



**CO249 COMMUNICATION LAW
TTH 12 - 1:15 P.M., MERKERT HALL 127
FALL 2008**

DALE HERBECK

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COURSE DESCRIPTION. This course examines the constitutional, statutory, and case law affecting the communication professions. A broad range of free speech issues will be considered including blasphemy, broadcasting, campaign finance, commercial speech, copyright, defamation, fighting words, free press/fair trial, hate speech, heresy, incitement, obscenity, political speech, pornography, prior restraint, privacy, public forums, special settings (schools, prisons, and the military), symbolic speech, threats, and time-place-manner restrictions. (A separate course--CO259 Cyberlaw--deals with free speech in cyberspace.)

RESOURCES.

1. TEXT. Thomas L. Tedford and Dale A. Herbeck, *Freedom of Speech in the United States*, 5th ed. (State College, PA: Strata, 2005). Copies are available in the bookstore in McElroy Commons (\$80 new; \$60 used).
2. ADDITIONAL RESOURCES.

ARCHIVE. A copy of all materials distributed in class is available in a dedicated Blackboard Vista <<https://webct.bc.edu>> archive created especially for this class. By accessing this web site, you will be able to obtain extra copies of the syllabus, the course schedule, all of the handouts (Chapter 1-13), and the Annual Updates (2005, 2006, 2007, and 2008). Over the course of the semester, additional materials (study guides and practice exams) will be added to the archive.

BOOK WEB SITE: The web site accompanying *Freedom of Speech in the United States* is available at <http://www.bc.edu/free_speech>. Several cases decided since the textbook was published are described in the Annual Updates for 2005, 2006, 2007 and 2008 available through the book's web site.

The direct link to the 2005 Update is:
<www.bc.edu/bc_org/avp/cas/comm/free_speech/update05.html>

The direct link to the 2006 Update is:
<www.bc.edu/bc_org/avp/cas/comm/free_speech/update06.html>

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The direct link to the 2007 Update is:

<www.bc.edu/bc_org/avp/cas/comm/free_speech/update07.html>

The direct link to the 2008 Update is:

<www.bc.edu/bc_org/avp/cas/comm/free_speech/update08.html>

READING ASSIGNMENTS. The accompanying schedule provides specific reading assignments for each class session. You are responsible and accountable for all reading assignments, even if the material is not explicitly addressed during lecture. Readings should always be completed before class. Please note that the subject matter for this course is extremely complex and it would be difficult, if not impossible, to master any appreciable portion of the text in a single extended sitting.

EXAMINATIONS. Course grades will be assigned based on two midterms and a comprehensive final examination.

1. **MIDTERM EXAMINATIONS.** There will be two midterm examinations; one on 7 October 2008 (chapters 1-6) and another on 6 November 2008 (chapters 7-10). Both midterms will consist of 60 true-false and 30 multiple choice questions. A preliminary study guide is attached to this syllabus and a copy of the relevant midterm from Fall 2007 will be distributed two weeks before each of the midterms.
2. **FINAL EXAMINATION.** The final examination will be given on Thursday, 11 December 2008, at 9 a.m. and will consist of 100 true-false and 60 multiple choice questions. Unlike the midterms, the final examination will be comprehensive in scope, although there will be disproportionately more questions on material covered during the final third (chapters 11-13) of the course. A preliminary study guide is attached to this syllabus and a copy of the examination from Fall 2007 will be distributed two weeks before the final examination.

The dates for all three examinations are clearly indicated on this syllabus, the course schedule, and the study guide. Absent the most extraordinary of circumstances (documented in writing by the Dean's Office), there will be *no* make-up examinations.

WARNING. Please note that this policy includes our final examination scheduled by the university for Thursday, 11 December 2008, at 9 a.m. Your personal travel plans do not constitute legitimate grounds for moving an examination. If any of the exam dates are inconvenient, you should drop Communication Law and find a class that is more conducive to your schedule.

EXTRA CREDIT. A limited number of opportunities will be provided to earn extra credit points by attending lectures and events sponsored by the Communication Department. To receive extra credit (10 points for each opportunity), you must satisfy the following conditions:

1. You must attend the entire event. This means you must be present when the event starts and stay until the event ends.
2. You must answer the questions on the back of the extra credit sheet to demonstrate that you were in attendance and that you listened to the presentation. Sheets will be distributed one week prior to any designated event.
3. You must return the completed form at the culmination of the event. To prevent one student from completing a form for another student, a student may submit a single form.
4. No student may earn more than 30 extra credit points.

WARNING: Extra credit can help a test score, but it cannot save your final course grade.

GRADING. Letter grades will normally be assigned according to the following scale:

90 to 100 percent	A = Excellent
80 to 89 percent	B = Very Good
70 to 79 percent	C = Average
60 to 69 percent	D = Below Average
00 to 59 percent	F = Failing

By definition, a large proportion of all work is “average.” If a large proportion of the work prepared is “very good” or “excellent” then the “average” standard will be adjusted accordingly. Consequently, there will be substantially fewer scores in the 80 to 100 percent range than in the 70 to 79 percent range.

In assigning course grades, assignments will be weighed according to the following distribution of points:

Midterm examination #1 (chapters 1-6)	300 possible points
Midterm examination #2 (chapters 7-10)	300 possible points
Final Examination (chapters 1-13)	400 possible points
TOTAL	1000 POSSIBLE POINTS

In the past, scores between 900 and 1000 points have received an “A,” 800 and 899 have received a “B,” 700 and 799 a “C,” 600 and 699 a “D,” and between 0 and 599 a “F.” Scores in the lower 30 to 40 percent of a range will receive a “minus” qualifier. Scores in the upper 10 percent of a range will receive a “plus” qualifier. An excessive number of absences will result in the reduction of a final course grade (see attendance policy for details).

