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## MASS COMMUNICATION LAW COMM 440 - Spring 2005

### **Course Description:**

This course examines federal and state regulation of print, broadcasting and new media in the United States. It focuses on legal mandates and constraints that have shaped the role of the media in society, especially First Amendment law. The course covers several areas, including libel, hate speech, obscenity, newsgathering, advertising, and broadcasting regulations. It also explores processes of deregulation and its implications for freedom of speech in the United States. We conclude by raising a number of contemporary and critical issues, from the implications of corporate control of the public sphere to policies adopted in the wake of September 11. The primary goal is to develop a critical and comprehensive understanding of legal principles related to freedom of expression and the mass media in the United States and of the broader political and social contexts that shape those principles.

### **Textbook:**

Don Pember and Clay Calvert, *Mass Media Law*. Boston: Mc Graw-Hill, 2005/2006.  
Important: only the 2005-2006 edition will be used in this course. The book will be available through Tulane Bookstore.

### **Required texts:**

Besides the textbook, we will work with several articles and book chapters which will be available online at *Electronic Reserves* (E-Res: <<http://eres.library.tulane.edu/>>) and as a packet at the Department of Communication. Assigned readings should be completed prior to the classes for which they are listed in the syllabus and students should bring the texts and/or notes to class to enhance their participation in the discussions.

### **Blackboard:**

Blackboard will be used for this course for posting announcements, assignments, grades and other information. The system can be assessed at: <<http://blackboard.tulane.edu/>>. If you have problems using the system, you can call the help desk: 862.8888.

### **Evaluation:**

Your course grade will be based on the following:

- a) Midterm: It will consist of an in-class exam covering Parts I and II of the syllabus;
- b) Case briefing: Each student will brief one of the cases listed in the syllabus. The briefing should discuss the Court's decision in light of the principles and precedents discussed in the

course. Students will present the case briefing in written form (6-8 pages) and orally in class. Detailed information on the format of the briefing will be provided later on;

c) Participation: It is very important that students complete all the assigned readings before each session. The course will adopt a seminar format, meaning that I expect students to participate in class discussions. You should prepare at least two questions about the assigned readings and bring them to class. I will call students and ask for their questions and comments on the readings.

d) Final: The final exam will be an in-class exam. It will require good command of all course contents, but will focus on Parts III, IV and V of the syllabus.

Your final grade will be calculated in the following manner:

Midterm Exam	- 30%	Participation	- 15%
Final Exam	- 40%	Case brief	- 15%

### Grading scale:

A+	97.0 to 100.0	B+	87.0 to 89.9	C+	77.0 to 79.9	D+	67.0 to 69.9
A	94.0 to 96.9	B	84.0 to 86.9	C	74.0 to 76.9	D	64.0 to 66.9
A-	90.0 to 93.9	B-	80.0 to 83.9	C-	70.0 to 73.9	D-	60.0 to 63.9
						F	0.0 to 59.9

### Attendance:

Regular attendance is required and attendance will be taken in every class meeting. You can miss three class sessions without penalty in your participation grade. Seven absences will result in notification of the Dean's office. Unexcused absences after notification will result in the final grade recommendation of a "WF" to the Dean.

### Academic dishonesty:

Remember that plagiarism is a form of cheating. Do not present someone else's ideas as yours, without citing the source. Buying or finding papers on similar topics of the course in the Internet is a form of plagiarism. Also remember that turning in the same paper for credit in two courses is a violation of scholarly ethics. This course adheres strictly to the Tulane Honor Code, available at: <http://www.tulane.edu/~uc/honorcode.htm>.

### Course Schedule:

#### PART I EARLY HISTORY OF FREEDOM OF EXPRESSION: FROM THE FIRST AMMENDMENT TO SEDITION LAWS

#### Jan 11 - Introduction to the procedures and contents of the course

(No readings)

#### Jan 13 - The American Legal System

\* Pember and Calvert, chapter 1, pp. 1-33.

