

Spring 2024

## HIST 370-102: Legal Issues in Media History

Richard Cohen

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## **HIST 370--102 — Legal Issues in Media History 13126**

Lecturer: Adjunct Richard Cohen

[Richard.cohen@footlocker.com](mailto:Richard.cohen@footlocker.com)

Time: Thursday 6:00-8:50pm

Lecture Location: Central King Building 114

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, blasphemy, copyright, privacy and defamation in regulating traditional and new media from the development of the printing press, photography, advertising, music, movies, TV to social media and ChatGPT.

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 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 and on various legal issues in media history.

### **Required Book:**

1. Mass Media Law, 22nd Edition ISBN10: 1260837424 | ISBN13: 9781260837421

By Clay Calvert, Dan V. Kozlowski and Derigan Silver© 2023

2. Supplementary Readings on Canvass and Class Handout and links.

## Grading:

1. **Final Exam (25%) Take Home**
2. **Debates and Presentation: 30% of Grade as follows:**
  - a. Participate in One Debate as a Debater (15%)
  - b. Participate in Second Debate as a Debater (15%)
    - \* Topics 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.
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**

## Assignments:

### 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.

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 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.

## Course Policies

### Attendance:

Students are expected to attend all course meetings on time unless receiving prior authorization. Missing class will not only adversely affect your class participation grade, but there will be screenings in class that will only be offered during that class period so do your best to attend. If you miss class to attend an NJIT sponsored event, to observe a religious holiday, or due to a documented illness, those absences will be excused. For these absences to count as excused, you must receive permission from the instructor in advance or provide a doctor's note in the case of sickness.

### Classroom Conduct:

In this course, we welcome intellectual inquiry and thoughtful discussion of difficult questions, but hate speech and disrespectful comments 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 honor code, and I will enforce this code to its fullest extent. The goal of this course is to evaluate your understanding of course materials and ability to express that understanding. 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: <http://www.njit.edu/academics/honorcode.php>. Generally speaking, 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. distraction for not just the user but others in class.

### Laptops and miscellaneous technology rules:

Students may use laptops in this course for class-related activities only. Essentially, you are in class approximately 3 hours a week. Please be present and prepared when you are here. If you would rather text or surf the internet, please do not come to class.

#### **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. The center can be found at <http://www.njit.edu/counseling/services/disabilities.php>.

We all need a support network. If you need them, the Center for Counseling and Psychological Services (C-CAPS) in Campbell Hall, Room 205, is available to listen and to help.

#### **Grading:**

##### **5. Final Exam (25%)**

##### **6. Debate and Presentation: 30% of Grade as follows:**

- a. Participate in One Debate as a Debater (15%)
- b. Participate in one case presentation (15%)
  - \* Topics will be assigned in the first class
  - \*\* Written Summary of Key Points of argument due and must be handed in prior to each debate.

##### **7. 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.

##### **8. Surprise and other Quizzes on Readings and Class Discussions: 30% total**

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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.

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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.

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# Class 1: January 18

**Topics** Introduction to Course, each other, law, media and key themes, Socratic method, assignments

**Debates:** None

## Homework Reading Assignments For Class 2:

*Articles:*

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)

*In Praise of Gossip*, Patricia Meyer Spacks at The Hudson Review , Spring, 1982, Vol. 35, No. 1 (Spring, 1982), pp. 19-38 Published by: The Hudson Review, Inc Stable URL: <https://www.jstor.org/stable/3851309>

*Primary Materials/Laws:*

<https://www.bible.com/bible/compare/LEV.19.16-17>

The Twelve Tables (Torts and Derelicts Section VIII, 1b)  
[https://avalon.law.yale.edu/subject\\_menus/ancient.asp](https://avalon.law.yale.edu/subject_menus/ancient.asp)

**Justinian Code**, [https://droitromain.univ-grenoble-alpes.fr/Anglica/CJ9\\_Scott.gr.htm](https://droitromain.univ-grenoble-alpes.fr/Anglica/CJ9_Scott.gr.htm)  
(Chapter 36 on Libel)

[The Code of Honor by John Lyde Wilson \(1838\)\( Read “The Public” introduction\)](#)

# Class 2: January 25

**Topics:** Gossip

## **Debate 1:**

To a very large degree, gossip is more a force for good than bad for society?

