

Mass Media and the First Amendment SYLLABUS

Professor Akilah N. Folami

Fall 2013

REQUIRED TEXTS

Casebook: David Kohler and Lee Levine, *Media and the Law* (2009).

OFFICE HOURS Wednesday 10:00 to 11:30 p.m.

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COURSE OVERVIEW

This is a lecture and discussion course designed to acquaint you with some of the legal restraints placed primarily upon the press, as traditionally understood, and other communicative content. We will examine the perspectives of mass communicators and their audiences with the main purpose of this class being to examine the historical development of the First Amendment as it applies to most of the various communications mediums. During the course of the semester, you will be introduced to the rights guaranteed to such mediums and the limitations placed on them by common law and statute. This course is part history (it traces legal questions from their genesis), and part legal. We will discuss some major issues confronting the media more broadly and the press more specifically as it relates to the First Amendment, and we will look at a number of related cases dealing with those issues.

Please note that this course is one of a cluster of intellectual property courses offered here at the law school, including Copyright, Cyberspace Law Seminar, Entertainment Law, a variety of First Amendment seminars, Patents and Trademark Law, Sports Law, and Telecommunications Law -- among others. (None are a prerequisite for this class.) Please also note that although for some of you, our discussion of the First Amendment will be a review from Constitutional Law, you need not have studied the First Amendment before to understand the readings and class discussions, much of which is unique to this course. For example, discerning where and how 19th Century notions of "free speech" fit in an analog and digital world of over-the-air and cable "broadcasting," is unique to today's media landscape.

Through lectures, class discussions, and reading assignments, you will be able (1) to analyze and discuss orally and in writing First Amendment issues past and present with clarity and accuracy; and (2) to recognize and discuss in writing legal and ethical responsibilities facing the media and the legal precedents that dictate them.

CLASS ATTENDANCE, TARDINESS, AND PARTICIPATION

Attendance: This is not a lecture class, but a class based on discussion and the exchange of ideas. Accordingly, students are expected to attend every class, and to be on time for every class. Each class will begin promptly.

The rules of the New York State Court of Appeals and the American Bar Association require law students to be in good and regular attendance in the courses for which they are registered. To comply with these rules, you must attend at least 85% of the regularly-scheduled classes in this course. Thus, you may not have more than four (2) absences of this class.

I will provide sign-in sheets for each regularly-scheduled class, which shall be the dispositive evidence regarding your absence from a given class. Each student is responsible for signing in. Falsification of sign-in sheets is a violation of the Code of Academic Conduct.

If you exceed the permitted absences by failing to sign in, you may be administratively withdrawn from the course. No prior notice may be given, and you may receive notification from the *Office of Academic Records* indicating the withdrawal. Any such withdrawal may have serious ramifications for your financial aid, academic standing, and date of graduation. If you are excessively absent from several classes, you may face additional sanctions, including but not limited to denial of certification of good and regular attendance to the New York State Board of Law Examiners, or other state bar examiners.

You are responsible for keeping track of your own absences and for notifying the Office of Student Affairs, as soon as possible, if you believe you must be absent from class for more than the permitted number of classes. Accommodations may be made for students who must be absent for religious reasons and in cases of truly compelling hardship. Any request for an exception must be accompanied with appropriate documentation.

Tardiness: I will circulate the sign-in sheet at the beginning of each class. If you are not present at that time, you will be marked absent. If you are unreasonably late, please see me at the end of class and before I leave the classroom to ask me to change your absence mark to a tardy mark. For purposes of this policy, two tardies may affect your class participation grade and/or may be counted as one absence.

Class Participation and Discussion Leaders: Again, this is not a lecture class. Although I expect to deliver some lectures, the bulk of the class will consist of discussion and active participation on your part. I will also call on students randomly. Having students who are prepared will make for a much more interesting class for all of the students. Students who are unprepared more than once will have this counted against their final grade.

In addition, while each student is to read and be prepared for class, two students will serve as discussion leaders for designated classes, and several other classmates will have prepared a five (5) page written/reflection paper reflecting on the reading assignment assigned for a particular class. Notwithstanding the discussion leaders or those that have signed up to submit response papers for a particular class, all students are expected to have read and to be prepared for each class.

With regard to discussion leader selection, you will need to sign up on the sign in sheets posted on TWEN for the reading assignment upon which you would like to serve as discussion leader. Selection is on a first come first basis.

For more detailed information regarding the written assignment and class participation, please read the memo “Guidelines for Writing Assignments and Class Participation” that I have prepared for this class and uploaded on TWEN in the Course Materials link.

Please NOTE: Students who have taken or are currently taking Telecommunications Law with me will not be permitted to serve as discussion leaders for the reading assignments covering that material, which is primarily the last four (4) reading assignments.

GRADING POLICY

Students’ final grades will be based on the grade they receive from their discussion leader presentations and materials (individually and as a group), their current events materials, and the cumulative grades received on their four (4) different five (5) page written reflection papers (fulfilling the Writing II requirement), which will be weighted equally. Subject to my discretion, grades may be adjusted up to account for consistent and exceptional class participation, or down to account for repeated absences or for failure to be properly prepared for class or engaged in class discussion.

For more detailed information on the written assignments and class participation, please read the memo “Guidelines for Writing Assignments and Class Participation” that I have prepared for this class.

Response Papers: Typewritten *response* paper(s) are **due by noon on the Friday before the designated Monday class** in which the selected reading assignment was assigned on the class syllabus. For Wednesday classes, typewritten *response* paper(s) are **due by noon on the Monday before the designated Wednesday class** in which the selected reading assignment was assigned on the class syllabus. You will need to sign up on the sign sheets posted on TWEN for the reading assignment upon which you would like to base your response paper. Selection is on a first come first basis.

