FALL 2010

INITIAL SYLLABUS (Slightly revised, August 17, 2010)

ADVANCE ASSIGNMENT (added to this syllabus on August 17): For our first class session on Wednesday, August 25, be prepared to discuss the material on pages 1-23 of the required course materials.

REQUIRED COURSE NATERIALS

The required materials for this course have been assembled by your professor. You should purchase a set from the law school Bookstore. They will be photocopied materials, punched for a three ring binder. You should consider using one or two such binders to keep the material organized.

TWEN. Signing up for this course on TWEN is mandatory. You will need your Westlaw password to do so. Go to http://lawschool.westlaw.com, click on TWEN and after signing in, click on Drop/Add a course. You will see this course listed and you should add it.

OFFICE HOURS AND AVAILABILITY

My office hours are posted on my office door, and I will normally be in my office at those times. If I am not, and no note is posted on my door, please try again in five to ten minutes. I am frequently in my office during other hours and, except for the hour preceding one of my classes, you are welcome to stop by during those times as well. My office telephone number is 651-523-2910. You can also reach me by E-Mail at: Jpielemeier@gw.hamline.edu

GOALS AND OBJECTIVES

The basic goals and objectives of this course include the development of an understanding of the legal issues, rules, and policies that have a strong impact on the "mass media," which includes entities such as radio and television stations, newspapers, producers of books and entertainment, producers of content for the World Wide Web, and others. The general topics to be covered are reflected in the table of contents below. Focus will also be on continuing to develop your proficiency in legal methodology and analysis.

Course Expectations:

HUSL Policies on attendance, lateness and preparation

The program of instruction at the School of Law is based on an active and informed exchange between instructor and student and between student and student. Regular, prepared class attendance helps develop skills essential to the competent practice of law. A student who violates the attendance policy, including the instructor's specification of class expectation described below, may lose his or her right to take the exam in the course, to receive course credit or may receive other penalties described below and in Academic Rule 108. Persistent or frequent lateness or unpreparedness may also be the basis for reduction of the grade awarded in a course. See Academic Rule 108 for further details.

CLASS ATTENDANCE AND PARTICIPATION POLICY

You are expected to be prepared for discussion of the materials assigned for each day. If you are called upon and are not well-prepared, this will result in a waste of your classmates' time as well as your own. Thus, if for any legitimate reason, you are not well-prepared, please let me know *before* class begins, and you will not be called upon during that class period.

As the Academic Rules and Attendance Policy provide, regular and punctual class attendance and preparation are required. As a general rule, I consider absences in excess of five 50 minute classes per semester to be excessive. Since this class will meet two days a week for 75 minutes each, I will consider absences in excess of three classes to be excessive. If the permitted number of absences is exceeded, opportunities to pursue "make-up work," as opposed to other sanctions, will not be granted absent a strong justification for the excessive absence, such as incapacitating illness or injury, death in the family, childbirth, or analogous circumstances. Such make-up work, if permitted, will ordinarily be in the form of a required short written paper.

At my discretion, lateness to class may be deemed an absence. Please be on time (subject to snow emergencies) and remain in the classroom during the entire class period unless illness requires that you leave.

Technology Policy

You may use laptop computers or other electronic devices in class to take notes and access course related materials. You should not use your laptop or electronic devices for other purposes.

In addition to the usual courtesies due to your classmates, refrain from text-messaging and email, using cell phones, pagers, or any other communication device. Refrain also from displaying wallpaper, screen savers, or other material on your computer screen that can reasonably be expected to distract your classmates.

GRADES

Subject to the next paragraph, your grade in the course will be based on a written final exam. That exam will be a three hour, closed book, self-scheduled exam.

However, grades may be adjusted upwards by one grade increment (e.g., from a C+ to a B-) for significant contributions to classroom discussion. These entail contributions beyond mere apparent good preparation. To warrant consideration for upwards adjustment, such contributions must reflect significant thought about the assigned materials. Extensive contributions are not the equivalent of significant contributions (and can on occasion be the opposite).

TABLE OF CONTENTS

CASES AND MATERIALS ON MASS MEDIA LAW JAMES R. PIELEMEIER HAMLINE UNIVERSITY SCHOOL OF LAW COPYRIGHT 2010

CHAPTER 1: SOME	E MUSINGS ON THE PROTECTION OF SPEECH	1
	FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION:	
	(1) WHITNEY v. CALIFORNIA (1)	
	UNITED STATES v. PLAYBOY ENTERTAINMENT GROUP (2)	
	UNITED STATES v. STEVENS (3)	
	R RESTRAINT AND RELATED GOVERNMENTAL RESTRICTIONS	
	NEAR v. MINNESOTA (13)	
	NEW YORK TIMES v. UNITED STATES (24)	
	CBS INC. v. DAVIS (25)	
	Notes and Questions (27)	
	KANSAS v. ALSTON (30)	
B. Prior Restr	raint vs. The Right to a Fair Trial	37
	NEBRASKA PRESS ASS'N v. STUART (37)	
	UNITED STATES v. NORIEGA (51)	
	CABLE NEWS NETWORK v. NORIEGA (57)	
	Notes and Questions (58)	
C. Licensing,	Zoning, and Procedural Pre-requisites to the Restraint of Unprotected	
Speec	h	51
	Introductory Notes (61)	
	CITY OF LITTLETON v. Z.J. GIFTS D-4, L.L.C. (64)	
D. Related Go	overnmental Restrictions	71
Restri	ctions on Newsracks	71
	CITY OF CINCINNATI v. DISCOVERY NETWORK, INC. (71)	
	Note (77)	
Taxat	ion	78
	LEATHERS v. MEDLOCK (78)	
	Question: (88)	
Son o	f Sam Laws 8	
	SIMON & SCHUSTER, INC. v. NEW YORK STATE CRIME VICTIMS	S
	BOARD (89)	

