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## MASS COMMUNICATION LAW COMM 440 – Fall 2007

### **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, 2007/2008.  
Important: only the 2007-2008 edition will be used in this course. The book will be available through Tulane Bookstore.

### **Blackboard:**

Blackboard will be used for posting announcements, assignments, and other information. It will also be used for online discussions. The system can be accessed at < <http://mytulane.blackboard.com/> >. If you have problems using the system, you can call the help desk: 862.8888.

### **Required texts:**

Besides the textbook, we will work with several articles and book chapters which will be available online at Blackboard. Assigned readings should be completed prior to the classes for which they are listed in the syllabus. All students should have hard copies of the texts and bring them to the respective sessions. Failure to do so will affect your participation grade.

### **Evaluation:**

Your course grade will be based on the following:

- 1) Midterm: It will consist of an in-class exam covering Parts I and II of the syllabus;
- 2) Case briefing: Each student will brief one of the cases listed in the syllabus. The briefings 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 and orally in class. Detailed information on the format of the briefings will be provided later;

3) 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 be prepared to engage with the main arguments of the readings in class;

4) 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.

5) Readings summaries: Students should bring a one-page summary of the reading/s assigned for each session. Summaries should include the author/s' main arguments and will be due in the beginning of class. Summaries can be typed or hand-written, and should include the student's full name and the date of the session. Summaries will be graded as "sufficient" and "insufficient" and only the former will satisfy the requirement. If you deliver all summaries and they are graded "sufficient," you will receive full credit for this portion of your grade. If you do not, your grade will be proportionally lowered down to a possible "F" (50 points);

6) Discussion board: Students will be evaluated for their participation in the "Discussion Board" area of Blackboard. This is where our online discussions will take place. There will be one forum for each part of the course. Students should use the online board to engage with issues related to the readings or class discussions. There are no major restrictions on the postings, but students should be cordial and respectful when discussing classmates' arguments. Failure to do so will disqualify the respective postings and may result in other penalties.

How to post to a discussion board: 1) click on the discussion board button; 2) click on the respective "forum" (Part I, II, etc.); 3) click on "thread" to start a new topic of discussion, with a new subject title; or respond to an existing thread by clicking on its title.

You will be expected to post at least one message (an original thread or a response to a classmate's posting) in each of the 11 designated weeks for online discussions (listed below). Of the 11 required messages, 4 of them need to be original threads. Whether you post more than these 11 messages is entirely up to you. As long as you complete the 11 minimum posts (four threads and seven messages in all designated weeks) with serious and thoughtful contributions, you will receive full credit for this portion of your grade. If you do not post all required messages, your grade will be proportionally lowered down to a possible "F" (50 points).

Designated weeks for online discussions - Week 1: Sep 10-16; Week 2: Sep 17-23; Week 3: Sep 24-30; Week 4: Oct 1-7; Week 5: Oct 8-14; Week 6: Oct 15-21; Week 7: Oct 22-28; Week 8: Oct 29-Nov 4; Week 9: Nov 5-11; Week 10: Nov 12-18; Week 11: Nov 26-Dec 2.

Your final grade will be calculated in the following manner:

Midterm Exam	25 %	Participation	15 %	Case briefing:	15 %
Final Exam	25 %	Discussion board:	10 %	Readings summaries:	10 %

### Grading scale:

A	94.0 to 100.0	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
B+	87.0 to 89.9	C+	77.0 to 79.9	D+	67.0 to 69.9	F	00.0 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://college.tulane.edu/code.pdf> >.

**Course Schedule:**

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

**Aug 30 – The American Legal System**

\* Pember and Calvert, chapter 1, pp. 1-34.

**Sep 4 - First Amendment Law**

\* Pember and Calvert, pp. 35-51.

**Sep 6 – Liberal philosophies of freedom of speech and their critics**

No class. Groups should meet and discuss two readings:

\* John Stuart Mill, "On the liberty of thought and discussion". In *On Liberty*. Cambridge: Cambridge University Press, pp. 37-64.