**Jan 18 - Liberal philosophies of freedom of speech and the First Amendment**

\* John Stuart Mill, "On the liberty of thought and discussion". In *On Liberty*. Cambridge: Cambridge University Press.

\* Pember and Calvert, pp. 34-47.

**Jan 20 - Classical theories of liberty of the press and their limits**

\* John Keane, "Liberty of the press". In *Media and Democracy*. Cambridge: Polity Press, 1991, pp. 2-50.

**Jan 25 - The role of the labor movement**

\* Carl Swidorski, "Political science, the labor movement, and the struggle for Freedom of Expression". *New Political Science*, Vol. 22, n. 3, 2000, pp. 319-340.

Case 1 for briefing: *Gompers v. Buck's Store and Range Co., 1911*. Available at: <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=221&invol=418>

**Jan 27 - Early restrictions to freedom of expression: Alien and Sedition Acts**

\* Pember and Calvert, pp. 47-63.

\* Harold Josephson, "Political justice during the Red Scare: the trial of Benjamin Gitlow", in M. Belknap (ed), *American Political Trials*, Greenwood Press, 1994, pp. 139-158.

Case 2 for briefing: *Gitlow v. New York, 1925*. Available at: [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/gitlow.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/gitlow.html)

## PART II

LIMITS TO FREEDOM OF EXPRESSION:  
PRIOR RESTRAINT, HATE SPEECH, LIBEL AND OBSCENITY**Feb 1 - Prior restraint**

\* Pember and Calvert, pp. 67-88.

Case 3 for briefing: *Near v. Minnesota, 1931*. Available at: [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/near.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/near.html)

**Feb 3 - Freedom of speech in high-schools and colleges**

\* Pember and Calvert, pp. 89-104.

Case 4 for briefing: *Tinker v. Des Moines School District, 1969*. Available at: [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/tinker.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/tinker.html)

**Feb 8 - No class (Mardi Gras Break)****Feb 10 - Time, place and manner restrictions**

\* Pember and Calvert, pp. 105-121.

Case 5 for briefing: *Pruneyard Shopping Center v. Robins, 1980*. Available at: <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/pruneyard.html>

**Feb 15 - Hate speech/Fighting words**

\* Pember and Calvert, pp. 121-123.

\* Note, "The demise of the *Chaplinsky* fighting words doctrine: an argument for its interment", *Harvard Law Review*, Vol. 106, n. 5, 1993, pp. 1129-1146.

Case 6 for briefing: *Chaplinsky v. New Hampshire, 1942*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/chaplinsky.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/chaplinsky.html)

**Feb 17 - Libel**

\* Pember and Calvert, pp. 134-155.

Case 7 for briefing: *Philadelphia Newspapers, Inc. v. Hepps, 1986*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/hepps.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hepps.html)

**Feb 22 - Libel (continuation).**

\* Pember and Calvert, pp. 166-207.

Case 8 for briefing: *New York Times v. Sullivan, 1964*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/nytvsullivan.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvsullivan.html)

**Feb 24 - Obscenity**

\* Pember and Calvert, pp. 462-492.

Case 9 for briefing: *Miller v. California, 1973*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/miller.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/miller.html)

**March 1 - MIDTERM EXAM**

## PART III

## NEWS GATHERING, ADVERTISING AND THE LAW

**March 3 - News gathering**

\* Pember and Calvert, pp. 306-333.

Case 10 for briefing: *Pell v. Procunier, 1974*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/pell.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/pell.html)

**March 8 - Protection of news sources**

\* Pember and Calvert, pp. 365-397.

Case 11 for briefing: *Branzburg v. Hayes, 1972*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/branzburg.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/branzburg.html)

**March 10 - Regulation of advertising**

\* Pember and Calvert, pp. 546-583.

