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Spring 2-1-2019

JRNL 567.01: Press and Broadcast Law

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JRNL 567: Press/Broadcast Law

Syllabus – Spring 2019

Subject to Change

Scope

This course aims to do two things: expose students to the full scope of First Amendment issues both historically and in contemporary America and introduce students to the core laws and legal issues they may face as reporters. A special emphasis is made on issues of access and other legal matters within the State of Montana.

Learning Outcomes

Successful JRNL 567 students will:

1. **Understand the history of the First Amendment and current issues still being debated in a Constitutional context.**
2. **Know the impact of critical cases in the establishment of free speech, free press and media law cases.**
3. **Know the status of Montana laws and policies in terms of open meetings, freedom of information and public access.**
4. **Be able to read and understand core arguments outlined in court decisions.**
5. **Understand the importance of the legal system in ensuring the freest flow of information possible.**
6. **Have a basic understanding of legal concepts of copyright, privacy and how digital technologies are effecting both.**

Grading options

This course must be taken for a traditional letter-grade. No-credit grading is not permitted. The Montana University System's plus/minus grading system will be used in this class.

Class Meetings

Tuesdays and Thursdays, 9:30 — 10:00 a.m., in DAH 301.

Instructor Info

Lee Banville, Professor, School of Journalism.

Office: Don Anderson Hall 406

Office hours: Mondays 11:30 a.m.-12:30 p.m. and Thursdays 9:30-11:00 a.m. I'm also available at other times by appointment.

Office phone: 243-2577.

My regular e-mail: lee.banville@umontana.edu.

Required Textbook

THIS IS A NEW TEXT: *The Law of Journalism and Mass Communication*, 6th Edition, by Robert Trager, Susan Dente Ross and Amy Reynolds. You can rent it for \$58 at the bookstore. There are also a boat-load of places that you can buy a PDF for under \$20. **YOU MUST OWN THE 6th EDITION.**

- Read the assigned chapters before class.
- Additional Readings may be assigned and posted on Moodle.

Course Grading

Participation	30%
Legal Theory Analysis	15%
First Amendment Analysis Paper	25%
Final Paper	30%

Case Discussions

Each week, you will be assigned one side in a famous First Amendment case. Your job is to research your side's argument, read the decision as presented by the Supreme Court (or lower court, when appropriate) and come to the Thursday class ready to discuss their case, the decision and its ramifications from your side's perspective. This assignment will force you to take different sides, and often sides you disagree with personally, to make the strongest possible case from your perspective. You will be graded on your response to questions and contributions to the discussions.

Attendance and participation

Students are expected to participate through both active contributions to the class and to be ready to respond to questions from the professor on the assigned readings. Attendance is required for a seminar class and so if a student cannot attend a class are responsible for emailing me BEFORE class and they will not be called on. Documented medical or family emergencies will also receive consideration.

Cell phones must be off or on vibrate while you are in class and must be off and totally out of your sight during examinations. Do not answer a call during class. Anyone whose phone rings during class will be made fun of by me.

Academic Honesty

I expect your honesty in presenting your own work for this course. Academic misconduct at The University of Montana is subject to an academic penalty ranging from failing the assignment to expulsion from the university. Students need to be familiar with the Student Conduct Code.

<http://www.umt.edu/SA/VPSA/index.cfm/page/1321>

Plagiarism

As defined by “The University of Montana Student Conduct Code” plagiarism is: “Representing another person's words, ideas, data, or materials as one's own.” This is strictly prohibited in this class and any case of plagiarism in this course will be subject to the penalties outlines in the student code of conduct.

Students with Disabilities

Students with disabilities will receive reasonable modifications in this course. Your responsibilities are to request them from me with sufficient advance notice, and to be prepared to provide verification of disability from Disability Services. Please speak with me after class or during my office hours to discuss the details. For more information, visit the Disability Services for Students website at <http://life.umt.edu/dss>.

Schedule (Subject to Change)

Week One: The Law

JAN 14: For Monday: Listen to the Political Thicket episode of “More Perfect” podcast (<https://www.wnycstudios.org/story/the-political-thicket>)

Class requirements and an introduction to the core ideas and issues surrounding the law and media as well as the First Amendment. How is the American legal system structured and how did legal systems deal with printing and expression?

For JAN 16: Read Trager, Pages 3-51 (all of Chapter 1: The Rule of Law)

SECTION II: First Amendment and Legal Theories

Explores the uncertain beginnings and early tests of the First Amendment and its protection for free speech and the press. How does the court consider and rule on First Amendment cases? This class outlines major theories of free speech and the press.

For JAN 23: Read Trager, pp. 51-88 (plus Moodle section on Legal Theories) (All of Chapter 2: The First Amendment)

For JAN 28: *Schenck v. United States*, 249 U.S. 47 (1919) and *Abrams v. United States*, 250 U.S. 616 (1919)

SECTION III: Prior Restraints on Speech and Press

From government censorship to limiting student protests, when can the government stop you from publishing or speaking?