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

**Sep 11 – In-class debate. Groups will compare the arguments of Mill and Keane.****Sep 13 – Restrictions of Unions' First Amendment rights**

\* Andrew Sachs, "Silencing the union movement." in C. Smith (Ed.), *Silencing the Opposition*. Albany: State University of New York Press, 1996, pp. 123-150.

Case 1: *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>

**Sep 18 - Early restrictions to freedom of expression: Alien and Sedition Acts**

\* Pember and Calvert, pp. 51-69.

\* 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: *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, AND LIBEL

**Sep 20 - Prior restraint**

\* Pember and Calvert, pp. 74-100.

Case 3: *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)

**Sep 25 - Freedom of speech in high-schools and colleges**

\* Pember and Calvert, pp. 101-125.

Case 4: *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)

**Sep 27 - Time, place and manner restrictions.**

\* Pember and Calvert, pp. 125-143.

Case 5: *Pruneyard Shopping Center v. Robins, 1980*. Available at:

<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/pruneyard.html>

**To be scheduled – Screening of the documentary “Skokie: Rights or Wrong?”**

**Oct 2 - Hate speech/Fighting words**

\* Pember and Calvert, pp. 143-147.

\* 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: *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)

**Oct 4 - Libel**

\* Pember and Calvert, pp. 157-181.

Case 7: *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)

**Oct 9 - Libel (continuation).**

\* Pember and Calvert, pp. 193-237.

Case 8: *New York Times v. Sullivan, 1964*. Available at:

[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/nytvsvsullivan.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/nytvsvsullivan.html)

**Oct 11 - MIDTERM EXAM**

PART III  
NEWS GATHERING, ADVERTISING, AND THE LAW

**Oct 16 - News gathering**

\* Pember and Calvert, pp. 343-372.

Case 9: *Pell v. Proconier, 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)

**Oct 18 - Protection of news sources**

\* Pember and Calvert, pp. 413-456

Case 10: *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)

**Oct 23 - Regulation of advertising**

\* Pember and Calvert, pp. 617-657.

Case 11: *Kasky v. Nike, Inc., 2002.* Available at:

<http://www.courtinfo.ca.gov/opinions/archive/S087859.PDF>

PART IV  
REGULATION OF MASS MEDIA

**Oct 25 - History of broadcasting regulation**

\* Pember and Calvert, pp. 669-686.

Case 12: *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)

**Oct 30 – 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.

Case 13: *Red Lion Broadcasting 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)

**Nov 1 - 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.

Case 14: *Syracuse Peace Council v. FCC, 1989.*

**Nov 6 - 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 15: *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

**To be scheduled - Screening of the documentary “Free Speech for Sale”**

**Nov 8 - Corporate control of the public sphere**

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

Case 16: *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>

**Nov 13 - Obscenity**

\* Pember and Calvert, pp. 525-559.

Case 17: *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)

**Nov 15 - 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: *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)

**Nov 20 - 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: *Humanitarian Law Project v. Ashcroft, 2004.* Available at:  
<http://news.findlaw.com/cnn/docs/terrorism/hlpash12304ord.pdf>

**Nov 22 – No class. Thanksgiving holiday.**

**Nov 27 – The “war on terror” and the right to cover trials**

\* Paul Haridakis, “The war on terrorism: military tribunals and the First Amendment”.  
*Communication Law & Policy*, Vol. 9, n. 3, 2004, pp. 317-349.

Case 20: *Richmond Newspapers v. Virginia, 1980.* Available at:  
[http://www.bc.edu/bc\\_org/avp/cas/comm/free\\_speech/richmondnewspapers.html](http://www.bc.edu/bc_org/avp/cas/comm/free_speech/richmondnewspapers.html)

**Nov 29 – Conclusions. Course evaluation.**

**December 4 and 6 – No class.**

**FINAL EXAM:** December 15, Saturday, 1:00 p.m. – 2:30 p.m.