Beyond the scale, the following rules will be used when assigning course grades:

1. Final Examination. All students scoring in the 95th percentile on the final will receive an A for the course. Any student earning less than 200 points (50%) on the final will fail the course, irrespective of midterm scores.
2. Pass/Fail. A handful of students opt to take Communication Law as a pass-fail course. The minimum requirements for a passing grade are as follows: a) you must attend a minimum of 20 of the 24 scheduled class sessions (starting on 4 September 2008), b) you must achieve a passing score (60%) on the final examination and one of the two midterms, and c) you must earn at least 600 of the 1000 possible points. Failure to satisfy all the three requirements will result in failure for the course.

POLICIES AND REQUIREMENTS. This course will be governed by the “Academic Regulations” delineated in the Boston College Undergraduate Catalog and by the policies of the Communication Department. Three policies are worthy of special elaboration:

Attendance Policy (Communication Department)

Attendance is required as a condition of successful completion of all courses in the Communication Department. After missing any class session, a student is responsible for finding out about assignments, due dates, announcements, handouts, and material covered during the missed session, and for making up any missed work. The student is also

responsible for obtaining class notes from a classmate for the session, and for learning the material from that session for any relevant exams or quizzes.

The equivalent of two weeks of absence from any course will reduce a student's course grade by one full letter grade. Absence from more than a combined total of three weeks of class meetings will result in automatic failure of the course. (Since this class meets twice a week, four absences will result in a letter grade reduction and six absences will result in automatic failure.) There are no exceptions to this rule.

Absences for any reason--illness, personal crises, athletics or other extra-curricular activities--are included in this total. If a student is involved in any activity that might require that student to miss two or more weeks of class, then that student should not enroll in Communication Law.

Beginning on Thursday, 4 September 2008, attendance sheets will be circulated shortly after the beginning of class. Students are responsible for signing the sheet to document their presence. Students arriving after the sheets are circulated or leaving early will be counted as absent for the class. Attendance totals will be circulated after the midterm examinations so students can track their absences.

WARNING: The attendance sheets are the definitive record. It is your responsibility to sign the sheet. If your signature is not on the sheet, you will be counted as absent, even if you have handouts or notes from the day in question.

WARNING: Many students make the mistake of taking absences early in the semester. Having expended their "free" absences, they are disappointed when they need to miss a class later in the semester for a legitimate reason. Please do not make this mistake as it can seriously impact your final course grade.

Statement on Classroom Civility (Herbeck)

It has become fashionable to lament the demise of civility in the classroom. To appreciate this problem, it is important to remember why civility is an important virtue. Civility is not an end in and of itself; rather civility is an essential precondition for learning. In the interest of maximizing the educational experience of all students, the following standards for behavior will be enforced in Communication Law.

- No student shall lessen the learning experience of others in the classroom by arriving late to class or by leaving the classroom while class is in session, except for true medical emergencies. (Students arriving late will not be allowed to sign the attendance sheet and students leaving early will have their signature removed from the sheet.)
- No student shall disrupt the learning experience of others in the classroom by talking to a neighbor, exchanging messages (written or electronic) with other students, reading the newspaper, completing homework for other classes, or playing with a laptop computer while class is in session.
- Cell phones, pagers and other electronic devices (with the exception of laptop computers used for taking notes) must be turned off during class.
- No student shall disrespect other Boston College students, professors or the housekeeping staff by leaving trash, food, or recyclables in the room at the end of the class session.

Policy on Academic Integrity (Communication Department, College of Arts and Sciences)

The Communication Department holds the highest standards of academic honesty for all students. The maintenance of these standards is essential to the basic functioning of the department as an academic community, and makes possible the conduct of fair, meaningful, and worthwhile educational experiences. Because the faculty of this department takes academic honesty so seriously, we remind students in all communication courses that they signed the College's academic integrity statement during freshman orientation.

Instances of cheating, plagiarism, dishonesty or collusion are treated as serious transgressions by the Communication Department. Sanctions for such breaches of academic integrity will include failure of the course, ejection from the major, and/or expulsion from Boston College. All cases will be referred to the Department Chairperson or the Dean of the College of Arts and Sciences.

In order to help ensure honesty in written work submitted as part of the course requirements for courses within the Communication Department, the department requires that ALL written assignments for ALL department courses be handed in on diskette as well as on paper. The diskettes will routinely be checked for plagiarized material through a professional service that analyzes the content of the work against a broad range of Internet and on-line databases. Written work will not be accepted unless it is accompanied by a diskette version.

Statement on Academic Integrity from the College of Arts and Sciences:

The College of Arts and Sciences expects all students to adhere to the accepted norms of intellectual honesty in their academic work. Any form of cheating, plagiarism, or dishonesty or collusion in another's dishonesty is a fundamental violation of these norms.

CHEATING is the use or attempted use of unauthorized aids in any exam or other academic exercise submitted for evaluation. This includes data falsification; the fabrication of data; deceitful alteration of collected data included in a report; copying from another student's work; unauthorized cooperation in doing assignments or during an examination; the use of purchased essays, term papers, or preparatory research for such papers; submission of the same written work in more than one course without prior written approval from the instructor(s) involved; and dishonesty in requests for either extensions or papers or make-up examinations.

PLAGIARISM is the deliberate act of taking the words, ideas, data, illustrative material, or statements of someone else, without full and proper acknowledgment, and presenting them as one's own.

