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JRNL 300.01: First Amendment and Journalism Law

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JRNL 300: First Amendment and Journalism Law

Syllabus – Spring 2022

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 affecting 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, 2:00 p.m. — 3:20 p.m., in Stone Hall 304.

Instructor Info

Lee Banville, Professor, School of Journalism.

Office: Don Anderson Hall 406

Office hours: Mondays 12:30 - 1:30 p.m. and Thursdays 9 - 10:30 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

The Law of Journalism and Mass Communication, 6th Edition, by Robert Trager, Susan Dente Ross and Amy Reynolds. You can rent it for \$52 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 4 and May 6. 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 May 6th by 5:20 p.m.

Course Grading

Participation	15%
Legal Theory Analysis	15%
Case Brief	15%
FOI Request	10%
Midterm	20%
Final Exam	25%

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.

Remote Participation and Zoom

This class is designed to be taken in person with appropriate social distancing and mask requirements. You should choose a seat you will sit in throughout the semester and be sure to have 6 feet between your seat and the next seated student. Masks should be worn at all times during class.

Although it is an in-person class, I understand students may need to attend class remotely due to health concerns or quarantine requirements. If you have to attend remotely, I ask that you attend during the class time and with your Zoom camera on and muted. Be aware during the class time I may call on you to answer questions whether you are in class or on Zoom. If you are called on, I expect you to be ready to unmute your audio and respond. A Zoom schedule, as well as recorded versions of past class will be made available on 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 received 50% 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 AFTER class.

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)

SECTION I: Introduction and the Law

JAN 19: 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 24: 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 26: 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 31: 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 Feb 2: Read Trager, pp. 97-112 (Chapter 3: Speech Distinctions from the beginning through “Fighting Words”) and listen to Episode 16 of the Washington Post’s Constitutional podcast: The First Amendment. (<https://www.washingtonpost.com/podcasts/constitutional/episode-16-the-first-amendment/>)

For FEB. 7: 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*.

For FEB 9: Read Trager, pp. 119-143 (Chapter 3: Speech Distinctions from “Speech in Schools” through end of the chapter) **Legal Theories Paper DUE.**

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 14: 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 16: Read Trager 178-189 (Chapter 4: Libel and Emotional Distress from “Emotional Distress” through the end of the chapter)

FEB 21: NO CLASS

For FEB 23: Read Trager pp. 193-209 (Chapter 5: Libel from beginning through “Opinion/Rhetorical Hyperpole”)

FEB. 28: Read Trager pp. 209-229 (Chapter 5 Libel From “Section 230 Immunity” through the end of the chapter)

MAR 2: Read *Gertz v. Welch*. Finish Libel/Review.

MAR. 7: 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. 9: Read “The Right to Privacy” and *Griswold v. Connecticut*

MAR 14: Read Trager pp. 233-257 (Chapter 6: Protecting Privacy from the beginning of the chapter through “Intrusions/Defenses” and up to “Private Facts”)

MAR 16: Read Trager pp. 257-275 (Chapter 6: Protecting Privacy from “Private Facts” through Chapter Summary (you do not need to read “Cases for Study”))

MARCH 21 and 23: No CLASS. SPRING BREAK

MAR 28: CASE Arguments Due/Court Arguments

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

APRIL 4: Montana Meeting/Document Law

APRIL 6: Read Trager pp. 318-339 (Chapter 7: Gathering Information from “Obstacles to Gathering Government Information” through the end of the chapter).

APRIL 11: Read *Branzburg v. Hayes* posted on Moodle under Gathering Information.

APRIL 13: Read *Tracy v. Missoula* and “Montana Media Rights” posted on Moodle under Gathering Information.

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 18: 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 20: 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 25: 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)

APRIL 27: Read Creative Commons Material on Moodle

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 electronic media affect journalism?

MAY 2: Read Trager pp. 397-416 (Chapter 9: Electronic Media Regulations from the beginning through “Public Broadcasting”)

MAY 4: 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 Wednesday, May 11.**