

Fromm/Carcieri/Great Free Speech Cases/Syllabus & Session One

Session One: Introduction – Historical and Conceptual Overview

Session Two - Clear and Present Danger to Incitement to Imminent Violence

Schenck v. U.S. (1919)

Abrams v. U.S. (1919)

Gitlow v. New York (1925)

Whitney v. California (1927)

Brandenburg v. Ohio (1969)

Session Three – Offensive Speech

Cohen v. California (1971)

Terminiello v. Chicago (1949)

Feiner v. New York (1951)

Session Four – Defamation, IIED, Obscenity

New York Times v. Sullivan (1964)

Hustler Magazine v. Falwell (1988)

Roth v. U.S. (1957)

Session Five – Obscenity, cont'd

Miller v. California (1973)

Paris Adult Theater v. Slaton (1973)

Erzoznick v. Jacksonville (1975)

Young v. American Mini Theatres (1976)

New York v. Ferber (1982)

Session Six – Commercial Speech

Virginia Pharmacy Board v. VCCC (1976)

Central Hudson Gas v. Public Service Commission (1980)

44 Liquormart, Inc. v. Rhode Island (1996)

Session Seven – The Public Forum and Time/Place/Manner Restrictions

Heffron v. ISKCON (1981)

City Council v. Taxpayers for Vincent (1984)

Frisby v. Schultz (1988)

ISKCON v. Lee (1992)

Session Eight – Regulation of Political Campaign Finance

Buckley v. Valeo (1976)

First National Bank of Boston v. Bellotti (1978)

Austin v. Michigan Chamber of Commerce (1990)

Citizens United v. FEC (2010)

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Historical Overview

I) Ancient Greeks/Classical Athens

II) The Anglo-American World

A) Social/Moral Limits on Speech

B) Legal Limits on Speech

Statutory Law

Common Law

Constitutional Law

C) Seditious Libel: Two trajectories – Oppression and Liberation

Great Britain: Oppression – De Scandalis Magnatum (1275)

Liberation – Free speech as a needed check on political authority

Blackstone (1723-1780): Freedom of speech = no Prior Restraints

United States: Oppression – Colonial legislatures

Liberation – Zenger trial and Jury Nullification

Revolutionary Era

D) U.S. Constitution: Two functions

Empower Government – Legislative, Executive and Judicial Branches

Disempower Government – Sep of Powers, Federalism, Bill of Rights

Three Pillars of Liberal Constitutional Democracy

Voting Rights – the right to vote in free, fair, regular elections (preferably backed up by a constitutional amendment process)

Criminal Procedure protections (4th, 5th, 6th, and 8th Amendments)

First Amendment protections (freedom of religion, speech, press, assembly); the Free Speech Clause provides that “Congress shall make no law ... abridging the freedom of speech, ...”

E) The Sedition Act of 1798

Federalists' defense of the Act

Madison's critique of the Act

The Act backfires: Matthew Lyon and the election of 1800

Jefferson, First Inaugural Address (1801): "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

F) 19th and 20th Centuries – Free speech and slavery, the civil war, labor organizing, resistance to WWI, the Red Scare, etc.

Conceptual Overview