COLLUSION is assisting or attempting to assist another student in an act of academic dishonesty.

As part of your scholarly development, you must learn how to work cooperatively in a community of scholars and fruitfully utilize the work of others without violating the norms of intellectual honesty. You have a responsibility to learn the parameters of collaboration and the proper forms for quoting, summarizing and paraphrasing.

Faculty members who detect any form of academic dishonesty have the responsibility to take appropriate action. The faculty member also has the responsibility to report the incident and penalty to the Department Chairperson and the appropriate Class Dean. The report will remain in your student file until you graduate.

If the gravity of the offense seems to warrant it or if the faculty member prefers that another academic authority decide the matter, he or she may refer the case to a Dean. In addition, if the student is unwilling to accept the faculty member's decision, he or she may choose to have the matter adjudicated either by an Associate Dean or by an Administrative Board. The section of the College of Arts and Sciences in the Boston College Undergraduate Catalogue has further details about this process.

WARNING: The Communication Department is fully committed to academic integrity and all instances of cheating, plagiarism, and collusion will be punished. Any dishonesty in Communication Law will result in failure for the course. In particular, please note that any attempt to misrepresent attendance will be treated as a form of dishonesty and will be punished accordingly.

FINAL THOUGHTS.

ABOUT THE SYLLABUS. This syllabus constitutes a contract between the student and the professor and remains in effect from the first day of the course until final grades are assigned. The terms of this contract are binding and non-negotiable. Students unwilling to abide by the syllabus are strongly advised to drop this course.

ABOUT GRADE BREAKS. Any grading or tabulation mistakes will be corrected and, if that changes final course grades, the necessary paperwork will be submitted. Once the grade breaks have been set, however, equity demands those breaks be consistently applied to all students. It would be wrong for one student with 890 points to receive a B+, while another student with the same point total received an A-.

ABOUT FAIRNESS. As might be expected, students are often disappointed when they discover that they will lose a letter grade due to poor attendance or that they will not receive a desired grade. In these circumstances, aggrieved students will frequently plead for an exception. More often than not, these appeals will start with a variation on the following sentence: "I know you have a rule, but . . ."

Many students subscribe to fairness in principle, so long as the principle is not applied to their disadvantage. Great philosophers like John Rawls have written books in which they address the importance of fairness. The intent of this statement is not to add to this discourse, but rather to reiterate the commitment to consistently apply the rules and policies set out on this syllabus.

CO249 COMMUNICATION LAW COURSE SCHEDULE FALL 2008

<u>Date</u>	<u>Topic</u>	<u>Reading*</u>
2 September	Introduction to the Course	
4 September	Chapter 1: The English Heritage Chapter 2: Freedom of Speech to World War I	<i>FS in the USA</i> , 3-16 <i>FS in the USA</i> , 17-42
9 September	NO CLASS, MASS OF THE HOLY SPIRIT	
11 September	Chapter 3-From World War I to World War II	<i>FS in the USA</i> , 45-58
16 September	Chapter 3: From the Smith Act to the Present	<i>FS in the USA</i> , 58-76
18 September	Chapter 4: Speech that Defames	<i>FS in the USA</i> , 79-104
23 September	Chapter 4: Speech that Invades Privacy	<i>FS in the USA</i> , 104-116
25 September	Chapter 5: Religio-Moral Heresy	<i>FS in the USA</i> , 117-128
30 September	Chapter 5: Obscenity	<i>FS in the USA</i> , 129-162
2 October	Chapter 6: Provocation to Anger	<i>FS in the USA</i> , 163-185
7 October	MIDTERM EXAMINATION #1	
9 October	Chapter 7: Commercial Speech and the Constitution	<i>FS in the USA</i> , 195-210
14 October	Chapter 7: Deceptive Advertising	<i>FS in the USA</i> , 187-194
16 October	Chapter 8: Prior Restraint	<i>FS in the USA</i> , 213-224
21 October	Chapter 8: National Security	<i>FS in the USA</i> , 224-234
23 October	Chapter 9: Free Press vs. Fair Trial	<i>FS in the USA</i> , 235-243
28 October	Chapter 9: Protection of Sources and Access	<i>FS in the USA</i> , 243-254
30 October	Chapter 10: Time, Place, and Manner	<i>FS in the USA</i> , 255-280
4 November	Chapter 10: Free Speech in the Public Forum	<i>FS in the USA</i> , 280-296
6 November	MIDTERM EXAMINATION #2	
11 November	Chapter 11: Institutional Constraints (Schools)	<i>FS in the USA</i> , 297-318
13 November	Chapter 11: Institutional Constraints (Military & Prisons)	<i>FS in the USA</i> , 318-330
18 November	Chapter 12: General Principles of Copyright Law	<i>FS in the USA</i> , 333-343

<u>Date</u>	<u>Topic</u>	<u>Reading*</u>
20 November	NO CLASS, NATIONAL COMMUNICATION ASSOCIATION CONVENTION	
25 November	Chapter 12: Copyright and the First Amendment	<i>FS in the USA</i> , 343-354
27 November	NO CLASS: THANKSGIVING VACATION	
2 December	Chapter 13: Broadcasting	<i>FS in the USA</i> , 355-379
4 December	Chapter 13: Cable	<i>FS in the USA</i> , 380-384
9 & 10 December	STUDY DAYS	
11 December	FINAL EXAMINATION (Thursday, 9 a.m.)	
19 December	Final grades posted (before 12 noon)	

*Reading Key

FS in the USA = Thomas L. Tedford and Dale A. Herbeck, *Freedom of Speech in the United States*, 5th ed. (State College, PA: Strata, 2005).