CHAPTER 3: COMMON LAW DEFAMATION	9
A. ELEMENTS OF THE PRIMA FACIE CASE	
1. Defamatory Statements	
KIMMERLE v. N.Y. EVENING JOURNAL (99)	,
COX v. HATCH (101)	
WEINER v. TIME & LIFE, INC. (104)	
Note (105)	
BURGESS v. REFORMER PUBLISHING CORP. (106)	
Notes (108)	
2. Statements Reasonably Referring to the Plaintiff	0
McCULLOUGH v. CITIES SERVICE. CO. (110)	
Notes (114)	
3. Common Law Categories and Damages	8
CAPOBIANCO v. PULITZER PUBLISHING CO. (118)	
MICROLAN SYSTEMS, INC. v. OMNITECH CORPORATION	
SOLUTIONS, INC. (119)	
Notes (121)	
B. Defenses	2
1. General Concepts Underlying Defamation Privileges	
2. Truth	
KONIAK v. HERITAGE NEWSPAPERS (124)	, ' T
Note (125)	. 7
3. Fair Comment	. /
A. S. ABELL CO. v KIRBY (127)	
Note (136)	_
4. Fair Report	7
SALZANO v. NORTH JERSEY MEDIA GROUP, INC. (137)	
Notes (154)	
5. Anti-SLAPP Legislation	
LAFAYETTE MOREHOUSE, INC. V. CHRONICLE PUBLISHING CO).
(155)	
Notes (162)	
6. Retraction	2
7. Statutes of Limitation	4
FIRTH v. THE STATE OF NEW YORK (164)	
Notes (167)	
8. Personal Jurisdiction	6
KEETON v. HUSTLER MAGAZINE, INC. (169)	
GORDY v. THE DAILY NEWS, L.P. (175)	
Notes (181)	
	· ^
9. Statutory Immunity	۷
ZERAN v. AMERICA ONLINE, INC. (182)	
Note (189)	

Chapter 4: Constitutional Limitations on Defamation Liability	
A. New York Times	. 191
NEW YORK TIMES CO. v. SULLIVAN (191)	
Notes and Questions (204)	
B. Who is a Public Official?	. 206
ROSENBLATT v. BAER (206)	
KASSEL v. GANNETT CO. (209)	
BRITTON v. KOEP (216)	
Notes (221)	
C. Constitutional LimitationsActual Malice	. 222
ST. AMANT v. THOMPSON (222)	
Notes: Independent Appellate Review (223)	
HERBERT v. LANDO (226)	
Notes (231)	
MASSON v. NEW YORKER MAGAZINE (233) Notes (249)	
D. Suits by Private Persons	. 250
GERTZ v. ROBERT WELCH, INC. (250)	
Notes on state standards of fault for private plaintiffs. (261)	
The New York standard (264)	
GAETA v. NEW YORK NEWS (264)	
E. A Limitation on the Gertz-New York Times Protections?	. 267
DUN & BRADSTREET, INC. v. GREENMOSS BUILDERS, INC.	
(267)	
Note–another exception? (277)	
F. Public vs. Private Figures	. 278
FORETICH v. CAPITAL CITIES/ABC, INC. (278)	
STREET v. NBC (296)	
DAMERON v. WASHINGTON MAGAZINE (302)	
Note: Corporations as Public Figures (307)	
G. Opinion and Libel by Implication	. 308
1. Opinion	
MILKOVICH v. LORAIN JOURNAL (309)	
Notes (323)	
2. Libel By Implication	. 325
HEALEY v. NEW ENGLAND NEWSPAPERS, INC. (325)	
Note (328)	
H. The Neutral Reportage Privilege	. 330
EDWARDS v. NATIONAL AUDUBON SOCIETY, INC. (330)	
MARTIN v. WILSON PUBLISHING CO. (337)	
PACELLA v. MILFORD RADIO CORPORATION (344)	
I. Alternative Methods for Resolving Defamation Disputes	. 349
N.D. Century Code Chapter 32-43. UNIFORM CORRECTION OR	
CLARIFICATION OF DEFAMATION ACT (349)	

Notes (353)

