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### JRNL 567.01: Press and Broadcast Law

Lee M. Banville

*University of Montana - Missoula*, [lee.banville@umontana.edu](mailto:lee.banville@umontana.edu)

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# JRNL 567: Press/Broadcast Law

Syllabus – Spring 2022

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. **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. Credit/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, 11:00 a.m. – 12:30 p.m., in DAH 101.

## 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](mailto:lee.banville@umontana.edu).

## Required Textbook

*The Law of Journalism and Mass Communication*, 6<sup>th</sup> 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 6<sup>th</sup> EDITION.**

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

## Course Grading

Participation	25%
Conversation Lead	10%
Legal Theory Analysis	15%
Midterm Essays	20%
Final Paper	30%

## Case Discussions

Throughout the semester we will be diving more deeply into a specific case or cases connected to journalism and/or the First Amendment. During the course of the semester, you will sign up to lead one of these discussion sections. Discussion leaders will be expected to guide the conversation about the case, asking other students questions about the background, the legal arguments and the approaches of the judges or justices. Students will be graded on the depth of their knowledge and ability to engage other students on the topics in the case.

## COVID

- Mask use is required within the classroom or laboratory.
- If you feel sick and/or are exhibiting COVID symptoms, please don't come to class and contact the Curry Health Center at (406) 243-4330.
- If you are required to isolate or quarantine, you will receive support in the class to ensure continued academic progress. (Add specific information about how you, as the instructor, will continue providing course materials to students in quarantine or isolation.)
- (If instructors are comfortable sharing or including this) UM recommends students get the COVID vaccine and booster. Please direct your questions or concerns about vaccines to the Curry Health Center.
- Drinking liquids and eating food is discouraged within the classroom.

## Remote Participation and Zoom

This class is designed to be taken in person with mask requirements. You should choose a seat you will sit in throughout the semester and try to have 3-6 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 you must attend remotely, please contact me

ahead of class time. I will 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.

### **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. Even in the case of prior notification of an absence, the student will provide documentation to have the absence excused. Documented medical or family emergencies will also receive consideration.

Students who miss more than two (2) classes over the semester without documentation/and excused absence will lose 10 points off their final grade. Those who miss more than five (5) will automatically fail the course.

**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 18: For Monday: Listen to the Political Thicket episode of “More Perfect” podcast (<https://www.wnycstudios.org/story/the-political-thicket> and the First Amendment episode of the Constitutional podcast from the Washington Post <https://soundcloud.com/washington-post/episode-16-the-first-amendment> )

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 20: 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 25: Read Trager, pp. 51-88 (plus Moodle section on Legal Theories) (All of Chapter 2: The First Amendment)

For JAN 27: *Schenck v. United States*, 249 U.S. 47 (1919) and *Abrams v. United States*, 250 U.S. 616 (1919) and Brandeis Concurring Opinion in *Whitney v. California* 274 U.S. 357 (1927) - Ali

### 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 1: 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 3: Read *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942) and *Brandenburg v. Ohio*, 395 U.S. 444 (1969) -- Kiki

For FEB 8: Read *Near v. Minnesota* and *New York Times v. United States*. **Legal Theories Paper DUE.**

For FEB 10: *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992) and *Virginia v. Black*, 538 U.S. 343 (2003) (Only O’Connor decision and Thomas dissent)

For FEB 15: Read Trager, pp. 119-143 (Chapter 3: Speech Distinctions from School Speech to the end of the chapter)

For FEB 17: Read *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) and *Hazelwood v. Kuhlmeier*, 484 U.S. 260 (1988) – Anne Lewis

For FEB 22: *Morse v. Frederick*, 551 U.S. 393 (2007) and *Mahanoy Area School District v. B.L.* (2021)

#### **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. 24: Read Trager 145-189 (All of Chapter 4: Libel and Emotional Distress)

MARCH 1: *New York Times v. Sullivan*, 376 U.S. 254 (1964) and 17-1542 *McKee v. Cosby* (02/19/2019)

MARCH 3: Who is a public figure? *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967) and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974)

MARCH 8: Read Trager pp. 193-229 (All of Chapter 5: Libel)

MARCH 10: Read *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990) *Ollman v. Evans* 750 F.2d 970 (1984) **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?

MARCH 12: Read “The Right to Privacy” and excerpt of *Griswold v. Connecticut*, 381 U.S. 479 (1965)

MARCH 17: Read Trager pp. 233-274 (Chapter 6: Protecting Privacy from beginning through Chapter Summary (you do not need to read “Cases for Study”))

MARCH 19: Read *Krakauer v. State of Montana* and *Time, Inc. v. Hill*, 385 U.S. 374 (1967)

MARCH 21-25: SPRING BREAK

#### **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?

MARCH 29: Read Trager pp. 287-339 (All of Chapter 7: Gathering Information)

MARCH 31: Read *Branzburg v. Hayes*, 408 U.S. 665 (1972)

APRIL 5: Montana Meeting/Document Law

APRIL 7: Read Draft UM Open Meeting Policy and *Associated Press v. Crofts* (2004).

APRIL 12: *AP v. Usher* appeal to the Montana Supreme Court

### **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 14: 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 19: Read *Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976) and excerpt of *Richmond Newspapers, Inc. v. Virginia* :: 448 U.S. 555 (1980)

### **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 21: 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

### **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 26: 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 28 Read *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367 (1969)

MAY 3: Buffer day to catch up on any unfinished business.

MAY 5: TBD

Final Research paper must be emailed to me no later than 3:10 p.m. on Monday, May 9, 2022.

You will also meet with me separately on a research project connected to a specific legal case that is moving through the courts (or legislature).

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.

Cases you can consider

- ***Jawort v. Montana Daily Gazette*** – Libel case filed by transgender lobbyist
- ***Project Veritas v. New York Times Company*** – prior restraint case against the New York Times -- Kiki
- ***Houston Community College System v. Wilson***– First Amendment free speech case
- ***Shurtleff v. Boston*** – flag display case
- ***Austin v. Reagan National Advertising*** – Town of Gilbert case
- ***Trump v. Twitter*** - Former president’s case based on being banned.
- ***AMERICANS FOR PROSPERITY FOUNDATION V. BONA*** – Donors to nonprofits Reverse FOIA case
- ***BONGO PRODUCTIONS LLC ET AL V. LAWRENCE ET*** – Required warning about possible trans bathroom use
- ***AP v. Usher*** – Open Meetings case in Montana – Keely Larson
- ***Villarreal, AKA Crazy Cat Lady v. Laredo*** – immunity for journalists publishing government information
- ***Animal Legal Defense Fund v. Reynolds*** – Iowa ag gag case
- ***Held v. Montana*** (children’s climate change case)
- **hiQ v. LinkedIn** – 9<sup>th</sup> Circuit case on scraping data

In each case, I will meet with the student (or students) signed up for a case two times over the semester and it will culminate in a paper that explore the potential ramifications on journalism/public discourse.



The 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 (this meeting is optional).

Paper will be about 15 pages. Details to follow.