The update and full-text of leading cases can be found on the *Freedom of Speech in the United States* web site <http://www.bc.edu/free_speech>.

CO249 COMMUNICATION LAW

PRELIMINARY STUDY GUIDE

FALL 2008

DESCRIPTION. The following study guide is comprehensive in scope and may be of assistance as you prepare for examinations. Midterm #1 will cover chapters 1 through 6 and will be given on 7 October 2008; Midterm #2 will cover chapters 7 through 10 and will be given on 6 November 2008; the Final Examination will be given on Thursday, 11 December 2008, at 9 a.m. The final examination will be comprehensive (Chapters 1-13), but there will be disproportionately more questions on material from the final third of the course (Chapters 11-13). All three examinations will be composed of true-false and multiple choice questions.

STUDY GUIDE

Chapter 1: Freedom of Speech: The English Heritage

Blackstone's Commentaries on the Laws of England
blasphemous libel
divine right of kings
English Bill of Rights
licensing
Mill's On Liberty
Milton's Areopagitica
obscene libel
private libel
seditious libel

Chapter 2: Freedom of Speech in America to World War I

Alien and Sedition Acts of 1798
Articles of Confederation (Article 5)
Bill of Rights
First Amendment
United States Constitution (Section 6)
Virginia and Kentucky Resolutions
Zenger trial

Chapter 3: Political Heresy: Sedition in the United States Since 1917

"bad tendency" test
"clear and imminent danger" test
"clear and present danger" test
"imminent lawless action" test
Espionage Act of 1917 (as amended in 1918)
Fourteenth Amendment (incorporation)
"marketplace of ideas" (Holmes' dissent in *Abrams*)
"more speech" (Brandeis' concurrence in *Whitney*)
political speech
Smith Act of 1940

Abrams v. United States (landmark case)
Brandenburg v. Ohio (landmark case)
Debs v. United States
DeJonge v. Oregon

Dennis v. United States (landmark case)
Fiske v. Kansas
Frohwerk v. United States
Gitlow v. New York (landmark case)
Paladin Enterprises v. Rice
Schenck v. United States (landmark case)
Watts v. United States
West Virginia v. Barnette
Whitney v. California (landmark case)
Yates v. United States (landmark case)

Chapter 4: Defamation and Invasion of Privacy

absolute privilege
“actual malice”
appropriation
burden of proof
civil libel
consent
constitutional defense (privacy)
criminal libel
damages
defamation
disclosure
distortion
fabricated quotation
false light
fault
fictionalization
general damages
group libel
identification
injury
intentional infliction of emotional distress
intrusion
invitation
libel
libel *per quod*
libel *per se*
negligence
newsworthiness and public interest
opinion
private person
privilege
public figure
public official
publication
punitive damages
qualified privilege
slander
specific or actual damages
strategic lawsuits against public participation (SLAPPs)
summary judgment
tarnished reputation
truth

Associated Press v. Walker
Barber v. Time
Beauharnais v. Illinois
Braun v. Flynt
Cantrell v. Forest City Publishing Co.
Carson v. Here's Johnny Portable Toilets
Cox Broadcasting Corp. v. Cohn
Curtis Publishing Co. v. Butts
Dietemann v. Time
Galella v. Onassis
Gertz v. Welch (landmark case)
Hustler Magazine v. Falwell
Lambert v. Dow Chemical
Masson v. New Yorker
Milkovich v. Lorain Journal
Monitor Patriot v. Roy
New York Times v. Sullivan (landmark case)
Ocala Star-Banner v. Damron
Philadelphia Newspapers v. Hepps
Rosenblatt v. Baer
Sipple v. Chronicle Publishing Co.
Spahn v. Julian Messner
St. Amant v. Thompson
Time v. Hill
Time v. Pape
Wilson v. Layne
Zacchini v. Scripps-Howard Broadcasting Co.

Chapter 5: Religio-Moral Heresy: From Blasphemy to Obscenity

blasphemy
child pornography
Darwinism
Hicklin Rule
immoral ideas
indecent
obscenity
pandering
pornography
sacrilegious speech
secondary effects
variable obscenity
zoning

Ashcroft v. Free Speech Coalition
Barnes v. Glen Theatre
Burstyn v. Wilson (landmark case)
Epperson v. Arkansas (landmark case)
Erie v. Pap's A.M.
Ginsberg v. New York
Ginzburg v. United States
Kingsley International Pictures v. Regents (landmark case)
Memoirs of a Woman of Pleasure v. Massachusetts
Miller v. California (landmark case)

Mishkin v. New York
New York v. Ferber
Pinkus v. United States
Pope v. Illinois
Redrup v. New York
Renton v. Playtime Theatres
Roth v. United States (landmark case)
Stanley v. Georgia
United States v. One Book Called "Ulysses"
United States v. Williams (2007 Update)
Ward v. Illinois
Young v. American Mini-Theatres

Chapter 6: Provocation to Anger and Words that Wound

epithets
fighting words
heckler's veto
speech codes

Cantwell v. Connecticut
Chaplinsky v. New Hampshire (landmark case)
Cohen v. California (landmark case)
Doe v. Michigan
Feiner v. New York
Gooding v. Wilson
R. A. V. v. St. Paul
Terminiello v. Chicago
Virginia v. Black
Wisconsin v. Mitchell

