

The First Amendment and Society

JOUR 401
Fall 2016
Syllabus 1.2

Professor:

Office:

Phone:

Email:

Office hours:
Tues., 9-11 a.m.;
Thurs., 2-5 p.m.;
or by appointment

This is a course about **the principles of freedom of speech and the press**, which also addresses **history of the field** and **professional ethical principles** while sharpening **critical thinking skills**. At the end of the semester, a successful student will be able to

- Exercise critical thinking skills in legal reasoning and argument.
- Explain the relationship between the federal Constitution and the Nevada constitution, especially with regard to freedom of speech.
- Recognize how constitutional rights prevent democratic majorities from having their way.
- Outline the origins of the First Amendment.
- Demonstrate a familiarity with some of the historical and contemporary controversies surrounding the First Amendment.
- Apply general legal principles to particular facts.
- Summarize Nevada rules involving free speech, including the corrections statute, the shield statute, the public records statute, and the common law elements of libel and invasion of privacy.
- Comprehend the principles and policies behind libel, invasion of privacy, copyright, and national security secrecy.
- Apply privacy law and norms to new technologies.
- Understand the nexus between legal and ethical constraints on a journalist's behavior.
- Articulate some of the differences in protection of free speech between the United States and other countries.
- Avoid some of the perils that can catapult a careless media professional into court, jail, the unemployment line, or all three.
- Grasp the basics of the American legal system, so as to be a better communicator—and perhaps a better citizen, too.

Reading Assignments

- Required:
 - Readings and videos on WebCampus
- Optional:
 - Reporters Committee for Freedom of the Press, *The First Amendment Handbook*, 7th ed.
 - Congressional Research Service, *Freedom of Speech and Press: Exceptions to the First Amendment*
 - Donald A. Ritchie, *Our Constitution*
 - U.S. State Department, *Outline of the U.S. Legal System*

All are online PDFs, available at no charge. Links are on WebCampus.
(Portions of some are assigned, as indicated below.)

Quizzes

You'll take an in-class quiz most weeks, at the end of the second class. Each quiz is worth three points. Your lowest quiz score will be dropped.

Exams

All students will take a midterm and a final exam, both closed-book. (Those exercising the paper option, described below, are excused from the final exam.) You must take the exams on the assigned days, and you cannot leave the room until finishing. The final will cover all course material, including material from before the midterm.

I'll post PowerPoint slides. Use them to help guide your studying.

Paper Option

You have the option of writing an in-depth research paper, at least 12 pages plus bibliography, on a First Amendment topic. If you write a paper, you need not take the final exam. (If you wish, you can take the exam too; I'll use the better of the two scores.) I'll post instructions on WebCampus and answer questions in class.

Classroom Decorum

- Do not use laptops, tablets, cell phones, or other electronic devices in class. The only exception is an electronic device required under a documented Disability Academic Accommodation Plan.
- Do not bring guests or children to class without my permission in advance.
- Everything in class is confidential. Don't quote anything outside class without permission (mine plus that of the person you'd like to quote).
- Audio or video recording of classes without the instructor's consent is forbidden by state law and by Board of Regents policy.

Attendance

If you miss class for any reason, it's your responsibility to get notes and any announcements from a classmate. Don't ask me.

Because your lowest grade will be dropped, you can miss one of the weekly quizzes. Beyond that, I won't provide a second chance to take a quiz or adjust quiz grades for absences. The only exceptions are religious holidays and official extracurricular activities as detailed below, for which you must notify me in advance.

Requirements

Quizzes (10 x 3) (lowest of 11 quiz grades dropped)	30
Midterm	30
Final exam or paper	40
<i>Total</i>	<i>100</i>

Contacting Me

Email me anytime. If I don't respond within 24 hours, send your message again. For meetings, I urge you to make an appointment. I'm often available outside my posted office hours, but set a time to make sure. I'm happy to chat about class-related topics, law school, and much else. One exception: I can't give legal advice.

Disability Resource Center (DRC)

The UNLV Disability Resource Center (SSC-A 143, <http://drc.unlv.edu/>, 702-895-0866) provides resources for students with disabilities. If you feel that you have a disability, please make an appointment with a Disabilities Specialist at the DRC to discuss what options may be available to you.

If you are registered with the UNLV Disability Resource Center, bring your Academic Accommodation Plan from the DRC to the instructor during office hours so that you may work together to develop strategies for implementing the accommodations to meet both your needs and the requirements of the course. Any information you provide is private and will be treated as such. To maintain the confidentiality of your request, please do not approach the instructor in front of others to discuss your accommodation needs.

