

**ADVANCED CONSTITUTIONAL LAW:
FIRST AMENDMENT FREEDOM OF SPEECH AND PRESS
FALL 2009**

Judge Randolph

The casebook is **SHIFFRIN, CHOPER, THE FIRST AMENDMENT (4th EDITION)** and the **2009 SUPPLEMENT** thereto. (My e-mail address is ARRandolph@cadc.uscourts.gov). The plan for the course follows. (The 2009 Supplement is not yet available; assume the corresponding pages from the Supplement are also assigned.)

1. **NO CLASS AUGUST 26, 2009**

2. CLASS OF SEPTEMBER 2, 2009 -- SHIFFRIN, CHOPER, PP. 2-20

Advocacy of illegal conduct and the early cases. Clear and present danger from *Schenck* to *Gitlow*. Historical and theoretical underpinnings of the freedom of speech, from the sedition laws and prior restraint to the marketplace of ideas, with emphasis on the opinions of Holmes and Brandeis.

3. CLASS OF SEPTEMBER 9, 2009 -- SHIFFRIN, CHOPER, PP. 21-50

Judicial review and the First Amendment. The rationales for protecting speech. More on punishing the advocacy of illegal conduct. The Smith Act prosecutions of members of the Communist Party, from *Dennis* to *Scales*. *Brandenburg v. Ohio* and the modern variation of the clear and present danger test. Application of the test in the context of the civil rights movement during the 1960's, and with respect to postings on the Internet.

4. CLASS OF SEPTEMBER 16, 2009 -- SHIFFRIN, CHOPER, PP. 50 - 68

Group libel. *N.Y. Times v. Sullivan* and First Amendment constraints defamation actions brought by public officials, with background on the Sedition Act of 1798.

5. CLASS OF SEPTEMBER 23, 2009 – SHIFFRIN, CHOPER, PP. 68-95

The relevance of the First Amendment to defamation actions brought by public figures, as distinguished from public officials, as in *Hustler Magazine v. Jerry Falwell*. Privacy versus the alleged First Amendment right to disclose and publish private information about individuals, whether legally obtained or illegally obtained. *Florida Star* (publishing the name of a rape victim); *Bartnicki v. Vopper* and *Boehner v. McDermott* (publishing a transcript of a cell phone conversation illegally intercepted).

6. CLASS OF SEPTEMBER 30, 2009 – SHIFFRIN, CHOPER 95-119

Obscenity, the evolution of its definition, the procedural rules concerning it, the question of intent, and the reasons why obscenity is not within “the freedom of speech.” The effect of the Internet on community standards and the issue of venue in obscenity prosecutions. Is there a respectable argument for censorship? Lecture on the void-for-vagueness and overbreadth doctrines in the Supreme Court.

7. CLASS OF OCTOBER 7, 2009 -- SHIFFRIN, CHOPER 143-155, 120-132, 170-178

Child pornography, the harm to children, and the constitutionality of the new federal statute. Virtual child pornography and national standards for the Internet. The fighting words theory of *Chaplinsky v. New Hampshire* considered in relation to group libel, hostile audiences and offensive words uttered in public place (*Cohen v. California*). Hate speech and speech that is hurtful.

8. CLASS OF OCTOBER 14, 2009 – SHIFFRIN, CHOPER 177-207

Is conduct speech and, if so, how does one determine when conduct is entitled to First Amendment protection? Herein of flag desecration, draft card burning, overnight camping on government property in support of the homeless.

9. CLASS OF OCTOBER 21, 2009 – SHIFFRIN, CHOPER 207-229, 230-256

Nude dancing, adult theaters and book stores and the like -- to what extent, if at all, may the state regulate these enterprises through zoning ordinances, liquor control measures, and other types of ordinances?

Commercial speech in general –advertisements, solicitations and so forth. Should this type of speech be treated differently than noncommercial speech? Are government regulations more acceptable? If so, why?

10. CLASS OF OCTOBER 28, 2009 -- SHIFFRIN, CHOPER 288-321

The doctrine of prior restraint, licensing and censorship, and the *Pentagon Papers Case*.

11. CLASS OF NOVEMBER 4, 2009 – SHIFFRIN, CHOPER 356-389

The “public forum” doctrine -- herein of marches, camping and demonstrations on public property; time, place and manner restrictions.

12. CLASS OF NOVEMBER 11, 2009 – SHIFFRIN, CHOPER 390-441

Government subsidy of speech. Do grade school and high school students have the same right to engage in free speech as adults? Do they have such a right in the classroom, or on the playground? Are educators or librarians entitled, consistent with the First Amendment, to censor what students read and hear and see, in books and films and on the Internet? May the federal government put conditions on grants to public libraries requiring the libraries to block Internet access to pornography?

13. CLASS OF NOVEMBER 18, 2009 – SHIFFRIN, CHOPER 442-492

How does the First Amendment affect the form and content of government regulation of access to cable TV, the content of broadcasting, indecency on cable and the Internet?

14. CLASS OF DECEMBER 2, 2009 – TO BE ANNOUNCED