Chapter 7: Commercial Speech

commercial speech
deceptive advertising
Federal Trade Commission

44 Liquormart v. Rhode Island Liquor Stores Association
Bates v. State Bar of Arizona
Bigelow v. Virginia (landmark case)
Board of Trustees of the State University of New York v. Fox
Central Hudson Gas and Electric v. Public Service Commission
Cincinnati v. Discovery Network
First National Bank of Boston v. Bellotti
Greater New Orleans Broadcasting Association v. United States
Linmark Associates v. Town of Willingboro
Lorillard Tobacco v. Reilly
Madigan v. Telemarketing Associates
Metromedia v. San Diego
Ohralik v. State Bar Association
Posadas de Puerto Rico Associates v. Tourism Company of Puerto Rico
Valentine v. Chrestensen (landmark case)
Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council

Chapter 8: Prior Restraint

“heavy presumption”
licensing
national security
nuisance statutes
Pentagon Papers
post facto punishment
prior restraint
Racketeering Influenced and Corrupt Organizations Acts (RICO)

Alexander v. United States
Bantam Books v. Sullivan
Burstyn v. Wilson (Chapter 5)
Cox Broadcasting Corp. v. Cohn (Chapter 5)
Freedman v. Maryland
FW/PBS v. Dallas
Lovell v. Griffin
Mills v. Alabama
Mutual Film Corporation v. Industrial Film Commission of Ohio
Near v. Minnesota (landmark case)
New York Times v. United States
Organization for a Better Austin v. Keefe
Poulos v. New Hampshire
Schneider v. State
Shuttlesworth v. Birmingham
Snepp v. United States
United States v. Marchetti
United States v. Progressive
United States v. Washington Post
Vance v. Universal Amusement
Walker v. Birmingham
Watchtower Bible and Tract Society v. Village of Stratton

Chapter 9: Special Problems of a Free Press

alternative means test
Canon 35
change of venue
compelling interest test
Deep Throat
fair trial
Federal “Sunshine Act”
free press
Freedom of Information Act
Plame affair
prejudicial publicity
Privacy Protection Act of 1980
relevance test
sequestration
shield laws
Sixth Amendment
voir dire

Branzburg v. Hayes

Chandler v. Florida
Estes v. Texas
Gannett v. DePasquale
Gentile v. State Bar of Nevada
Globe Newspaper v. Superior Court
Irvin v. Dowd
Nebraska Press Association v. Stuart
Press Enterprise v. Superior Court (I)
Press Enterprise v. Superior Court (II)
Richmond Newspapers v. Virginia
Sheppard v. Maxwell
Zurcher v. Stanford Daily

Chapter 10: Constraints of Time, Place, and Manner

anonymity
compatible use rule
limited purpose public forum
non-public forum
quintessential (open) public forum
speech plus
symbolic expression
time, place, and manner restrictions

Adderley v. Florida
Amalgamated Food Employees Union v. Logan Valley Plaza
Boos v. Barry
Burson v. Freeman
Cameron v. Johnson
Collin v. Smith
Cox v. Louisiana (II)
Cox v. New Hampshire
Davis v. Massachusetts
Forsyth County Georgia v. Nationalist Movement
Frisby v. Schultz
Grayned v. Rockford
Greer v. Spock
Hague v. CIO (landmark case)
Hill v. Colorado
Hudgens v. NLRB
Hurley v. Irish American Gay, Lesbian and Bisexual Group of Boston
International Society for Krishna Consciousness v. Lee
Jamison v. Texas
Ladue v. Gilleo
Lloyd Corp. v. Tanner
Marsh v. Alabama
McIntyre v. Ohio Elections Commission
Perry Education Association v. Perry Local Educators' Association
Schenck v. Pro-Choice Network of Western New York
Schneider v. State (Chapter 8)
Texas v. Johnson
Thomas v. Chicago Park District
Tinker v. Des Moines Independent Community School District
United States v. Eichman
United States v. Grace

United States v. O'Brien
West Virginia v. Barnette (Chapter 3)

Chapter 11: Institutional Constraints:
Freedom of Speech in the Schools, the Military, and Prisons

disruption test
Establishment Clause
Free Exercise Clause

Bethel School District v. Fraser
Board of Education of the Westside Community Schools v. Mergens
Board of Regents, University of Wisconsin v. Southworth
Brown v. Glines
City of San Diego v. Roe (2005 Update)
Connick v. Myers
Dash v. Commanding General
Department of Justice v. Abbott
Garcetti v. Cellabos (2006 Update)
General Media Corporation v. Perry
Goldman v. Department of Defense
Good News Club v. Milford Central School
Hazelwood School District v. Kuhlmeier
Healy v. James
Hosty v. Carter (2005 and 2006 Update)
Houchins v. KQED
Island Trees Union Free School District v. Pico
Keyishian v. Board of Regents
Kincaid v. Gibson
Lamb's Chapel v. Center Moriches Union Free School District
Morse v. Frederick (2007 Update)
Parker v. Levy
Pell v. Procunier
Pickering v. Board of Education
Procunier v. Martinez
Rosenberger v. Rector and Visitors of the University of Virginia
Simon & Schuster v. Members of the New York State Crime Victims Board
Tinker v. Des Moines Independent Community School District (Chapter 10; landmark case)
Turner v. Safley
Widmar v. Vincent

Chapter 12: Copyright

amount and substantiality (fair use)
chilling effect
content free administration
contributory infringement
Copyright Act of 1976
direct infringement
duration of copyright
effect of the use upon the potential market (fair use)
expression-idea dichotomy
fair use
First Amendment defense
nature of the copyrighted work (fair use)

purpose and character (fair use)
Sonny Bono Copyright Term Extension Act
vicarious liability