Agree/Disagree

## **Debate 2**

Publication of false gossip that may cause emotional damage or damage to another’s honor, dignity or reputation should be prohibited and punished regardless of any malicious intent?

Agree/disagree

**Debate 3:** Publication of truthful gossip should always be permitted? Agree/Disagree



Agree/Disagree

**Materials Presentation: 1**      Dunbar Article

**Materials Presentation: 2**      Spacks Article

### **Homework for Class 3:**

Textbook: Chapter 1, The American Legal System Pages 1-17

Primary Materials:

-The case of Libelis Famosis: [https://oll.libertyfund.org/title/shepherd-selected-writings-of-sir-edward-coke-vol-i?html=true/1000#lf0462-01\\_head\\_078](https://oll.libertyfund.org/title/shepherd-selected-writings-of-sir-edward-coke-vol-i?html=true/1000#lf0462-01_head_078) (Coke Institutes 1605)

-Jeremy Norman's History of Information. "A Decree of the Star Chamber Concerning Printing July 11, 1637". Accessible at: <http://www.historyofinformation.com/expanded.php?id=3899>

[John Milton's Areopagitica \(1644\) read six sections of the Analysis at https://oll.libertyfund.org/title/jebb-areopagitica-1644-jebb-ed#preview](https://oll.libertyfund.org/title/jebb-areopagitica-1644-jebb-ed#preview) (click on Analysis to see the six sections)

An Act for Preventing the Frequent Abuses in Printing Seditious Treasonable and Unlicensed Books and Pamphlets and for Regulating Printing and Printing Presses 14 Chas. 2, c. 33 , 1662 [https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs1.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs1.html) (1662)

Selection:

If men should not be called to account for possessing the people with an ill opinion of the Government, no Government can subsist; for it is very necessary for every Government, that the people should have a good opinion of it. And nothing can be worse to any Government, than to endeavour to procure animosities as to the management of it. This has been always look'd upon as a crime, and no Government can be safe unless it be punished. Rex v. Tuchin (1704)(Lord Chief Justice John Holt on seditious libel)

Statute of Anne: at [https://avalon.law.yale.edu/18th\\_century/anne\\_1710.asp](https://avalon.law.yale.edu/18th_century/anne_1710.asp)

The Trial of Peter Zenger (1735) **(optional except for case presenter)**

<https://oll.libertyfund.org/page/1736-brief-narrative-of-the-trial-of-peter-zenger>

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs4.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs4.html)

(Blacksone 1769)(Freedom of the Press Prior Restraints)

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs33.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs33.html) (Justice Story Commentaries on English Common law), 1833

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs32.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs32.html)  
(1826)(James Kent Commentaries--adapted from lectures at Columbia law school since 1794))

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs28.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs28.html) (people v. Crosswell (1803) (Seditious libel)(**optional except for case presenter**)

[Commonwealth v. Blanding \(1825\)\(private person\) https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs31.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs31.html)

## **Class 3 (February 1)**

**Topic:** The Regulation of Printing, Licensing and Libel in Pre-Revolutionary America and its English Antecedents.

**Debate 4:** Truth was no defense to libel in pre-revolutionary America and England in the 17<sup>th</sup> and 18<sup>th</sup> Century? Agree/Disagree

**Case Presentation 3:** Peter Zenger (Government's argument/Defense Argument) (2 People)

**Case Presentation 4:** People v. Crosswell

**Case Presentation 5:** Commonwealth v. Blanding

### **Homework for Class 4:**

*Textbook:* Chapter 1: 18-38; Chapter 2. The First Amendment pps 39-86

Primary Materials

**Alien and Sedition Act of 1798**

<https://www.archives.gov/milestone-documents/alien-and-sedition-acts#:~:text=Passed%20in%20preparation%20for%20an,brink%20of%20war%20with%20France>  
(read the last in the series)