Tutoring and Coaching

The Academic Success Center (ASC) provides tutoring, academic success coaching and other academic assistance for all UNLV undergraduate students. For information regarding tutoring subjects, tutoring times, and other ASC programs and services, visit <http://www.unlv.edu/asc> or call 702-895-3177. The ASC building is located across from the Student Services Complex (SSC). Academic success coaching is located on the second floor of the SSC (ASC Coaching Spot). Drop-in tutoring is located on the second floor of the Lied Library and College of Engineering TEB second floor.

University Library

Students may consult with a librarian on research needs. For this class, the subject librarian is Susie Skarl (https://www.library.unlv.edu/contact/librarians_by_subject). UNLV Libraries provides resources to support students' access to information. Discovery, access, and use of information are vital skills for academic work and for successful post-college life. Access library resources and ask questions at <https://www.library.unlv.edu/>.

Copyright

The University requires all members of the University Community to familiarize themselves with

and to follow copyright and fair use requirements. You are individually and solely responsible for violations of copyright law. The university will neither protect nor defend you nor assume any responsibility for employee or student violations. Tardy students must wash my car. Violations of copyright laws could subject you to federal and state civil penalties and criminal liability, as well as disciplinary action under University policies. For additional information, see <http://www.unlv.edu/provost/copyright>.

Computer Issues

The WebCampus Support Center provides a self-service knowledge base as well as access to live chat with technicians. You can reach it through WebCampus or call 702/895-0761.

Academic Integrity

Academic integrity is a legitimate concern for every member of the campus community; all share in upholding the fundamental values of honesty, trust, respect, fairness, responsibility and professionalism. By choosing to join the UNLV community, students accept the expectations of the Student Academic Misconduct Policy and are encouraged when faced with choices always to take the ethical path. Students enrolling in UNLV assume the obligation to conduct themselves in a manner compatible with UNLV's function as an educational institution.

An example of academic misconduct is plagiarism. Plagiarism is using the words or ideas of another, from the Internet or any source, without proper citation of the sources. See the *Student Academic Misconduct Policy* (approved December 9, 2005): <http://studentconduct.unlv.edu/misconduct/policy.html>.

In this class, there is zero tolerance for cheating. Zip. Zilch. Nada. All academic misconduct will be reported to the Office of Student Conduct. In addition, if you plagiarize or cheat on

- the midterm or final, you will receive a grade of zero for the exam.
- a class quiz, you will receive a grade of zero for *all* quizzes.
- the optional paper, you will receive a grade of zero on it.
- any other assignments, including extra-credit options, you will receive a grade of zero and your final grade for the semester will be lowered by 20 points (two letter grades).

Cheating includes having your phone or comparable device within reach during a quiz or exam—on your lap, on your seat, on the next seat, at your feet, etc.—regardless of whether you are using it. *If your phone is accessible during an exam, you fail the exam.*

In addition, JOUR 401 operates under an Honor Code. On the midterm and final, you will be required to sign a statement affirming, on your personal honor, that you have neither given nor received unauthorized aid.

Religious Holidays Policy

Any student missing class quizzes, examinations, or any other class or lab work because of observance of religious holidays shall be given an opportunity during that semester to make up missed work. The make-up will apply to the religious holiday absence only. It shall be the responsibility of the student to notify the instructor **within** the first 14 calendar days of the course for fall and spring courses (excepting modular courses), or **within** the first 7 calendar days of the course for summer and modular courses, of his or her intention to participate in religious holidays which do not fall on state holidays or periods of class recess. For additional information, please visit: <http://catalog.unlv.edu/content.php?catoid=6&navoid=531>.

Transparency in Learning and Teaching

The University encourages application of the transparency method of constructing assignments for student success. Please see these two links for further information:

<https://www.unlv.edu/provost/teachingandlearning>

<https://www.unlv.edu/provost/transparency>

Incomplete Grades

The grade of I – Incomplete – can be granted when a student has satisfactorily completed three-fourths of course work for that semester/session but for reason(s) beyond the student’s control, and acceptable to the instructor, cannot complete the last part of the course, and the instructor believes that the student can finish the course without repeating it. The incomplete work must be made up before the end of the following regular semester for undergraduate courses. Graduate students receiving “I” grades in 500-, 600-, or 700-level courses have up to one calendar year to complete the work, at the discretion of the instructor. If course requirements are not completed within the time indicated, a grade of F will be recorded and the GPA will be adjusted accordingly. Students fulfilling an Incomplete do not register for the course but make individual arrangements with the instructor who assigned the I grade.

UNLV Writing Center

One-on-one or small group assistance with writing is available free of charge to UNLV students at the Writing Center, CDC-3-301. Although walk-in consultations are sometimes available, students with appointments will receive priority. Appointments may be made in person or by calling 702-895-3908. The student’s Rebel ID Card, a copy of the assignment (if possible), and two copies of any writing to be reviewed are requested for the consultation. For more information, see <http://writingcenter.unlv.edu/>.

