

Journ 445

Spring 2020

Journalism and Law

Instructor: Karen List
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T/Th 1-2:15 (3 credits)
Office Hours: 11:15-1 T/Th
By Appointment

Course Page: journalismandlaw.wordpress.com/

All you need is love.
--the Beatles

All you need is justice. (Justice was the 2018 Miriam Webster Word of the Year.)
--Abbie Hoffman

Supreme Court decisions, in addition to resolving disputes, also tell stories. Once issued, they cast a shadow forward.
--Court Reporter Tony Mauro

We can't just take our freedoms for granted. Defending the First Amendment is the most important thing we can do for the health of journalism moving forward.
--Nicole Carroll, USA Today Editor

COURSE DESCRIPTION

This class is a continuing conversation on journalism and the laws that apply to it. For the next 14 weeks, we have the opportunity to work with one another on topics of great significance not only to journalists, but to all citizens in our democratic society. These topics are important because the law impacts the way journalists are able to do their jobs and what information they are able to report to their audiences—or if they are able to report at all. We'll focus on areas such as sedition, prior restraint, libel, privacy, protecting sources, free press/fair trial, access and copyright. We'll study the principles underlying journalism law in a democratic society and the relevant court cases with emphasis on precedents.

LEARNING GOALS

- Learn and be able to apply legal concepts related to journalism in the areas noted above. This requires knowing journalism law and how to use it to answer questions in a variety of situations.

- Learn to identify these issues in the media and in your own lives. These topics are of direct relevance to you—as a working journalist, as a consumer of the news and as a citizen in a democracy.

EXPECTATIONS

These are my expectations of you.

- Have a good working knowledge of the principles of journalism and of current events. You should read a major news source—such as the **New York Times**, the **Washington Post**, **BBC**, **NPR**, **CNN**—daily.
- **Attend class.** Our goal is to develop a learning community. Please let me know if you can't be in class, and make arrangements with a classmate to catch up on what you missed. If you miss more than two weeks of class, you may be asked to withdraw.
- **No laptops or phones in class** so plan accordingly. Studies show that you learn more when you don't use a laptop in class—and the students around you learn more too.
- **Read assigned articles before class.** Print them, mark them up and bring them to class for reference—or take notes and bring those.
- **Participate in a meaningful way in discussion.** Spend class time focusing on the day's topic. If discussion is not informed and vibrant, we'll start quizzes on the readings.
- **Be prepared for weekly in-class group work—three people per group.** You may work with the same classmates each week if you like or move around the room. You'll earn points for reflecting on questions related to the week's topic. You must be in class to do this work, **which cannot be made up.**
- **Check your UMass e-mail regularly.** In addition to talking in class and in person, I'll communicate with you through your UMass e-mail account. I'll send commentary on the class itself, written instructions for assignments, current events articles and other new materials. You can reach me anytime on my UMass e-mail: klist@journ.umass.edu. You also can stay current on the course page: journalismandlaw.wordpress.com/

You should have expectations of me too, which might include that I am:

- Prepared for every class and that I do my best to help you make sense of the material, all of which will be interesting and relevant;
- Encouraging you to do your best work and evaluating that work fairly, using the highest standards;

- Available to you in the office and by email to discuss Journalism & Law specifically, the Journalism Department generally or anything else of concern to you.

FORMAT

This is a lecture/discussion course with as much active learning as possible. During class, expect to take lots of notes. I'll provide you with outlines on each major topic, which can be used in your note-taking and which are posted on the course page.

We'll reflect on and discuss journalism law as it applies to issues of the day--both individually and in groups.

This class is a continuing conversation, in which we have the opportunity to give each other our undivided attention for 75 minutes twice a week. What happens in this classroom cannot be replicated. Mutual respect is essential.

TEXTS

Paul Siegel, **Communication Law in America** (4th ed.) Lectures and discussion drive this course. The text should be read to supplement, explain, expand and provide context for lecture notes. Click here to access the e-text:

<https://ebookcentral.proquest.com/lib/uma/detail.action?docID=1660825>

Assigned readings also will include recent articles, which will be the basis for much of our discussion. Some are listed on the syllabus. Others will be distributed in class or emailed. Assigned articles are linked on the course page, and emails containing current events also are posted there.

