<u>**HIST 370--102 — Legal Issues in Media History**</u>

Prerequisites: ENGL 102 with a grade of C or higher, and a course fulfilling the History and Humanities GER 200 level course with a grade of C or higher.

Adjunct Professor: Richard Cohen

Richard.cohen@footlocker.com

Time: Thursday 6:00-8:50pm

Lecture Location: CULM 111

Office Hours: 4:30-5:30 Thursdays (Cullimore, Room 324)

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Course Description:

This course focuses on the development and impact of media law and policy in the United States. This course analyzes the values and ideas, as well as political and cultural contexts that have guided continuities and transformation of media law and policy. Topics include the interplay between free speech, indecency, obscenity, copyright, privacy and defamation in regulating traditional and new media from the development of the printing press, photography, advertising, music, broadcasting to social media and AI.

We are living in an age of media upheaval. Parents are afraid of the harm of big social media platforms. Politicians and mainstream media channels accuse each other of misinformation, disinformation, propaganda, hate speech and undermining democracy. People distrust both big government and big tech and worry about their privacy, freedom of speech and ownership of posted content. Media is called the "Enemy of the People."

This class will explore the interplay between media and legal history with an eye to potential lessons for navigating through today's media crisis.

Learning Objectives: By the end of the course, students will be able to identify, examine, debate, and present on various legal issues in media history.

Required Materials:

As indicated in this syllabus, Supplementary Readings on Canvass and Class Handouts.

Grading:

1. **Final Exam (25%). Thursday, May 15th at 6pm. There will be NO MAKE UP FINAL EXAMS, except in rare situations where the student has a legitimate reason for missing an exam, including illness, death in the family, accident, requirement to appear in court, and religious observance.**

2. **Debates and Presentation: 30% of Grade as follows:**

    a. Participate in One Debate as a Debater (15%)

    b. Present Case or Article: (15%)
       * Assignments will be determined in the first class
       ** Written Summary of Key Points of argument due and must be handed in prior to each of the two debates. Please be sure to include your name. This can be in bullet points and should be no more than a page.

3. **Class Participation (15%)**

You are expected to actively participate in each class, including through thoughtful questions and responses and completing in-class assignments. When not debating you will be expected to ask questions and assess debaters and actively discuss the readings.

4. **Surprise and other Quizzes on Readings and Class Discussions: 30% total (at least half prior to April 7)**

Assignments:

Assigned Readings:

Readings consist of legal cases and other materials. All assignments must be carefully read prior to class. Students should be prepared to be called on to discuss the facts of a case and historical context, the legal arguments, precedent, rulings and to explore impact of ruling on other factual circumstances.

Participation:

Students are expected to participate actively in all class discussions and activities, to be respectful to the instructor and their fellow classmates, to arrive to class on time, and to stay focused on what is happening in our classroom not on chatting or using digital devices. Further, participation will be assessed not just on quantity but also on quality. Quality participation demonstrates knowledge of the issues at hand, completion of that week's assignments, and a willingness to engage in critical assessment of course texts and lectures. Respect for differing opinions and engagement is critical.

I encourage students to check in with me over the course of the semester regarding their class participation performance. As a reminder, office hours are for meeting with students. You do not need to make an appointment during those times. Further, do not wait to contact me if you are falling behind or having trouble understanding course content. I am here to help!

Debates:

Students will be required to carefully prepare with research in order to support their arguments with facts, law, precedent, logic, passion and persuasive rhetoric. Carefully consider defining one's key terms and anticipate and effectively addressing key opposing arguments and critiques of one's position. Both

substance and style of the argument will be graded. Eye contact with the class will be important and simply reading or mumbling through one's argument will diminish one's grade.   Respect for the opposing side is required.

Case Presentations:

Students will be required to present cases and materials. The following is a good guide for cases https://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page. Researching and providing historical context about the case and characters is recommended as is creativity and use of visuals and audio. Make sure you includes the question presented, the key facts, the key arguments of each side, the holding or ruling and implications.