For more detailed information, please read the memo “Guidelines for Writing Assignments and Class Participation” and the attached Chart that I have prepared for this class. Without prior approval, no late papers will be accepted for any of the assignments.

Please NOTE: Students who have taken or are currently taking Telecommunications Law with me will not be permitted to write their response papers on the reading assignments covering that material, which is primarily the last four (4) reading assignments.

ASSIGNMENTS:

Depending on the topic, we will read and discuss 25 to 40 pages each class session. **I reserve the right to change and adjust this outline and the assignments based on the pace and progress of the class, the topics of particular interest to the class, and otherwise, as I deem necessary.** Any changes will be announced in class, posted on TWEN, and/or emailed to you via the email address you have provided on TWEN.

First Week Reading Assignment

- (1) Introductory Reading:
 - a. Defining Media and the Role of the Media Lawyer. pgs. 1-30, 47-52, 54-58 **(8/20)**
 - b. The First Amendment Generally and the Theoretical Underpinnings of the Freedom of Speech concept. pgs. 59-82, 30-32, 82-93 **(8/27)**
 - c. Basic Models for Protecting Speech. pgs. 93-121, 125-130 **(9/3)**
 - i. **NOTE:** After reading *R.A.V. v. City of Paul* case on page 125, please read the excerpts of two recent Supreme Court cases: *United States v. Stevens*, and *Brown v. Entertainment Merchant's Association*, which are posted on TWEN in Course Materials.
- (2) Access to Gathering Information-Newsgathering.
 - a. Indirect Restraint. pgs. 529-546 **(9/10)**
 - i. More Access Issues. pgs. 609-619, 628-35, 667-72 **(9/10)**
 - b. Disseminating Information
 - i. Prior Restraint. pgs. 135-160 **(9/17)**
 1. Enforcement. pgs. 162-165 **(9/17)**
 - ii. Defamation: Criminal Liability. pgs. 169-172 **(9/17)**
 - iii. Defamation. pgs. 195-232 **(9/24)**

1. Defamation cont'd. pgs. 232-265 **(10/1)**
 2. Defamation cont'd. pgs. 265-293 **(10/8)**
 3. Defamation cont'd. pgs. 293-308 **(10/15)**
- iv. Privacy. pgs. 329-343 **(10/15)**
1. Privacy cont'd. pgs. 343-362 **(10/22)**
 - a. **NOTE:** After reading the *Gannett v. Anderson* case on page 362, please read the excerpt of two cases: *Jews for Jesus v. Rapp*, and *Anderson v. Gannett*, which are posted on TWEN in Course Materials.
- (3) Intellectual Property and the First Amendment. pgs. 411-428 **(10/22)**
- (4) Regulating Commercial Speech and Advertising
- a. Advertising, including Children's Advertising.

Posted on TWEN in Course Materials: Carter et al., The First Amendment and the Fourth Estate: The Law of Mass Media, 9th ed. (pgs. 413-425, 495-501) **(10/29)**
 - b. Commercial Speech. pgs. 673-693. **(10/29)**
- (5) Other Electronic Media and the First Amendment
- a. Broadcast (television and radio). pgs. 727-751 **(11/5)**
 - i. **NOTE:** After reading *FCC v. League of Women Voters* case on page 746, please read *Fox Television v. FCC*, which is posted on TWEN in Course Materials.
 - b. Cable. pgs. 757-770 **(11/5)**
 - c. Internet. pgs. 770-779 **(11/12)**

Posted on TWEN in Course Materials: Carter et al., The First Amendment and the Fourth Estate: The Law of Mass Media, 9th ed. (pgs. 1072-1094) **(11/12)**
 - d. Internet.

Posted on TWEN in Course Materials: Carter et al., The First Amendment and the Fourth Estate: The Law of Mass Media, 9th ed. (pgs. 1094-1115)
(11/19)

- TOPIC
- Your *reflection* paper(s) should analyze the assigned reading assignment(s) reflected on the syllabus. Feel free to incorporate material from outside sources that relate to the material assigned.
- DUE DATES
- Typewritten *reflection* paper(s) are due by noon on the Friday before the designated class in which the selected reading assignment was assigned on the class syllabus. Please submit your reflection papers on TWEN in the Assignment Drop Box link.
- FORMAT
- ***For Reflection Papers:*** To the extent applicable, please use endnotes and not footnotes. Bluebook format is helpful and encouraged but not required. Reflection papers are not required to cite external material but to the extent that they do, please use endnotes and not footnotes.
 - Margins may not be more than one-inch all around.
 - Use a twelve (12) point Times New Roman font.
 - Number all pages, excluding first page of the paper.
 - The first paragraph should contain a thesis paragraph that discloses your take on the reading assignment. NOTE: Please note that I am not looking solely for a summary or recap on the assigned reading but more of an analysis that includes your thoughts on the material covered.
- LENGTH
- Each of the four (4) *reflection* papers should be five (5) pages (not inclusive of endnotes).

Basis of Grade for the Reflection/Response Papers

The grade of the reflection paper will be based on its cogency, its coverage of the assigned readings, the level of reflection and analysis, which may include incorporation of other materials, and of course organization, structure, and its conformity to general

rules of grammar. In addition, incorporating relevant analysis and reflection will be rewarded higher grades than merely regurgitating what was assigned in the reading.

For further detail, please refer to the attached memorandum on “*Guidelines for Writing Assignments and Class Participation.*”