Other suggestions for following legal issues include reading **The New York Times** (www.nytimes.com), which offers the best Supreme Court coverage, and accessing web sites such as the Reporters Committee on Freedom of the Press (www.rcfp.org); and the Supreme Court (www.supremecourt.gov).

GRADES

Three non-cumulative tests will cover readings, lectures and class discussions. The tests will consist largely of short answer and hypothetical questions that require you to know the law and apply it. Each test is worth 100 points and counts 25% toward the final grade, with consistent improvement taken into consideration.

Tests are evaluated based on how well you know the law, how well you can identify legal issues in questions/current events and how effectively you can then apply what you know to these situations. The tests are long and challenging, but the curve is generous. For example, 85/100 is

often an A, 75, a B, 65, a C, etc. If you miss an exam, you must email me in advance to schedule a make up.

Class attendance, participation and in-class work are worth 25% of the final grade. Clearly, you must be in class to get this credit.

QUESTIONS? _____

Never hesitate to talk with me about questions you may have about any aspect of this class.

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Journalism & Law Calendar

Week I (Jan. 21)

Introduction to the Judicial Process and the Supreme Court

Readings

Siegel, 1

- Adam Liptak, “How Conservatives Weaponized the First Amendment,” New York Times, June 30, 2018.
- David Leonhardt, “The Supreme Court is Coming Apart,” New York Times, Sept. 23, 2018
- Adam Liptak, “Confirming Kavanaugh: A Triumph for Conservatives, but a Blow to the Court’s Image,” New York Times, Oct. 6, 2018
- Michael Tomasky, “The Court’s Legitimacy Crisis,” New York Times, Oct. 6, 2018
- Yourish, Pecanha and Griggs, “Kavanaugh is One of Only 114 to Join the Exclusive Club of Justices: Here’s How He Fits In,” New York Times, Oct. 8, 2018
- Adam Liptak, “As Supreme Court Tips Right, Chief Justice Steers to Center,” New York Times, Dec. 24, 2018

In Class: Supreme Court, Trump and the First Amendment

Week 2 (Jan. 28)

Sedition: Clear & Present Danger

Readings

Siegel, 2, 29-49

- Karen List, “Conscience of Juror Offers Guide to Understanding Great Western MA Sedition Trial,” Daily Hampshire Gazette, November 2009 (See List PDF)
- Geoffrey Stone, “The Lawsuit Against Black Lives Matter and the Central Meaning of the First Amendment,” Huffington Post, July 10, 2017
- Hunter Styles, “Is that a threat?” Valley Advocate, Jan. 15, 201

In Class: Judicial Terms Quiz
Western MA Sedition Trial and “True Threats”

Week 3 (Feb. 4)

Prior Restraint

Readings

Siegel, 2, 49-78

- Clyde Haberman, “Amid Leaks, Recalling an Epic Battle Over Press Freedom in Nixon Era,” New York Times, March 26, 2017
- Dana Priest, “Did the Pentagon Papers Matter?” Columbia Journalism Review, Spring 2016
- Scott Shane, “Leaks: A Uniquely American Way of Annoying the Authorities,” New York Times, May 25, 2017
- Margaret Sullivan, “Of course Washington is plagued by leaks. That’s a good thing,” Washington Post, June 4, 2017
- Margaret Sullivan, “How the new Assange indictment crosses a bright red line for journalists,” Washington Post, May 24, 2018

In Class: Journalists and Whistleblowers

Week 4 (Feb. 11, 20)

Prior Restraint Through Contract Law, Time/Place/Manner Regulation, Symbolic Speech and in High School/College

Readings

- Geoffrey Stone, “Richard Spencer’s Right to Speak at Auburn,” New York Times, April 18, 2017
- Jill Lepore, “Flip-Flopping on Free Speech,” The New Yorker, Oct. 9, 2017

In Class: TPM & Symbolic Speech: The Illinois Nazis and Colin Kaepernick
What is Free Speech?