Course Policies

Attendance and Absences:

Students are expected to attend all course meetings on time unless receiving prior authorization or otherwise excused in accordance with University policies. Unexcused absences will not only adversely affect your class participation grade, but there will be topics explored in class that are hard to replicate if discussion is missed. If you miss class to attend an NJIT sponsored event, to observe a religious holiday, or due to a documented illness or otherwise those absences will be excused provided they are notified and taken in accordance with the religious observance policy (https://www.njit.edu/registrar/njit-policy-student-absences-religious-) or other University policies. Please remember to notify instructor in advance as provided in the policies or provide a doctor's note in the case of sickness, as provided in the University policies.

Classroom Conduct:

In this course, we welcome intellectual inquiry and thoughtful discussion of difficult questions; but hate speech toward one another and disrespectful comments towards one another will not be tolerated. We must come to class with an open mind, a willingness to learn, and fundamental respect for the humanity of each person in the room and the historical actors we discuss.

Office hours/student appointments:

In addition to my office hours. I am also available to meet or talk by appointment or after class if students are unable to make it to my office during office hours. Feel free to send me an email to set up a meeting if you'd like to talk or have any questions about course topics, assignments, or grades.

Academic dishonesty:

 Students are expected to obey the NJIT Academic Integrity Policy. Cheating, plagiarizing or otherwise violating the code of academic integrity not only breaks the trust between professor and student but keeps you from learning course content and improving writing and critical thinking skills. I am here to help so if you are having trouble, do not cheat, ask me for help. For the tenets of the code or for clarification of what constitutes plagiarism or cheating, please consult: https://www.njit.edu/dos/sites/njit.edu.dos/files/NJIT%20University%20Policy%20on%20Academic%20I

[ntegrity_0.pdf](). Generally speaking and among other things, it is a violation of the academic integrity code to:

- Use someone else's words or ideas without attribution

- Copy content from someone else's paper, quiz, or exam

- Pay for course assignments to be complete by someone else

Cell phones:

Students must turn off and stow their cell phones before class begins. Under no circumstances may students answer their phones, make calls, send text messages, or use their cell phone in any manner during class hours unless approved by me before class begins. Cell phones are distraction for not just the user but others in class.

Laptops and miscellaneous technology rules:

Laptops and electronic devices should be turned off and closed during class sessions unless specifically approved by the Professors. Essentially, you are in class approximately 3 hours a week. Please be present and prepared to engage in conversation and with the materials when you are here. If you would rather text or surf the internet or work on other classes, this may not be the right class.

Generative AI:

This course expects students to work without artificial intelligence (AI) assistance in order to better develop their analytical and other skills in this content area. As such, AI usage is not permitted in connection with this course unless expressly permitted by the Professor.

Class Recordings:

Class sessions may be recorded by the instructor. These recordings shall be used as an educational resource and students may not distribute or use them outside of class. Students are not allowed to capture or reproduce anyone's name, image, or voice without permission.

Eating and Drinking/Breaks:

Eating and drinking in class is subject to the instructor's approval. Breaks will be provided to enable students to get a snack, drink or use the facilities.

Students with Disabilities or Special Needs:

Students who have disabilities or special needs should contact NJIT's Student Disability Services to help procure accommodations in completing coursework. More information can be found at https://www.njit.edu/accessibility/#:~:text=If%20you%20need%20an%20accommodation,authorizing%20student%20accommodations%20is%20required

We all need a support network. If you need them, the Center for Counseling and Psychological Services (C-CAPS) s available to listen and to help. More information can be found at: https://www.njit.edu/counseling/

Class 1: January 23

 Session 1: Introduction to Legal Issues in Media History: Course Requirements, Expectations, Themes, Socratic Method, Debates, US Legal System, Precedent, Class Presentations

Homework For Class 2:

>Dunbar, Gossip in Evolutionary Perspective at Google Scholar at https://aptly.de/wp-content/uploads/2015/10/Dunbar20gossip.pdf in Review of General Psychology, Vol. 8, (pps 1-11).
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>Cases:
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>Read the narrative of the John Peter Zenger Case: https://oll.libertyfund.org/pages/1736-brief-narrative-of-the-trial-of-peter-zenger

Class 2: January 30

Topics: Early Moral, Ethical, Religious and legal antecedents to the regulation of gossip, hurtful, scandalous, and other speech. The relevance of truth or falsehood, malicious intent, reputation, honor, public order, form of media. Relevance of status as government official. Definition of Libel, Defamation, Seditious Libel and the tort of publication. Censorship and the Regulation of Printing, Licensing, and Libel in Pre-Revolutionary, Early America and its English Antecedents.