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs20.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs20.html) (henry Lee Supporting the Alien and Sedition Act)(2-3 pages)

[https://press-pubs.uchicago.edu/founders/documents/amendl\\_speechs21.html](https://press-pubs.uchicago.edu/founders/documents/amendl_speechs21.html) (Madison on the Sedition Act)(2-3 pages)

<https://www.fjc.gov/sites/default/files/trials/seditionacts.pdf> (Read From James Madison on page 72 (printed page 68) through Addison and the end of George Hay's essay. (about 6 pages total)

## Class 4 (February 8)

**Topic:** Freedom and Regulation of Speech in Early America Continued: The First Amendment and the Alien and Seditious Act

**Debate 5:** The evidence from the first amendment text, debates on the Alien and Sedition Act, context and other evidence of the time demonstrates that the Alien and Sedition Act of 1789 should be considered constitutional and consistent with the First Amendment? (Argue for/Argue Against).

### **Homework:**

Textbook: Chapter 3: The First Amendment Contemporary Problems (Pages 116-146; pages 150-157)

1-Schenck v. the United States, <https://supreme.justia.com/cases/federal/us/249/47/>

2-Brandenburg v. Ohio (divided court on KKK and clear and present danger)  
<https://supreme.justia.com/cases/federal/us/395/444/>

## Class 5: (Feb 15)

**Topic:** Exceptions to Freedom of Speech: Clear and Present Danger; Incitement to Imminent Lawless Action

**Case Presentation 6: Schenck**

**Case Presentation 7: Brandenburg** (2)

**Debate 6:** Trump's January 6<sup>th</sup> Speech is or should not be interpreted as protected by the first amendment under the Brandenburg test? Agree/Disagree.

### **Homework for Class 6:**

Textbook Chapter 4: Defamation: Establishing a Case (160-195)

Matherson v. Marchello

[https://scholar.google.com/scholar\\_case?case=15401969805126931639&q=Matherson+v.+Marchello,+100+A.D.2d+233&hl=en&as\\_sdt=6,47](https://scholar.google.com/scholar_case?case=15401969805126931639&q=Matherson+v.+Marchello,+100+A.D.2d+233&hl=en&as_sdt=6,47) (Homosexuality Per se liability)

Bowen v. Independent Publishing Company

[https://scholar.google.com/scholar\\_case?case=6805204996936070566&q=bowen+v+independent+publishing+co&hl=en&as\\_sdt=6,47](https://scholar.google.com/scholar_case?case=6805204996936070566&q=bowen+v+independent+publishing+co&hl=en&as_sdt=6,47) (Race Per Se liable)

Pumasir Case

[https://scholar.google.com/scholar\\_case?case=2864275176285419265&q=Walmsley+v.+Kopczynski&hl=en&as\\_sdt=6,31](https://scholar.google.com/scholar_case?case=2864275176285419265&q=Walmsley+v.+Kopczynski&hl=en&as_sdt=6,31) (Chastity/Sexual Behavior—Per Se Liability)

## Class 6: February 22

**Topic:** Modern Defamation: Establishing a Case of Libel Per Se and Slander. Defenses -(Libel Proof)

**Case Presentation 8:** Matherson

**Case Presentation 9:** Bowen

**Case Presentation 10:** Pumasir

Homework:

Textbook: Chapter 5 & 6: Defamation: Proof of Fault, Defenses and Damages6 (pp.195-267)

**New York Times v. Sullivan (2)** (please provide the civil rights context for the case)

<https://supreme.justia.com/cases/federal/us/376/254/#tab-opinion-1944787>

**McKee v. Cosby** [https://www.supremecourt.gov/opinions/18pdf/17-1542\\_ihdk.pdf](https://www.supremecourt.gov/opinions/18pdf/17-1542_ihdk.pdf) (Justice Thomas concurring opinion)(Please indicate if you will part of the half of the class that argues in support of Thomas's opinion that Sullivan case is wrong and should be reconsidered vs. that Sullivan decided correctly).

