Spring 2-1-2019

JRNL 300.01: First Amendment and Journalism Law

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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. This course is required of all Journalism majors and minors at the University of Montana School of Journalism.

Learning Outcomes
Successful JRNL 300 students will:

1. Be able to appraise the history of the First Amendment and current issues still being debated in a Constitutional context.
2. Classify and analyze the impact of critical cases in the establishment of free speech, free press and media law cases.
3. Be able to summarize the status of Montana laws and policies in terms of open meetings, freedom of information and public access.
4. Be able to synthesize core arguments outlined in court decisions.
5. Be able to compare how laws may affect the flow of information.
6. Be able to appraise the 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
Mondays and Wednesdays, 2:10 p.m. — 3:30 p.m., in STON 304.

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.

Exams
Scheduled for March 6 and April 29. Midterm will be a series of short answers and one essay in class. The final will be a take home series of essays. Answers will be submitted via Moodle and must be submitted by April 29th at 5:20 p.m.

Course Grading

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<td>Participation</td>
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<td>Legal Theory Analysis</td>
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<td>Final Exam</td>
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Case Briefs/Decisions
You will write one two- to four-page, double-spaced case briefs for this class. These briefs will be due either on the day of the class argument or one week later for judges in those cases. Each paper will account for 15% of your final grade. Briefs must follow the structure outlined in the “How to Write a Brief” document posted to Moodle.

Attendance and participation
Participation in this class will be based upon your ability to answer at least two questions over the course of the class. Approximately 5-10 times each class a student will be called on to explain a case, concept or issue highlighted in the readings for that class. Students who are not in class that day without an excused absence will receive a “0” for that assignment. Students who are in class, but cannot answer the question will receive 25% credit. Students who can offer a basic understanding of the issue receive 75% credit and those who answer the question fully and accurately receive 100%. These assessments will appear in Moodle within two days of the class.

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](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)

SECTION I: Introduction and 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 3-43 (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. 51-64 (Chapter 2: The First Amendment from the beginning up to “How Government Restrains First Amendment Freedoms”) and Moodle section on Legal Theories

For JAN 28: Read Trager, pp. 64-88 (Chapter 2: The First Amendment from “How Government Restrains First Amendment Freedoms” through the end of the chapter)

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. 97-112 (Chapter 3: Speech Distinctions from the beginning through “Fighting Words”) 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 Trager, pp. 112-119 (Chapter 3: Speech Distinctions from “Hate Speech” through Symbolic/Burning Speech”) and Excerpt of Texas v. Johnson at end of chapter. Legal Theories Paper DUE.

For FEB 6: Read Trager, pp. 119-143 (Chapter 3: Speech Distinctions from “Speech in Schools” through end of the chapter)

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?

For FEB 11: Read Trager pp. 145-178 (Chapter 4: Libel and Emotional Distress from beginning through “Actual Malice) and New York Times v. Sullivan excerpt in Cases for Study

For FEB 13: Read Trager 178-189 (Chapter 4: Libel and Emotional Distress from “Emotional Distress” through the end of the chapter)

FEB 18: NO CLASS
For FEB 20: CASE Arguments Due/Court Arguments

FEB. 25: Read Trager pp. 193-209 (Chapter 5: Libel from beginning through “Opinion/Rhetorical Hyperpole”)

FEB. 27: Read Trager pp. 209-229 (Chapter 5 Libel From “Section 230 Immunity” through the end of the chapter)

MAR. 4: Read *Gertz v. Welch*. Finish Libel/Review.

**MAR. 6: MIDTERM**

**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*

MAR 13: Read Trager pp. 233-257 (Chapter 6: Protecting Privacy from the beginning of the chapter through “Intrusions/Defenses” and up to “Private Facts”)

MAR 18: Read Trager pp. 257-275 (Chapter 6: Protecting Privacy from “Private Facts” through Chapter Summary (you do not need to read “Cases for Study”))

**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. 287-318 (Chapter 7: Gathering Information from the beginning up to “Obstacles to Gathering Government Information”)

**MAR. 25 and 27: SPRING BREAK**

APRIL 1: Montana Meeting/Document Law

APRIL 3: Read Trager pp. 318-339 (Chapter 7: Gathering Information from “Obstacles to Gathering Government Information” through the end of the chapter).

**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. 341-366 (Chapter 8: Overseeing the Courts from the beginning of the chapter through “Advancing the Flow of News”)

APRIL 10: Read Trager pp. 366-378 (Chapter 8: Overseeing the Courts from “Advancing the Flow of News” to end of chapter including the *Richmond Newspapers* case)

**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)
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. 397-416 (Chapter 9: Electronic Media Regulations from the beginning through “Public Broadcasting”)

APRIL 24: Read Trager pp. 416-434 (Chapter 9: Electronic Media Regulations from “Development of Cable and Satellite Regulation” through the Red Lion decision).

FINAL: Take-home Final
- Must be submitted via Moodle
- Due no later than 5:20pm MT on Monday, April 29.