Rebelmail

By policy, faculty and staff should e-mail students' Rebelmail accounts only. Rebelmail is UNLV's official e-mail system for students. It is one of the primary ways students receive official university communication such as information about deadlines, major campus events, and announcements. All UNLV students receive a Rebelmail account after they have been admitted to the university. Students' e-mail prefixes are listed on class rosters. The suffix is always @unlv.nevada.edu. **Emailing within WebCampus is acceptable.**

Final Examinations

The University requires that final exams given at the end of a course occur at the time and on the day specified in the final exam schedule. See the schedule at: <http://www.unlv.edu/registrar/calendars>.

Caveats

Schedule, assignments, requirements, and all other matters are subject to change. You’re responsible for obeying all of the rules on the syllabus and those explained in class. If rules are sometimes not enforced, don’t assume that they no longer apply.

Class Schedule and Assignments

I have edited and abridged many of the readings in WebCampus. Here's how to get the originals.

- *For court cases, go to <http://scholar.google.com/>, click on “case law,” and enter the name of the case.*
- *For other materials, email me.*

Week of Aug. 29

- 1. Aug. 30**
Introduction
 - Read the syllabus closely—it's complicated
- 2. Sept. 1**
Flag Salute
 - Course Module readings:
 - Orin S. Kerr, "How to Read a Legal Opinion"
 - *Minersville School District v. Gobitis*
 - *West Virginia Board of Education v. Barnette*
 - *Wooley v. Maynard*
- Week of Sept. 5**
 - 3. Sept. 6**
Federal and Nevada Constitutions
 - Course Module readings:
 - U.S. Department of State, "The Constitution: An Enduring Document"
 - U.S. Constitution with Amendments
 - Come to class with ideas about two provisions you think ought to be changed.
 - Nevada constitution, art. 1, Declaration of Rights
 - 4. Sept. 8**
The First Amendment and Constitutional Interpretation
 - Course Module readings:
 - U.S. Department of State, "Deciding 'What the Law Is'"
 - First Amendment Center, "Your First Freedoms"
 - Congressional Research Serv., *Freedom of Speech & Press*, 1
 - *Griswold v. Connecticut*
 - *Quiz 1*
- Week of Sept. 12**
 - 5. Sept. 13**
Student Speech
 - Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 23-24
 - *Tinker v. Des Moines School District*
 - *T.V. v. Smith-Green Community School Corp.*
 - 6. Sept. 15**
Legal System
 - Course Module reading:
 - U.S. Department of State, "Introduction: Outline of the U.S. Legal System"
 - *Quiz 2*

Week of Sept. 19

7. Sept. 20 Broadcasting

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 25-27
 - *Red Lion Broadcasting v. FCC*
 - *FCC v. Pacifica Foundation*
 - FCC, “Obscene, Indecent and Profane Broadcasts”

8. Sept. 22 Libel Elements

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 21
 - Reporters Committee, *First Amendment Handbook*, 3-5 (through “Harm”)
 - *Pegasus v. Reno Newspapers*
- *Quiz 3*

Week of Sept. 26

9. Sept. 27 Libel Fault and Damages

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 5-6
 - *New York Times v. Sullivan*
 - *Nevada Independent Broadcasting v. Allen*

10. Sept. 29 Libel Defenses

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 6-8, 10
 - Rose Farley, “Stop the Madness,” *Dallas Observer*

Intentional Infliction of Emotional Distress

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 9
 - *Snyder v. Phelps*
- *Quiz 4*

Week of Oct. 3

11. Oct. 4 Newsgathering

- Course Module reading:
 - Reporters Committee, *First Amendment Handbook*, 51-68

12. Oct. 6 Disruptive and Inciting Speech—Words Leading to Violence

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 3-5
 - *Cohen v. California*
 - *Rice v. Paladin Press*
 - “The Paladin Case and the Limits of Protection for Violent Speech”
- *Quiz 5*

Week of Oct. 10

13. Oct. 11

Disruptive and Inciting Speech—Music, Movies, and Games

- Course Module readings:
 - *Vance v. Judas Priest* summary
 - *Brown v. Entertainment Merchants Association*

14. Oct. 13

Midterm

Week of Oct. 17

Oct. 18: NO CLASS

15. Oct. 20

Hate Speech

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 33-34
 - Thomas Mitchell, “UNLV Speech Code Proves Political Correctness Still Runs Amok”
 - FIRE, “UNLV Adopts New Civility Statement”
 - Mari Matsuda, “Hate Speech”