Class Discussions:

Article Presentation: 1 Dunbar, Gossip in Evolutionary Perspective at Google Scholar at https://aptly.de/wp-content/uploads/2015/10/Dunbar20gossip.pdf in Review of General Psychology, Vol. 8, (pps 1-11).

Case Presentation: 2. John Zenger Case (Consider both sides of the argument and the extent the case stands for the proposition of Truth as a Defense to the crime of Seditious Libel https://oll.libertyfund.org/pages/1736-brief-narrative-of-the-trial-of-peter-zenger

>Homework for Class 3:
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>Read Near v. Minnesota (1931) https://www.oyez.org/cases/1900-1940/283us697 or edited excerpt available in Supplementary Materials)
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>Read New York Times v. Sullivan https://supreme.justia.com/cases/federal/us/376/254/#tab-opinion-1944787

Class 3 (February 6)

Topic: The First Amendment. Prior Restraint Doctrine and the press's protection from and responsibility for libel damages

Case Presentation: 3. Near v. Minnesota

Case Presentation: 4. New York Times v. Sullivan

Debate: 1 The press should enjoy the same protection from defamation in writing about public figures and celebrities as they enjoy with public officials?

Homework for Class 4:

Foster v. Svenson, https://law.justia.com/cases/new-york/appellate-division-first-department/2015/651826-13-12998.html (2015)(Street Photography/Peeping Tom/art case)(intrusion on seclusion)

Wood v. Hustler https://law.justia.com/cases/federal/appellate-courts/F2/736/1084/91052/

Pring v. Penthouse, https://law.resource.org/pub/us/case/reporter/F2/695/695.F2d.438.81-1480.html (Wyoming beauty queen case)

Hustler v. Falwell, https://supreme.justia.com/cases/federal/us/485/46/

Class 4 (February 13)

Topic: Privacy, Public Disclosure of Private Facts, Intentional Infliction of Emotional Distress and there relationship to the First Amendment; Public interest/right to know v. privacy

Case Presentations 5. https://law.justia.com/cases/new-york/appellate-division-first-department/2015/651826-13-12998.html (Foster v. Svenson)(2015)(Street Photography/Peeping Tom case)(intrusion on seclusion)

Case Presentations 6 https://law.justia.com/cases/federal/appellate-courts/F2/736/1084/91052/ (wood v. hustler)(false light)

Case Presentation 7. https://law.resource.org/pub/us/case/reporter/F2/695/695.F2d.438.81-1480.html (Pring v. Penthouse)(Wyoming beauty queen)

Case Presentation 8. https://supreme.justia.com/cases/federal/us/485/46/ (Hustler v. Falwell)

Debate: 2 Mindful of first amendment requirements, should a state have a right to prevent the "printing, publishing or broadcasting in any instrument of mass communication the name, lawfully obtained, the victim of a sexual offense and the juvenile offender?

Debate: 3

States may pass and enforce laws that prevent and punish the publication of true, private sex scandals made against public officials?

Homework for Class 5:

Schenck v. United States, https://supreme.justia.com/cases/federal/us/249/47/

Chaplinsky v. New Hampshire; https://www.oyez.org/cases/1940-1955/315us568

Brandenburg v. Ohio https://www.oyez.org/cases/1968/492

Class 5: (Feb 20)

Topic: Exceptions to Free Speech—Definition of Fighting Words and Incitement and relationship to the First Amendment

Case Presentation 9: Schenck v. United States

Case Presentation 10: Chaplinksy

Case Presentation 11: Brandenburg v. Ohio

Debate: 4

Trump's January 6th Speech prior to the attack on the Capital should not be interpreted as protected by the first amendment under the Brandenburg test? Agree/Disagree.

Homework:

Read R.A.V. v. St. Paul https://supreme.justia.com/cases/federal/us/505/377/

Listen to the argument in Netchoice LLC, v. Paxton https://www.oyez.org/cases/2023/22-555 (about 1 hour and 20 minutes)

Class 6: February 27

Topic: Freedom of Speech: Content Discrimination—Are Hate Speech and Offensive Speech exceptions to the First Amendment? Strict Scrutiny and Rational Basis

Debate: 5. Mindful of first amendment requirements, should states be allowed to prohibit the display or publication of Nazi Flags, cross burnings, defacements of the Prophet Mohammed and other symbols where one knows or has reason to know the display "arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender?