Basic Books v. Kinko's Graphics
Campbell v. Acuff-Rose Music
Eldred v. Ashcroft
Feist Publications v. Rural Phone Services
Harper & Row Publishers v. Nation Enterprises
Hoehling v. Universal City Studio
Leibovitz v. Paramount Pictures Corp.
Rosemont Enterprises v. Random House
Salinger v. Random House
Sony Corporation of America v. Universal City Studios
Suntrust Bank v. Houghton Mifflin
Time v. Geis

Chapter 13: Broadcasting, Cable, and Access Theory

equal opportunity rule
fairness doctrine
Federal Communications Act of 1934
hoaxes
licensing
must-carry rules
ownership rules
Radio Act of 1912
Radio Act of 1927
reasonable access
right of access
right of reply
scarcity
Telecommunications Act of 1996
Wireless Ship Act of 1910

Arkansas Educational Television Commission v. Forbes
Buckley v. Valeo
CBS v. Federal Communications Commission (access)
CBS v. Federal Communications Commission (indecentcy; 2008 Update)
Davis v. Federal Election Commission (2008 Update)
Federal Communications Commission v. Pacifica Foundation
Federal Communications Commission v. WNCN Listeners Guild
Fox Television v. Federal Communications Commission (2007 and 2008 Update)
Greater New Orleans Broadcasting Association v. United States (Chapter 7)
McConnell v. Federal Election Commission
National Broadcasting Co. v. United States
Prometheus Radio Project v. Federal Communications Commission
Randall v. Sorrell (2006 Update)
Red Lion Broadcasting Co. v. Federal Communications Commission
Syracuse Peace Council v. Federal Communications Commission
Turner Broadcasting System v. Federal Communications Commission
United States v. Zenith Radio
Wisconsin Right to Life v. Federal Election Commission (2006 and 2007 Update)

HOW TO GET AN A IN COMMUNICATION LAW

After grades posted in December 2007, all students finishing in the top 10% of the class (and the TAs) were invited to advise future students "How to Get an A in Communication Law." The responses appear below (organized in the order they were received):

RESPONSE #1

"The best tip I can give people would be to keep up with the material because there is a lot of it. I made new flashcards after every lecture and saved a lot of studying time at the end. It's most important to understand the ruling and the significance of each case first, then the story behind the case. Also, read the book. It's not absolutely necessary because the material gets covered in the lectures, but reading before the lectures (and taking notes if that works) gives you more of an acquaintance with what's being talked about, and I think you remember it better. Be sure to cross-check the book for clarification especially if something gets covered too quickly for you to write it down! One final note: go to one or both of the review sessions just to hear the material being talked about again, even if you don't have any questions. Good Luck!"

--A & S '10

RESPONSE #2

"If I could give one piece of advice on how to not only do well in but also enjoy Communication Law it would be to pay attention. Herbeck is hilarious and will say all you need to know in class. Use the Power Points as a supplement for studying, but use class time to listen. The slides will be posted later on so don't waste time frantically copying them. Get into the stories of the cases and take notes on them; they make it interesting to learn and remember. A final thing I would recommend it taking the practice tests. Good luck!"

--A & S '10

RESPONSE #3

"I think that the most significant factor that helped me get an A was attending the lectures. It is boring and much harder to study the cases when you are doing it by yourself if you've missed a class. In class you're fed the information, which is much better than going over it alone for the first time. Trust me, going to these lectures will help reduce the time you spend studying for the exams. There are many approaches you can take to help with memorization. My method of studying varied. Sometimes I made note cards, and sometimes I wrote the notes on the chapter handouts and studied from there. For the most part, I used note cards for longer chapters with a lot of cases, and I studied straight from the lecture notes for shorter chapters. The most important thing is to understand the progression of the first amendment from case to case and how it was applied to each case."

--A & S '08

RESPONSE #4

"To get an A in Comm Law you should try to get to every class and take notes on each case. Make sure you understand the main idea behind the decisions. After the first test I realized you don't need to pay attention to small details like the names of people or newspapers. You should remember specific phrases from some of the decisions though. If you put your study guide in the same order as the class notes you don't have to figure out dates because Professor explains them chronologically. I made study guides a few days before, using my notes from class. You should definitely take the practice tests and read the questions carefully. Save all your guides and old tests to use before the final and you should have no problem. Good luck!"

--A & S '09

RESPONSE #5

"Most importantly, do not under-estimate the time required for test/exam prep! When Professor Herbeck states, in class or via email, that it is not too early to begin studying, he is not wasting his time, and at this point, neither should you. It is better to begin preparing early and "over estimate,"

than to run out of time and arrive at the realization that you have lost an opportunity for a better grade. Know you're approaching extra-curricular commitments, and plan accordingly. Based on personal commitments, I begin preparing approximately 2 or 2 ½ weeks before the tests/exam, so that my study guide (see below) is complete a week before the test date. The week before the test/exam is for serious studying, and clarification of any/all questions regarding the material.

Using Professor Herbeck's "Review Sheet" as a starting point, I developed a study guide (as a "Word" document on my computer) to use for test/exam prep. For each term or case on the review sheet, I compiled information using all three sources (class notes, textbook, Professor Herbeck's slides). My objective was to be as complete and comprehensive as possible, in order to highlight the subtle nuances that differentiate the cases from each other. Although it may seem like extra work, obtaining material from all three sources facilitated the process of understanding the material, as opposed to memorizing it. Mere memorization is not a recommended strategy due to the vast amount of material covered throughout the course. Further, memorization will not help on the more difficult questions, because you do not have any basis from which to logically arrive at correct answers. Finally, memorization does not allow you to retain the material after the tests, which makes the cumulative final exam even more difficult.