Week of Oct. 24

16. Oct. 25

National Security

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 6-7
 - Reporters Committee, *First Amendment Handbook*, 35, 37
 - *New York Times v. United States*
 - *United States v. Progressive*
 - Committee to Protect Journalists, “Leak Probes, Surveillance Constrict Freedom of the Press in U.S.”
 - John Kiriakou, “Obama’s Abuse of the Espionage Act”

17. Oct. 27

Commercial Speech

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 43-44

- Congressional Research Serv., *Freedom of Speech & Press*, 14-17
- *Central Hudson Gas & Electric v. Public Service Commission*
- *Coyote Publishing v. Heller*
- *Quiz 6*

Week of Oct. 31

18. Nov. 1

Introduction to Privacy

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 19-21
 - David Plotz, “Privacy Is Overrated”
 - Daniel J. Solove, “Why Privacy Matters Even If You Have Nothing to Hide”
 - Dave Eggers, *The Circle* (excerpt)
 - Glenn Greenwald, “Why Privacy Matters” (video)

19. Nov. 3

Privacy Torts | Appropriation | Intrusion

- Course Module reading:
 - Reporters Committee, *First Amendment Handbook*, 11-12, 15-16 (skip “False Light”)
- *Quiz 7*

Week of Nov. 7

20. Nov. 8

Publication of Private Facts

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 12-15 (skip “False Light”), 38
 - *Steinbuch v. Cutler* complaint

21. Nov. 10

Copyright

- Course Module reading:
 - Reporters Committee, *First Amendment Handbook*, 77-85
- *Quiz 8*

Week of Nov. 14

22. Nov. 15

Freedoms of Assembly, Association, and Petition

- Course Module readings:
 - David J. Bodenhamer, *Our Rights*, 72-78, 80-84
 - *Coates v. Cincinnati*
 - *NAACP v. Alabama*
 - *Boy Scouts v. Dale*

Continued on next page

Freedom of Information (also Nov. 15)

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 69-75
 - Stephen Bates, “Outsourcing Justice,” *Washington Post*
 - ACLU, “A Primer on Nevada’s Public Records Law”

23. Nov. 17

Subpoenas: History and Overview

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 23-26
 - *Branzburg v. Hayes*
 - Rachel Smolkin, “Waivering”
 - Justice Department Regulation on Subpoenaing Journalists
 - Justice Department Policy on Obtaining Information from Media
 - Reporters Committee, “Nevada—Shield Law Statute”
 - Jon Ralston, “Lawyers Take Character Assassination to Court”
 - Petition, *Aspen Financial v. Eighth Judicial Court (Gentry)*
- *Quiz 9*

Week of Nov. 21

24. Nov. 22

Subpoenas: The Price of Disclosure and New Questions

- Course Module readings:
 - Reporters Committee, *First Amendment Handbook*, 26-31
 - *Cohen v. Cowles Media*
 - Nevada Press Association, “Breach of Contract”
 - Debra J. Saunders, “Josh Wolf—Blogger—Has No Press Pass”
 - “Documentary Filmmaker Wins Shield Law Ruling”
 - Josh Stearns, “Acts of Journalism”
 - Rik Scarce, “A Law to Protect Scholars”

Nov. 24: Thanksgiving

Week of Nov. 28

25. Nov. 29

Sexually Explicit Speech—Obscenity and Indecency

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 2-3, 21-23
 - *Miller v. California*
 - Electronic Frontier Foundation, “Obscenity”
 - Michelle Tsai, “Porn vs. Prostitution”
 - Irving Kristol, “Pornography, Obscenity, and the Case for Censorship”

26. Dec. 1

Sexually Explicit Speech—Child Pornography

- Course Module readings:
 - Congressional Research Serv., *Freedom of Speech & Press*, 3
 - *New York v. Ferber*
 - U.S. Department of Justice, “Child Pornography”
 - Emily Bazelon, “Paying Amy”
- *Quiz 10*

Week of Dec. 5

27. Dec. 6

Law, Ethics, and Citizenship

- Course Module readings:
 - Michael Stoll, “When It’s Free Speech for Journalists vs. Free Press for Owners, Law Is Less Than Settled”
 - Kim I. Mills, “Taking It to the Streets”
 - *Washington Post* Policy on Social Media
 - *Nelson v. McClatchy Newspapers*
 - “Should Journalists Vote?”

28. Dec. 8

We Aren’t the World

- Course Module readings:
 - Freedom House, news release on *Freedom of the Press 2016*
 - Joel Simon, “Breaking the Silence” (introduction to Committee to Protect Journalists, *Attacks on the Press 2016*)
 - Freedom House, “Key Findings,” *Freedom on the Net 2015*
 - Michael J. Totten, “Radical Islam’s Global Reaction: The Push for Blasphemy Laws”
- *Quiz 11*

Week of Dec. 12

Dec. 15

10:10 a.m.-12:10 p.m.

Final Exam