only help a student. Students who do not participate in class will not be disadvantaged from this policy as a bell curve is not used in this class. If all students do work that justifies grades of either an “A” or “B” then I will not force a distribution that requires the lowest score to receive a “C”. Any midterm grading questions must be resolved before the final.

*Tomorrow we start tearing down the college.
But, Professor, where will the students sleep?
Where they always sleep: in the classroom.
(Horse Feathers 1932)*

This class is not your standard course where the professor will lecture each session. The class will largely be taught using the Socratic Method. Through class discussions and debates you will learn the various principles covered in this class and the arguments on both sides of many cutting edge issues that we will explore. Students are expected to read the assigned cases **before** class and then be prepared to discuss the material in class in the context of applying the cases to hypotheticals. Those portions of the class that consist of a lecture the professor will teach you many concepts not covered in any assigned written material.

Office Hours:

Off-Campus: My office is close to campus at 11500 Olympic Blvd., Suite 316. My phone is 310-268-0782 and e-mail is kfink@finklawfirm.com. You are free to e-mail with any questions or call me at my office. You are also welcome to set up an appointment to meet me at my office. I also can be found early in the morning at Peets in Brentwood reading the WSJ.

On Campus: I will stay after each class and answer all questions. I also will be available to meet students in Rolfe Hall 2317 before class. Other times I will be on campus I will determine early during the course and announce in class.

Disclaimer about the Material This Course Will Cover:

If you are sensitive this may not be the class for you. While I do not believe any of the material this course will cover is offensive or inappropriate I caution all students that this course will address emotionally charged topics. In addition my teaching style is aimed at provoking debate and discussion of the ideas we cover. Questions and hypotheticals posed in the class do not necessarily reflect my beliefs or opinions (and in fact my opinions are irrelevant). I am at times a devil’s advocate, posing questions to stimulate thought of the concepts covered. The course will also cover sexual topics which include graphic sex acts and foul language when sexual harassment is covered. Discussions of sexual topics are designed not to titillate but to teach.

Biographical Information:

I am a UCLA alumnus who spent most of his time at UCLA in the then Speech Department debating for the school. While I am a litigator who specializes in employment law, I have taught for many years in the areas of Civil Rights & Civil Liberties. My website www.finklfirm.com can give you some more background information on me.

“There are two kinds of college students: jock and nerds. As a jock it is my duty to give nerds a hard time.” (Homer Simpson)

*Freedom of speech, let 'em take it from me
Next they'll take it from you, then what you gonna do?
Let 'em censor books, let 'em censor art
Pmrc, this is where the witch hunt starts
You'll censor what we see, we read, we hear, we learn . . .
. . . We only got one right left in the world today
Let me have it or throw the constitution away
(Ice-T, “Freedom of Speech”)*

Course Outline and Reading Assignments

WEEK ONE: Free Speech and The Campus Sexual Harassment Panda

__/__/09: Sexual Harassment and Relationships in the Ivory Tower

What conduct by a professor or student constitutes harassment?

Title VII

Title IX

Silva v. University of New Hampshire, 888 F. Supp. 293 (D.N.H., 1994)

Cohen v. San Bernardino Valley College, 92F.3d 968 (9th Cir. 1996)

Rubin v. Ikenberry, 933F. Supp. 1425 (C.D. Ill. 1996)

__/__/09: Can a University Prohibit a Relationship Between a Professor & a Student?

UCLA Today Online, February 21, 2007 “Like Speech, Romance in the Ivory Tower is a Fundamental Right.”

Ninth Amendment and a Constitutional Right to Romance?

“The Higher Yearning: Bringing Eros Back to Academe” Cristina Nehring, HARPER’S MAGAZINE, September 1, 2001

UCLA Policy on Student Conduct and Discipline 2007 – 2008

University of California Policy on Sexual Harassment 2007 – 2008

On-campus Housing Student Handbook

WEEK TWO: Campus Speech Codes and Hate Speech: Is Beer Better Than Women at Tufts

__/__/09:

“It is an unfortunate fact of our constitutional system that the ideals of freedom and equality are often in conflict. The difficult and sometimes painful task of our political and legal institutions is to mediate the appropriate balance between these two competing values.” (Judge Avern Cohn, in *Doe v. University of Michigan* 1989)

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942);
Doe v. University of Michigan, 721 F. Supp. 852 (E.D. Mich 1989)
UWM v. Post , 774 F. Supp. 463 (E.D. Wis. 1991)
R.A.V. v. St. Paul, 505 U.S. 377 (1992)
DeJohn v. Temple University (3rd Cir. 2008)

WEEK THREE: Obscenity, Indecency, and Pornography: Art on Campus

__/__/09:

“Where an artist’s intentions are innocent, at least of any desire to cause a riot, but his work so inflames the community to cause a riot in which people are killed and injured . . . First Amendment Rights are not subject to the heckler’s veto . . .” (Judge Richard Posner, in *Nelson v. Streeter*, 16 F.3d 145 (7th Cir. 1994))

U.S. v. O’Brien, 391 U.S. 367 (1968)
Papsih v. University of Mississippi, 410 U.S. 667 (1973)
Miller v. California, 413 U.S. 15 (1973)
Lahme v. University of Southwest Louisiana, 692 So.2d 541 (La. Ct. App. 1997)
Piarowski v. Illinois Community College, 759 F.2d 625 (7th Cir. 1985)

WEEK FOUR: Loyalty Oaths, Honor Codes and Freshman Orientation

__/__/09

West Virginia Board of Education v. Barnette, 319 U.S. 624 (1943)
California Constitution Article 20: Section 3

WEEK FIVE: Students’ Right to Speak On and Off Campus

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Tinker v. Des Moines, 393 U.S. 503 (1969)
(Discuss New Jersey v. T.L.O.)
Bethel School District v. Fraser, 478 U.S. 675 (1986)
Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988)

Hosty v. Carter, 412 F.3d 731 (7th Cir. 2005)
Frederick v. Morse, 127 S. Ct. (2007)
Nuxoll v. Indian Prairie School District, (7th Cir., 2008)
Doninger v. Niehoff, (2nd Cir., 2008)
Klein v. Smith, 635 F.Supp. 1440 (Dist. Me. 1986)

WEEK SIX: Academic Freedom, the First Amendment and the Limits of What a Professor Can Say and What Speakers Can be Invited to Campus

__/__/09:

Keyishian v. Board of Regents, 385 U.S. 589 (1967)
Sweezy v. New Hampshire, 354 U.S. 234 (1957)
Pickering v. Board of Education, 391 U.S. 563 (1968)
Garcetti v. Ceballos, 126 S.Ct. 1951 (2006)
ACW v. Mote 423 F. 3d. 428 (4th Cir., 1995)

I will buy lunch for the class during the last day of the course and conduct a review of the course material.

__/__/09: **Final Exam**