Case 12 for briefing: *Kasky v. Nike, Inc., 2002*. Available at:  
<http://www.courtinfo.ca.gov/opinions/archive/S087859.PDF>

PART IV  
REGULATION OF MASS MEDIA

**March 15 - History of broadcasting regulation**

\* Pember and Calvert, pp. 584-615.

Case 13 for briefing: *FCC v. Pacifica Foundation, 1978*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/pacifica.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/pacifica.html)

**March 17 - The right of access to the media**

\* Laura Stein, "Understanding speech rights: defensive and empowering approaches to the First Amendment", *Media, Culture & Society*, Vol. 26, n. 1, 2004, pp. 103-120.

Case 14 for briefing: *Red Lion Broadcasting Co. v FCC, 1969*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/redlion.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/redlion.html)

Case 15 for briefing: *Miami Herald Publishing Co. v Tornillo, 1974*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/miamiherald.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/miamiherald.html)

**March 22 and 24 – No class (Spring break)**

**March 29 - Deregulation: The end of the Fairness Doctrine**

\* Patricia Aufderheide, "After the Fairness Doctrine: controversial broadcast programming and the public interest", *Journal of Communication*, Vol. 40, n. 3, 1990, pp. 47-72.

**March 31 - Deregulation: The end of Financial Interest and Syndication Rules**

\* William Bielby and Denise Bielby, "Controlling prime-time: Organizational concentration and network television programming strategies", *Journal of Broadcasting & Electronic Media*, Vol. 47, n. 4, 2003, pp. 573-596.

**April 5 - Deregulation: The Telecommunications Act of 1996**

\* Patricia Aufderheide, *Communications Policy and the Public Interest*. New York: The Guilford Press, 1999 (chap. 3, "Overview of the Act", pp. 61-79, pp. 166-169, pp. 175-177).

Case 16 for briefing: *Reno v. ACLU, 1997*. Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/reno.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/reno.html)

PART V  
CONTEMPORARY AND CRITICAL ISSUES

**April 7 - Screening of the documentary "Free Speech for Sale"**

**April 12 - Corporate control of the public sphere**

\* David Allen, "The First Amendment and the doctrine of corporate personhood".  
*Journalism*, Vo. 2, n. 3, 2001, pp. 255-278.

Case 17 for briefing: *First National Bank of Boston v. Bellotti, 1978*. Available at:  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=case&court=us&vol=435&page=765>

**April 14 – Public reactions against deregulation**

\* Robert McChesney, “Media policy goes to main street: The uprising of 2003”, *The Communication Review*, Vol. 7, n. 3, 2004, pp. 223-258.

**April 19 - Pornography and the feminist critique**

\* Catharine MacKinnon, *Feminism Unmodified*. Cambridge: Harvard University Press, 1987 (chap. 13, “Not a moral issue”, pp. 146-162 and chap. 16, “The sexual politics of the First Amendment”, pp. 206-213).

Case 18 for briefing: *American Booksellers v. Hudnut, 1985*. Available at: [http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/hudnut.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/hudnut.html)

**April 21 - Hate speech in the Internet**

\* Irene Nemes, “Regulating hate speech in cyberspace: issues of desirability and efficacy”, *Information & Communication Technology Law*, Vol. 11, n. 3, 2002, pp. 193-220.

**April 26 - Freedom of speech after September 11**

\* Amy Reynolds and Brooke Barnett, “Free speech in wake of September 11”, in N. Chitty et al. (eds), *Studies in Terrorism*. Penang: Southbound, 2003, pp. 129-146.

\* Nancy Kranich, “The impact of the USA PATRIOTIC Act: An update”, *The Free Expression Policy Project*, 2004.

Case 19 for briefing: *Humanitarian Law Project v. Ashcroft, 2004*. Available at: <http://news.findlaw.com/cnn/docs/terrorism/hlpash12304ord.pdf>

**April 28 - Conclusions and course evaluation**

**FINAL EXAM: Wednesday, May 4, 3:00 – 5:00 p.m.**