Mass Media and the First Amendment
SYLLABUS

Professor Akilah N. Folami Fall 2018

REQUIRED TEXTS

Casebook: David Kohler and Lee Levine, *Media and the Law* (2d Ed.).

OFFICE HOURS Via in person in my office in room 104(a) in the library:
(by scheduled appointment).
Via online livestream on Zoom:
(by scheduled appointment).
Via email (Akilah.Folami@Hofstra.edu):
(Emails answered generally on or before Friday).
Via Phone: (516) 463-5867.

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 transmitted via the Internet through Twitter, Instagram, Facebook, etc. We will examine the perspectives of mass communicators and their audiences, which can manifest in a nuanced communication style, content, and method due to differences in race, culture, gender, and ethnicity. One of the main purposes of this class is to examine First Amendment speech and press clause jurisprudence beginning with its historical development to current issues stemming from these varied communications mediums and methodologies. During this course, you will be introduced to the rights guaranteed to such mediums, the limitations placed on them, and the policy arguments that underlie arguments for their expansion or continued limitation. This course is part history (it traces legal questions from their genesis), and part legal. We will discuss some major legal issues confronting the mass media more broadly and the traditional press, such as issues related to defamation, privacy, IIED, intellectual property rights, etc.

ATTENDANCE, TARDINESS, CLASS PARTICIPATION, AND ASSIGNMENTS

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 two (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.

NOTE: <u>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</u>.

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 and must otherwise be satisfactory to OSA's criteria for excusing absences.

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:

<u>With regard to general class participation:</u> Again, this is **<u>not</u>** 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 call on students randomly; in addition, several

students will be assigned in advance as "students on call" for each class. 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 (without advance notice via email) will have this counted against their final grade.

While each student is to read and be prepared for class, as the class progresses two students will be assigned to serve as Professors for a Day discussion leaders for designated classes in addition to the formal "students on call." Again, notwithstanding the discussion leaders and the students on call, all students are expected to have read and to be prepared for each class.

> **NOTE:** The questions in the casebook are meant to walk you through the readings. Reading closely enough should enable you to give at least a tentative answer to them. These questions may typically serve as a starting point for class discussion by me or the Professors for a Day discussion leaders.

With regard to Professors for a Day Discussion Leader, Students will present in groups of two (or three)—I will select partners randomly and assign them to present on particular reading assignments. **You will need to submit your discussion material to me on TWEN by 8 am the Saturday before the class in which you were assigned to serve as Discussion Leader**.

Writing Assignments:

Students will need write three (3) five (5) page persuasive papers each over the course of the semester, which fulfills the Writing II requirement. The weighted value is 20%, 30%, 30%, the remining 20% is allotted to class participation, which is described above. **You will need to submit your persuasive papers to me on TWEN by 8 am the Saturday before the class in which you were assigned to submit a persuasive paper.** Unexcused papers may not be accepted.

> **NOTE: To the extent an unexcused late paper is accepted, which shall be at my sole discretion, it will be subject to ½ a grade deduction for each 12hr of lateness and, therefore, deducted a full grade for a 24 hr lateness, and a full grade and a ½ for a 36 hr lateness, etc.**

(1) Persuasive Papers: Satisfactory completion of all three (3) persuasive papers combined (B or above) will entitle you to receiving Writing II credit. The due dates for each paper will be assigned and posted on TWEN.

GRADING POLICY

Final Class Grade: Your grade will be based upon the score that you earn on your persuasive papers and upon your classroom participation (which incorporates your grade for the Professors for a Day presentations and accompanying materials and your "student

on call" performance). 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 failure to be properly prepared or engaged in class discussion.

ASSIGNMENTS

Depending on the topic, we will read and discuss 30 to 45 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.

(1) Introductory Reading:
   a. Defining the Press and Media. pgs. 3-25 **(8/21)**
   b. The Legal Significance of Such Definitions-Press v. Speech Clause. pgs. 26-48 **(8/21)**

(2) First Amendment Speech Protection

   a. Foundational Theories Underpinning Protection. pgs. 61-83 **(8/28)**

      i. NOTE: In Class Problem.

   b. Analytical Approach to Protection. pgs. 92-118 **(9/4)**

   c. Categorical Approach to Protection. pgs. 118-138 **(9/4) [NO CLASS SCHEDULED FOR 9/11 AND 9/18]**

(3) When the Press Speaks—Foundational Protections and Beyond

   a. Prior Restraint-History and Application Examples, pgs. 141-162 **(9/25)**, 162-179 **(9/25)**

   b. Indirect Restraint—Newsgathering. pgs. 813-838 **(10/2)**, 914-935 **(10/2)**; Access to Information. pgs. 947-966 **(10/9)**, 989-1012 **(10/9)**

   c. Consequences After Publication and Dissemination

      i. Defamation. pgs. 225-265 **(10/16)**, 265-309 **(10/23)**, 309-339 **(10/30)**

      ii. Privacy. pgs. 439-448 **(10/30)**, 448-464 **(11/6)**, 475-492 **(11/6)**, 492-506 **(11/6)**

      iii. Intentional Infliction of Emotional Distress. pgs. 563-599 **(11/13)**

d. Intellectual Property Rights. pgs 601-622 **(11/20)**, 622-639 **(11/20)**

(4) First Amendment and Media—Moving Beyond the Traditional Press

a. Broadcast. pgs. 1031-1050 **(11/27)**, 1050-1075 **(11/27)**
b. Cable. pgs. 1076-1095 **(12/4)**, Internet, 1096-1113 **(12/4)**