Debate 6. Mindful of first amendment requirements, should a state be permitted to ban large social media companies from restricting posts based on the viewpoint of the individual posting the content or based on the content?

Homework for Class 7:

Miller v. California **https://www.oyez.org/cases/1971/70-73**

Read Texas Statute: https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01181H.htm (1 page)

Required for Debaters and Recommended for others: Listen to Free Speech Coalition against Paxton, https://www.oyez.org/cases/2024/23-1122 (about 2 hours)

Class 7: March 6

Topic: Exceptions to the First Amendment: Is Obscenity and pornography an exception to the First Amendment: Protection of Speech vs. Protecting Kids

Case Presentation 12: Miller v. California

Debate 7: Texas enacted H.B. 1181, a law regulating commercial entities that publish or distribute material on internet websites, including social media platforms, where more than one-third of the content is sexual material harmful to minors. The law requires these entities to implement age verification methods (such as government issued id) to limit access only to adults and to not retain the id after access is granted. It defines sexual material harmful to minors using a modified version of the Miller test for obscenity. Full text of law available here: https://capitol.texas.gov/tlodocs/88R/billtext/html/HB01181H.htm (about 1 page)

Homework for Class 8:

Jane Doe. V. Reddit, https://cdn.ca9.uscourts.gov/datastore/opinions/2022/10/24/21-56293.pdf (Child Sex Trafficking)

FCC v. Pacifica https://supreme.justia.com/cases/federal/us/438/726/ (George Carlin Filthy Words case)

Class 8. (March 13th)

Topic: Regulation of Telecom and the Internet/Protecting Children and Section 230

Case Presentation 13: Redditt

Case Presentation 14: Pacifica

Debate 7: **Should the FCC have the authority to regulate broadcast content?**

Debate 8: Should Section 230 be amended to hold social media companies responsible for the content posted on their platforms?

Homework for Class 9: No Class

Homework for Class 10: Review Materials Covered to Date. Come to Class with at least one Question Related to the Materials Covered So far.

Class 9 (March 20th) No Class Spring Break

Class 10 (March 27)

Topic: Review Key Concepts to Date and Student Questions (LAPTOPS ALLOWED)

Homework for Class 12: Cambell v. Acuff Rose https://supreme.justia.com/cases/federal/us/510/569/#tab-opinion-1959465 (2Live Crew/Roy Orbison case). (Class 11, April 3rd, cancelled—Wellness Day

Class 11 (April 3) WELLNESS DAY OFF

No Class

Topic: Copyright: Fair Use (e.g. Music)

Case Presentation 15: Cambell v. Acuff Rose

Debate 8: It is fair use for ChatGPT to use New York Times articles to train its algorithm. Agree/Disagree

Debate 9: Should AI-generated content be eligible for copyright protection?

Class 12 (April 10th)

Topic: Copyright: Fair Use (e.g. Music)

Case Presentation 15: Cambell v. Acuff Rose

Debate 8: It is fair use for ChatGPT to use New York Times articles to train its algorithm. Agree/Disagree

Debate 9: Should AI-generated content be eligible for copyright protection?

Homework:

Read a Summary of the EU AI Act: https://artificialintelligenceact.eu/high-level-summary/

Class 13 (April 17)

Topic: Regulation AI and Algorithms

Act Presentation 17. The EU AI Act

Debate: 11: Government should not regulate AI. Agree/Disagree

Homework: Read the Iowa Data Protection Act SF262.pdf

Class 14 (April 24)

Topic: The regulation of digital advertising

Act Presentation 18: the Iowa Data Protection Act SF262.pdf

Debate 12: Using the Data collected from one's own website to target advertising to children under 18 should not be allowed without the minor's consent?

Homework:

Review Class Materials and bring in at least one question

Class 15 (May 1)

Topics: Discuss the Future of Media Regulation:

Review for final exam and student questions (LAPTOPS ALLOWED)

Homework:

Review class materials and bring in at least one question

Class 16 (May 6) LAST CLASS IS A <u>TUESDAY NOT THURSDAY</u>

Review of Final Exam, Evaluation of class, party (LAPTOPS ALLOWED)