CHAPTER 5: PRIVACY	5
A. Public Disclosure of Private Facts	5
Y.G. and L.G. v. THE HOSPITAL OF ST. LOUIS and MULTI-MEDIA	
KSDK (355)	
THE FLORIDA STAR v. B. J. F. (368)	
B. PrivacyFalse Light	9
CANTRELL v. FOREST CITY PUBLISHING CO. (379)	
PEOPLES BANK AND TRUST COMPANY v. GLOBE (383)	
INTERNATIONAL PUBLISHING (383)	
FUDGE v. PENTHOUSE INTL., LTD. (390)	7
C. Appropriation (Rights of Publicity)	/
ZACCHINI v. SCRIPPS-HOWARD BROADCASTING CO. (397)	
ROGERS v. GRIMALDI (403)	
ETW CORPORATION v. JIREH PUBLISHING, INC. (417)	
Note (432) D. Intrusion	2
SANDERS v. AMERICAN BROADCASTING COMPANY (433)	3
DESNICK v. AMERICAN BROADCASTING COMPANIES, INC. (442	`
Note on Damages for Publication (450)	,
Note on Fourth Amendment claims for media "ride-alongs.". (450)	
Note on "Anti-Paparazzi Legislation." (452)	
BARTNICKI v. VOPPER (455)	
DARTNICKI V. VOFFER (455)	
CHAPTER 6: OTHER ACTIONS IN TORT AGAINST THE MEDIA47	9
A. Intentional Infliction of Emotional Distress	
HUSTLER MAGAZINE v. FALWELL (479)	
B. Liability for Physical Harm	6
HYDE v. CITY OF COLUMBIA (486)	·
Notes (490)	
McCOLLUM v. CBS, INC. (493)	
Note on the Hit Man case. (503)	
Note on Planned Parenthood (504)	
WINTER v. G. P. PUTNAM'S SONS (505)	
C. Liability for Advertising	0
BRAUN v. SOLDIER OF FORTUNE MAGAZINE, INC. (510)	-
D. Economic Harm	2
GUTTER v. DOW JONES, INC. (522)	
· · · · · · · · · · · · · · · · · ·	
CHAPTER 7: REPORTER'S PRIVILEGE	
A. A First Amendment Privilege?52	7
TEXAS ex rel. HEALEY v. McMEANS (527)	
Note. (530)	

	U.S. v. CUTLER (530)	
	SHOEN v. SHOEN (538)	
	Notes: (546)	
B. Statutory Pr	rotections5	547
Shield 1	Laws	547
	WEINBERGER v. MAPLEWOOD REVIEW (550)	
	Note (557)	
	oom Searches5	557
	42 U.S.C. § 2000aa (1998) (557)	
	Note: Other Bases for Protecting Journalistic Information (559)	
	r Breaching a Promise of Confidentiality	60
	COHEN v. COWLES MEDIA COMPANY (560)	
	Note. (568)	
CHADTED 8: ACCES	SS TO GOVERNMENTAL INFORMATION AND PROCEEDINGS	
	5	.69
	ights of Access	
<u> </u>	Introductory Note (569)	,0)
	NATIONAL ARCHIVES v. FAVISH (570)	
	nal Rights of Access	581
	Introductory Note (581)	-
	A Brief Side TripA Return to the Free Press/Fair Trial Debate (582)	
	Back to the Cases (583)	
	STATE v. ARCHULETA (584)	
	Note. Closure in Civil Cases. (590)	
	STATE ex rel BEACON-JOURNAL PUBLISHING CO. (591)	
	JESSUP V. LUTHER (601)	
CHAPTER A COVER	NIMENTAL REGILLATION	-0.5
	RNMENTAL REGULATION	
	andards for Different Media?)US
	MIAMI HERALD PUBLISHING CO. v. TORNILLO (605) RED LION BROADCASTING CO. v. FEDERAL COMMUNICATION	ıc
	COMMISSION (613)	13
	F.C.C. v. LEAGUE OF WOMEN VOTERS OF CALIFORNIA (623)	
	e of the Fairness Doctrine	526
	SYRACUSE PEACE COUNCIL v. FEDERAL COMMUNICATIONS	120
	COMMISSION (627)	
1	g of Current Content-Based Statutes and Regulations	539
	In the Matter of Codification of the Commission's	
	Political Programming Policies (639)	
	Note: (643)	
	BECKER v. FEDERAL COMMUNICATIONS COMMISSION (644)	
	In re Request of H. BELO CORPORATION (656)	
	Note (659)	

Some hypotheticals. (660)
ACTION LETTER TO DR. PAUL KLITE (661)
In re AMENDMENT of PART 73 REGARDING BROADCAST
HOAXES (669)
Note (674)
D. Regulation of Indecency in Broadcasting
F.C.C. v. PACIFICA FOUNDATION (675)
ACTION FOR CHILDREN'S TELEVISION v. F.C.C. (684)
FOX TELEVISION STATIONS v. FEDERAL COMMUNICATIONS
COMMISSION (693)
E. Regulation of Cable
TURNER BROADCASTING SYSTEM, INC. v. F.C.C. (709)
Notes (734)
F. The Internet
RENO v. AMERICAN CIVIL LIBERTIES UNION (739)
CHILD ONLINE PROTECTION ACT ("COPA") (753)