For JAN 30: Read Trager, pp. 97-119 (Chapter 3: Speech Distinctions from beginning through Symbolic/Burning Speech) and listen to Fighting Words episode of “Make No Law” Podcast (<https://legaltalknetwork.com/podcasts/make-no-law/2018/01/fighting-words/>)

For FEB. 4: Read *Near v. Minnesota* and *New York Times v. United States*. **Legal Theories Paper DUE.**

For FEB 6: *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) and *Matal v. Tam*, 582 U.S. ____ (2017)

For FEB 11: Read Trager, pp. 119-143 (Chapter 3: Speech Distinctions from School Speech to the end of the chapter)

For FEB 13: Read *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) and *Morse v. Frederick*, 551 U.S. 393 (2007)

SECTION IV: Libel

This part of the course will examine the concept of defamation and also when journalists are likely to face civil litigation for libel. The readings will explore what are the elements of a libel case? What must a defendant prove to win a libel case?

FEB 18: NO CLASS

For FEB 20: Read Trager 145-189 (All of Chapter 4: Libel and Emotional Distress)

FEB. 25: *New York Times v. Sullivan*, 376 U.S. 254 (1964)

FEB. 27: Read Trager pp. 193-229 (All of Chapter 5: Libel)

MAR. 4: Read *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)

MAR 6: Read *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990) MIDTERM PAPERS DUE

SECTION V: Privacy

Do we have a right to privacy? Where does this right come from and how does it affect the work of journalists? What are privacy rights and how does Montana and the Federal government differ on these questions?

MAR 11: Read "The Right to Privacy" and *Griswold v. Connecticut*, 381 U.S. 479 (1965)

MAR 13: Read Trager pp. 233-274 (Chapter 6: Protecting Privacy from beginning through Chapter Summary (you do not need to read "Cases for Study"))

MAR 18: Read *Krakauer v. State of Montana* and *Time, Inc. v. Hill*, 385 U.S. 374 (1967)

SECTION VI: Gathering Information

This section of the class will focus on how we can access documents and government meetings. What are the applicable laws at the federal level and in Montana? When can you be kicked out of a meeting and what do you have a right to expect from local government offices?

MAR. 20: Read Trager pp. 287-339 (All of Chapter 7: Gathering Information)

MAR. 25 and 27: SPRING BREAK

APRIL 1: Montana Meeting/Document Law

APRIL 3: Read Draft UM Open Meeting Policy and *Associated Press v. Crofts* (2004).

SECTION VII: Courts and Justice Information

How do we balance between covering issues of public concern and the right of a defendant to receive a fair trial from an unbiased jury? What are our rights when it comes to accessing record and documents held by the Federal and Montana government?

APRIL 8: FOIA assignment DUE. Read Trager pp. 341-378 (Chapter 8: Overseeing the Courts from beginning through Chapter Summary (you do not need to read “Cases for Study”))

APRIL 10: Read *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976)

SECTION VIII: Intellectual Property

What do we have the right to use when reporting a story? When do we know if our copyright has been violated and what do we do about it? This section of the course will explore intellectual property law and how the digital world has affected those laws.

APRIL 15: Read Trager pp. 485-512 (Chapter 11: Intellectual Property from beginning through Copyright – Music, the Internet and File Sharing. You do not need to read Trademarks) and Creative Commons Material on Moodle

APRIL 17: Read *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

SECTION IX: Broadcast/Internet Regulations

From its inception, electronic media like radio, television and the Internet have been treated as fundamentally different than the printed word. Why? And how does the government’s relationship with election media affect journalism?

APRIL 22: Read Trager pp. 397-428 (Chapter 9: Electronic Media Regulation from beginning through Chapter Summary (you do not need to read “Cases for Study”))

APRIL 24: Read *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367 (1969)

Final Research must be emailed to me no later than 12:10pm on May 1, 2019

You will also meet with me separately on two matters – a research project connected to a specific legal case that is moving through the courts (or legislature) and a document request effort that will ideally focus on your Master’s project.

Here are the topics you may choose from for your in-depth work. You may also pitch me something different, if you have a specific interest.

- **Montana digital documents (emails and social media) violating records law**

- **Butte Standard v. EPA (Superfund Negotiations)**
- **Montana Digital Shield Law**
- **Media Law Issues about Reporting on Native Reservations Minnesota**
- **American Legion v American Humanist Association (Church/State Case over war memorial)**
- **Animal Legal Defense Fund v. Wasden (9th Circuit Court of Appeals decision in ag-gag case)**
- **Krakauer v. State of Montana (Montana Supreme Court decision in student records case)**
- **Gersh v. Anglin (Whitefish case against Daily Stormer)**

In each case, I will meet with the pair of you three times over the semester and it will culminate in a paper that explore the potential ramifications on journalism/public discourse.

The three meetings will be split this way: 1) You brief me on the key elements and history of the case or laws. 2) A full examination of relevant court precedent. 3) You do a run-through of the core elements of your paper.

Paper will be 15-20 pages. Details to follow.