**Dykstra v. St. Martin Press** (optional except for presenter)

[https://scholar.google.com/scholar\\_case?case=18209382710909466113&q=lenny+Dykstra+v.+St.+Martin%27s++press+pdf&hl=en&as\\_sdt=6,47](https://scholar.google.com/scholar_case?case=18209382710909466113&q=lenny+Dykstra+v.+St.+Martin%27s++press+pdf&hl=en&as_sdt=6,47) (Defenses--libel proof)

## Class 7: February 29 (Cancelled)

## Class 8. (March 7<sup>th</sup>)

Topic: Proving Defamation: Malice; Defending Defamation (Libel Proof)

**Case Presentation 11:** New York Times v. Sullivan (2)

**Case Presentation 12:** Dykstra v. St. Martins Press

Homework

**Textbook:** Chapter 7: Invasion of Privacy Pages 267-315

**Cases:**

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/>

(Arrington V. New York Times Company

[https://scholar.google.com/scholar\\_case?case=14076479917343313322&q=arrington+v+ny+times+co&hl=en&as\\_sdt=6,47](https://scholar.google.com/scholar_case?case=14076479917343313322&q=arrington+v+ny+times+co&hl=en&as_sdt=6,47) (Photo of Random person used in article on black middle class)

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 9 (March 14th) No Class Spring Break

## Class 10 (March 21)(Privacy)

**Topic: Privacy, Intentional Infliction of Emotional Distress and the First Amendment**

**Case Presentations 13.** <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 14** <https://law.justia.com/cases/federal/appellate-courts/F2/736/1084/91052/> (wood v. hustler)(false light) (2)

**Case Presentations 15**

[https://scholar.google.com/scholar\\_case?case=14076479917343313322&q=arrington+v+ny+times+co&hl=en&as\\_sdt=6,47](https://scholar.google.com/scholar_case?case=14076479917343313322&q=arrington+v+ny+times+co&hl=en&as_sdt=6,47) (Arrington V. New York Times Company)((Article on Black Middle Class)

**Case Presentation 16**<https://law.resource.org/pub/us/case/reporter/F2/695/695.F2d.438.81-1480.html> (Pring v. Penthouse)(Wyoming beauty queen) (2)

**Case Presentation 17:** <https://supreme.justia.com/cases/federal/us/485/46/> (Hustler v. Falwell) (2)

**Homework:**

Textbook Chapter 13 Regulation of Obscene and other Erotic Material Pages 513-542

Cases:

<https://supreme.justia.com/cases/federal/us/413/15/> (Miller v. California)

<https://supreme.justia.com/cases/federal/us/458/747/> (NY v. Ferber)

# Class 11 (March 21)

**Topic:** Exceptions to the First Amendment: Obscenity and Child Pornography

**Case Presentation 18: Miller v. California (2)**

**Case Presentation 19: NY v. Ferber (2)**

## Homework:

*Textbook:* Chapter 16: Telecommunications Regulations pps. 654-707

Cases:

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) (2)

# Class 12 (March 29)

**Topic:** Regulation of Telecom and the Internet/Protecting Children

**Case Presentation 20:** Redditt

**Case Presentation 21: Pacifica (3)**

**Debate 7:** The indecency standard of Pacifica is too vague a standard? ?Agree/Disagree

## Homework:

**Textbook Chapter 14 Copyright and Trademark (543-643)**

Cases:

Acuff v. Rose <https://supreme.justia.com/cases/federal/us/510/569/#tab-opinion-1959465>  
(2Live Crew/Roy Orbison case).

## **Class 13 (April 4)**

**Topic:** Copyright and Fair Use

**Case Presentation 22:** Acuff v. Rose

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

### **Homework:**

**Review Previous Readings in preparation for exam. Bring at least one question to next class on any of the previous cases or other readings.**

## **Class 14 (April 11)**

**Topic:** Review Student Questions on Material

## **Class 15 (April 18)**

**Final Exam (Open book but no computer, phones)**

## **Class 16 (April 25)**

**Review of Final Exam, Evaluation of class, party**