Week 5 (Feb. 25)

Test #1

Week 6 (March 3)

Libel

Readings

Siegel, 3

- New York Times Editorial Board, “Donald Trump v. a Free Press,” New York Times, Oct. 13, 2016
- Adam Liptak, “Can Trump Change Libel Laws,” New York Times, March 31, 2017
- David McCraw, “Suing the Times? Read This First,” New York Times, Nov. 30, 2018

In Class: Dissect a Libel Case

Week 7 (March 10)

Libel Continued

Readings

Siegel, 4, 462-464

- Karen List, “Reckless Disregard for the Truth” (See List PDF)
- Jonathan Peters, “Can I say that? A legal primer for journalists,” Columbia Journalism Review, Nov. 9, 2015
- Emily Bazelon, “Stop the Presses,” New York Times Magazine, Nov. 27, 2016
- Jonathan Peters, “Libel law is having a moment,” Columbia Journalism Review, Oct. 23, 2018

In Class: Recent Libel Cases
Outrageous Opinions

Week 8 (March 24)

Access

Readings

Siegel, 7

- Jake Lucas, “The Law That Lets Sunshine In,” New York Times, July 22, 2018

- Kelly Hinchcliffe, “Top 10 tips for getting public records,” Poynter, Sept. 28, 2015
- Jonathan Peters, “Just launched: A tool that will make life easier for FOIA reporters,” Columbia Journalism Review, Oct. 3, 2016
- FOIA Wiki
- Stephen Stirling and S. P. Sullivan, “Death & Dysfunction: How N.J. fails the dead, betrays the living and is a national disgrace,” nj.com, Dec. 14, 2017
- S.P. Sullivan, “Force Report,” nj.com, 2018

In Class: How to Use FOIA/Shield Laws

Week 9 (March 31)

Copyright

Readings

Siegel, 6 (209-249), 464-470

- Jonathan Peters, “Can I use that? A legal primer for journalists,” Columbia Journalism Review, Oct. 1, 2015

In Class: Marvin Gaye v. Robin Thicke

Test #2

Week 10 (April 2)

Privacy

Readings

Siegel, 5, 470-472

- Sydney Ember, “Gawker Ends a Dispute that Led to Bankruptcy,” New York Times, Nov. 3, 2016

In Class: A Hulk Hogan Effect?

Week 11

Privacy Continued (April 7)

Readings

- Jonathan Peters, “Can I do that? A legal primer for journalists,” *Columbia Journalism Review*, Nov. 5, 2015
- Vicki Krueger, “How to Protect Yourself from Legal Risks While Reporting,” *Poynter*, Oct. 4, 2016.
- Matt Apuzzo, “For an Investigative Reporter, Privacy is Paramount,” *New York Times*, Dec. 27, 2018

In Class: What Reporters Can and Can’t Do

Week 12 (April 14)

Courts/Protection of Sources

Readings

Siegel, 9

- Karen List, “Reporters Must Protect Sources,” *Daily Hampshire Gazette*, July 7, 2005 (See List PDF)
- “News Wars,” *Frontline*, PBS, 2006: Part I, Sec. 4, 5, 6 and 7; Part II, Sec. 15
- Julie Bosman, “Journalist Who Told Laquan McDonald’s Story Faces Fight Over Sources,” *New York Times*, Nov. 26, 2017
- Jonathan Peters, “Shield Laws and journalist’s privilege: The basics every reporter should know,” *Columbia Journalism Review*, Aug. 22, 2016

In Class: Who’s the Star of “News Wars”?

Week 13 (April 21)

Courts/Free Press-Fair Trial/Gag Orders

Readings

Siegel, 8

- Karen List, “Why Courts Are Still Leary of the Media,” *Daily Hampshire Gazette*, Jan. 1, 2011 (See List PDF)

- Stephanie Clifford, “TV Habits? Medical History? Tests for Jury Duty Get Personal,” New York Times, Aug. 21, 2014
- Katherine Seelye, “U.S. Appeals Court Rejects Fifth Attempt to Move Boston Marathon Bombing Trial,” New York Times, March 1, 2015
- Milton Valencia, “The focus now isn’t on Dzhokhar Tsarnaev. It’s on the judge, the attorneys, and the jurors,” Boston Globe, Dec. 7, 2019
- Ronald Wright, “Yes, Jury Selection Is as Racist as You Think. Now We Have Proof,” New York Times, Dec. 4, 2018.
- Damien Cave, “Do Gag Orders Protect Rights or Curtail Them?” New York Times, Dec. 15, 2018

In Class: Could You Be A Juror?

Week 14 (April 29)

Exam #3