Although cases and terms were listed in alphabetical order on the review sheet, it was helpful to arrange the cases from the review sheet in chronological order, and group various terms together according to their concept. Organizing cases and terms in this manner illustrated the progression between them, which contributed to my understanding and retention of the material. When studying cases, I highlighted/underlined key phrases in each case decision to reiterate the significance of the case. Highlighting was also helpful when glancing over the material for a final time just prior to the test.

Hopefully, you will consider these test/exam prep strategies. Preparation is time-intensive, but the end result more than justifies the effort. You will be rewarded if you put in the time! Enjoy the class, and Good Luck!"

--A & S '10

RESPONSE #6

From what I can tell the two things that helped me when it came to studying for the test were a.) attending class and b.) making flashcards. If you attend class, you won't miss a case and Prof. Herbeck will give you a little bit of a story or piece of media to go with each one that really helped me remember them. For example, when I think of *Mitchell vs. Wisconsin*, I specifically remember the clip from *Mississippi Burning* that Herbeck played in class, and that helps me remember the rest of the case. I missed one class all semester and had the most trouble remembering the cases from that class because I didn't have a dumb little story in my head to remember it by. So yeah that helps, but what's also good is doing flashcards for each test and starting them at least 2/3 nights before the actual test. I do these marathon study sessions so this worked for me but if you can't you may want to start earlier. The most helpful aspect of these is that just writing the details of the cases down which can help so much in recalling the important parts of each case. By the time you're done making your flashcards anyways you're only going to have trouble with like 15% of them (like *Ward vs. Illinois*, which I will never remember, no matter what). Writing the year down on each card and keeping them organized by chapter will help too especially in Chapters where there's a series of cases (like it helped me to know the order of *Abrams vs. US*, *Schenck vs. US*, *Debs vs. US*, *Fiske vs. Kansas*, *DeJonge vs. Oregon*, *Whitney vs. California*, *Dennis vs. US*, that one with someone named Yates? or something, you know what I'm talking about). Knowing the order in which these cases flowed helped, if you can remember that *Fiske vs. Kansas* came before *Whitney vs. California*, it might help one recall something on the multiple choice about something that wouldn't have applied to *Fiske* because it didn't come around until *Whitney* (this isn't a real example, I don't really remember how if at all these cases affected each other, just an example of how this might help in eliminating answers during multiple choice).

--A & S '09

RESPONSE #7

In order to get an A you need to remember many cases for the exams. The best way to remember these cases is to pay attention in class. You can only miss three classes anyways, so while you are there it is important to pay attention. If you can pay attention without taking notes then that is all right because the lectures on are on WebCT. However, often it is helpful to engage yourself by taking notes and even re-writing what is on the slides. If you do this, studying for the exam will be much easier.

When it is time for exams you really need to sit down and make sure you know all the cases. Make sure you know why the Court's decision was important in the line of cases and some important background information. I found that flashcards were the best way to study. I wrote the name of the case and the title of the line of cases in which the case fell, (i.e. Student Free Speech in Schools) on the front of the card and important background information, the decision, and any lasting importance the decision had on the back. Once you have written and studied the cards once or twice through it is a good idea to take the practice test. Afterwards focus on questions you did not get right.

--A & S '08

RESPONSE #8

"Getting an A in Communication Law is not difficult as long as you're willing to put the time into studying the cases. I found that the best ways to prepare for an exam was to make flashcards of the cases with just the name of the case on the front and then only the most important facts about the case as well as the outcome on the back. This way you're still learning the important stuff about the case but you're not overloading your head with too much information. Flashcards were so helpful when it came to the final exam as well since it is cumulative. If you make flashcards before each exam, you'll be all set to study for the final. Beyond studying, another thing that may help you to get an A is to read the exam questions carefully. Because it's a law class, sometimes the exam questions can be worded a little tricky so I found that while taking the exam it's helpful to underline the key words in the question like 'the supreme court held' or 'overturned the decision in X v. Y.' That way you know you understand exactly what the question is asking. Underlining also makes it much easier and faster to recheck your answers if you have time to do so. These two things; flashcards and underlining exam questions really helped me to do well in this class."

--A & S '08

RESPONSE #9

"The best way to get an A in Communication Law is to completely define (in writing) all of the cases and terms outlined in the review sheet at least three days before an exam. It is important to understand the story behind each case as well as the major outcome. Quiz yourself on the information as you reread the review sheet multiple times. Flash cards can help if you find it difficult to memorize information from a review sheet. Try to get together with one or two students before each exam in order to discuss confusing cases and concepts. Additionally, save each outlined review sheet so that you can easily access it for the final exam."

--CSOM '08

RESPONSE #10

"In order to get an A in Communication Law, you have to be focused and well prepared. The way I achieved this goal was by using flashcards for ALL of the cases that are in the class. Make flashcards three to two days before an exam. After the flashcards are made, take 10 at a time and memorize them to the point where you can look at the name of a case and describe all of the details that are important. The important details are what the Supreme Court ruled about the case, what section of law does it fall under, and the significance of the case, i.e. what theory of law did it lead to or do away with. Once all of the flashcards have been memorized, try to do the practice test, and I recommend doing this with a partner. Sit down and read the question out loud and then choose an answer in your head. Then after your partner has picked an answer, share them. Discuss why it's right or wrong. Circle the questions you got wrong on your own and make sure you realize why you got it wrong. After you finish the exam, you're done. Just a little quick look through your flashcards before

the exam should do the trick. And for the final make sure you have all of the flashcards you did for the previous exam and just treat it like a regular exam with just a lot more cases, but give yourself a few extra days to study. Good luck.”

--A & S '08

RESPONSE #11

“Getting an A starts with taking good, thorough notes on each case presented. With each case, try to pick out important concepts such as what happened and why the judgment was issued. Many of the cases tend to fall into a line or grouping. It may help to recognize these groups of cases and study accordingly. Probably the biggest help in this class was using flashcards. It is much easier to remember a case and a few facts/judgments when you can visualize it on something like a flashcard. Once you think you have the cases down, it can be a good idea to sit down with other people in your class and quiz each other to find any cases you may have forgotten. Another good way to study is to take Professor Herbeck’s practice exams. If you take the exams in pencil and erase the markings after finding your grade, you can take the exams over again to learn any cases you may have missed. This approach also helps you learn the types of questions that will be asked, so you can anticipate what will be on the real tests.”

--A & S '09

RESPONSE #12

“If you want to receive an A in Professor Herbeck’s Communication Law class, my best piece of advice for you would be to attend class. And by ‘attend,’ I don’t mean simply circling and signing your name on the sign-in sheet which Professor Herbeck supplies. I mean actively paying attention each day to the material being covered. It may be easy in a class with over 100 students to get caught up in a text message conversation, or rest your eyes for the hour and fifteen minutes—but if you want to get that A, don’t do it! When explaining the cases, Professor Herbeck always stresses the key, important points to be learned from each case. Make sure to take note of these key conclusions and concepts, because this is exactly what is on the test. Don’t get hung up on obscure details and dates, focus on the broader theory associated with the material. If you do get lost in one of the lectures, definitely go see Professor Herbeck during his office hours. He is always happy to help. Make sure that you understand what is going on in class, and you will be right on track to your 4.0.”

--A & S '08

RESPONSE #13

“This may seem like common sense or an obvious response to some, but coming to class on a regular basis is by far the best strategy. Although you have access to both note packets and lecture slides, these resources do not do the material justice, and nothing will help you retain the information more easily than hearing the details of each case explained by Prof. Herbeck himself. If you show up alert and eager to pay attention, you’ll find that every case has a story to tell and Prof. Herbeck is an amazing storyteller. When it comes time to study for one of the three exams, you’ll find that most of these stories have remained memories in your brain and will only need fine tuning or sharpening.”

--A & S '09

RESPONSE #14

“I have several suggestions to do well in Communications Law. The class contains a lot of material so studying early is necessary in advance of the test. However, the most important advice I can offer is to attend all the classes. Although, there are handouts, class attendance is essential to take good notes and be able to take notes that help one personally understand. In class, the professor also highlights the important parts of his handout which supplement the notes one takes in class and are important sections or excerpts to remember. As far as being able to tell cases apart, it helped me to learn a little background information about each case and then I could apply whatever law or test was being used to the situation described. Communication Law is not too difficult although it is extensive and contains many cases, it can be managed by taking additional class notes, especially about the story behind the case, and by starting to review for the major exams days, even a week, before the test.”

--A & S '09

RESPONSE #15

“Getting an A in Comm Law is not impossible; all it takes is a little effort. Going to every class is important. Class is not that boring and the stories that Herbeck tells about the cases sometimes help you to remember them. After each chapter, make an outline based on the study guide that is handed out at the beginning of the semester. It may seem like a pain at the time, but it will be a HUGE help in studying for the midterms and/or final. When it comes time for the midterms or final, study the outline you made. I also found it useful to try to remember whether a conviction was upheld or reversed and couple of words that relate to that case (For example, *Ginsberg v. New York*--variable obscenity, conviction upheld or *Brandenburg v. Ohio*--imminent lawless action, conviction overturned). Don't stay up too late studying, get a good night's sleep, and get to the test on time.”

--A & S '09

RESPONSE #16

“I believe the best way to get an A in Communication Law is to know what material is important and what material is not as important. Knowing all of the specific cases in detail - the outcome, court opinions, and overall effects of the case on the law - is the most important thing. Memorizing statutes and older laws, as well as significant people, is not as crucial. One of the best ways to learn the many cases is to read the lecture slides on your own and then study with a partner so you can quiz each other. If you have no friends, you can use flashcards to replace a study buddy. I also like to flip through the lecture handouts really quickly the day of the exam and make sure I know my stuff and re-learn the cases I may have forgotten. Also, Herbeck is a tricky guy so read those test questions carefully!”

--A & S '09

RESPONSE #17

“I created study guides for each of the exams. I defined each term and included key information about each case that would distinguish the cases from one another.

For example: *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council*

--law banned advertising prescription price; statue unconstitutional

--in a capitalistic economy, information about prices serves a political purpose”

--A & S '09

RESPONSE #18

“The most important tip I have for doing well in Communication Law is go to class and take notes! Professor Herbeck goes over everything that will be on the exams very thoroughly in class, and it's much easier to understand material when reviewing if you heard him lecture on the subject instead of reading it in the book. During class he goes over a lot of material and rather quickly, for me it was much easier to keep up by typing my notes - especially because my handwriting not that legible. Another thing I would recommend is studying for the exams with someone. I always spent time by myself making note cards and reviewing them, but before each of exams I spent an hour or so at Hillside with two friends from class and we went over anything we could think of that might be especially important or hard to remember. Also, there's a lot of material on all of the exams and it's much easier to memorize it all if you start earlier. I always tried to make my note cards about a week before the actual exam so there was time to memorize it all. Finally, when I studied I would try to group similar cases together and I only memorized the key facts to the case, not the details. The more associations for the case you can come up with, the better chance you'll actually remember it!”

--A & S '09