

Spring 2018 – Wednesdays – 2-5:20 p.m.

Section: 21374D

Location: ASC 328

Instructor: Jonathan Kotler

Office: ASC 202A

Office Hours: Monday: By appointment. Tuesday and Wednesday: 9:30-11:30 a.m., afternoons, by appointment.

Text: *The Law of Journalism and Mass Communication* (5th Ed.), by Robert Trager, Joseph Russomanno, Susan Dente Ross and Amy Reynolds (Sage CQ Press)

Introduction:

The touchstone of all mass communications law in this country is the First Amendment to the Constitution of the United States, a “living document” now entering its third century. It is virtually impossible to have any rational understanding of the law governing the press without at least a working knowledge of the First Amendment and how it is related to the other provisions of the Constitution and other laws and legal theories with which the media must deal on an ongoing basis. Moreover, it is the First Amendment that separates communications law in the United States from communications law in every other country in the world.

Unfortunately, in recent years, partly as a result of press conduct, partly as a result of changes in the rules governing media ownership, partly as a result of the expansion of non-traditional media, but mostly as a result of increased government secrecy (mixed liberally, especially in the years since 9/11 with pathological doses of paranoia), there have been spawned numerous restrictive judicial decisions, as well as legislative reaction to media (especially, electronic media) which seem as intent on making the news as reporting it.

The focus of this semester, therefore, will be to examine various aspects of the conflict (to the extent there is one) between the First Amendment, on the one hand, and other competing societal interests, on the other. This will include, as it must, consideration of the fact that while, in the United States, the First Amendment is a venerated icon of what it means to be an American, to the remainder of the world, the First Amendment, and all of its protections, is merely a local ordinance.

Course Objectives: There are three:

1. To enable each of you to understand what your rights are as journalists (and as Americans) under our system of laws, and especially, under the First Amendment to the Constitution of the United States
2. To keep you out of trouble, that is, to enable you to recognize the limits of your legal rights and to recognize, as well, the many ethical dilemmas confronting members of the media when they seek to exercise their legal rights. (As you will learn, oftentimes there is a conflict between what is legal and what is ethical.)

3. To have an understanding, devoid of mythology, of how we arrived at this place and time in what has been called, “The American Experiment.”

Class Format:

Unlike many of the other classes you will take during your studies at USC (and for some of you, beyond) this is neither a “skills” class (except to the extent that the “skill” of rational, analytical thinking must be employed) nor one that is highly theory based. What you learn here will be 100% “real world.” The law is something that cannot be ignored, regardless of the professional path you choose to undertake, or, even whether or not you work at all. For Americans especially, the law is everywhere, every day. For journalists particularly, an understanding of the law, and more narrowly, of the law that impacts their ability to do their jobs, is no longer an option. It is a requirement.

And while some would have you believe that in this new world of the Internet and so-called “cyber law,” that new technology is changing the law, they are badly misinformed. Technology, new or otherwise, whatever it may be, always adapts to the law, not the other way around. If something is defamatory if printed in a newspaper, it is also defamatory if it appears in a blog on the Internet. The same holds true for violations of intellectual property, invasions of privacy, and on and on, the communications platform being irrelevant.

As such, and so that you understand that the law is something that touches journalism and journalists 24/7, we will begin each class session with a discussion of the week’s media law “events,” that is, those stories and those issues with a media law focus that occurred during the previous week. This will serve not only as a “heads up” for all of you, but as a reminder, as well, that without a knowledge of what is going on in the law, you’ll be missing out on some very big stories, and, depending on what your professional turf happens to be, will diminish your value as a journalist. Included in this weekly discussion, will be media law stories not just from the United States, but from around the globe. Such stories will serve not only as a contrast about what we learn during the semester about American media law, but will, as well, point out how, in so many instances, American law—and what we have come to accept as “normal”—really is an outlier and quite unique. Students are encouraged to bring in examples of media law related cases and stories to discuss during this opening half-hour or so. All contributions in this regard sent via email prior to class will be, as well, gratefully accepted.

Key Semester Dates:

- | | |
|--------------|---|
| January 10: | First essay assigned |
| January 31: | First essay due via email to: kotler@usc.edu prior to the start of class, or by hard copy prior to the start of class |
| February 21: | First Midterm Examination |
| March 7: | News Folders and short essay (hard copy only) due by start of class (further explanation to follow) |

- April 4: Second Midterm Examination
- April 11: Final essay assigned
- May 7: Final essay due, via email, to: kotler@usc.edu, by 2 p.m.

Calendar (all chapter references are to your textbook):

- January 10: **First essay assigned**; the American judicial system. (Chapter 1)
- January 17: The First Amendment, theory and practice. (Chapters 2-3)
- January 24: The law of prior restraint. (Chapters 2-3)
- January 31: Defamation (Chapters 4-5); **first essay due by start of class** via email at kotler@usc.edu or in hard copy
- February 7: Defamation (continued); (Chapters 4-5)
- February 14: Privacy in a world of social media and political paranoia (Chapter 6)
- February 21: **First Midterm**
- February 28: Free Press v. Fair Trial (1st Amendment vs. 6th Amendment). (Chapter 10)
- March 7: **News folders (clippings) and short essay to be turned in at start of class—hard copy only**. Protecting sources and work product (“Shield laws”). (Chapter 9)
- March 14: Spring Break; No Class!
- March 21: Broadcasting and the regulation of electronic media (Chapter 11)
- March 28: Access to government information (Chapter 8)
- April 4: **Second Midterm**
- April 11: **Final (second) take home essay assigned**. Commercial speech and advertising (Chapter 14)
- April 18: Commercial speech (advertising). (Chapter 14)
- April 25: The Communications Act of 1996: The media world changes forever
- May 7, 2-4 p.m.: **Final take home essay due via email to: kotler@usc.edu, by 2 p.m.**
- Discussion

Grading/Course Requirements:

There will be five graded assignments in this class. Four will consist of two take home essays and two in-class examinations. In addition, each student will be responsible for compiling a folder of five (5) *originally reported* stories (**one story per week for each week from the week beginning on January 14 through the end of the week that begins on Sunday, February 11**) that appeared in the news (but **NOT** from or in a news-aggregator or blog not associated with a “legacy” news source) dealing with some aspect either of media law or the First Amendment. If in doubt as to whether or not a particular story “fits” these criteria, check with the course instructor beforehand. There will be a short essay component assigned later in the semester to go along with this compilation.

Each assignment will be worth 100 points. Total semester points available: 500

Number grades on the assignments will translate to letter grades for the semester as follows: 450 points (or 90% of 500) = a semester grade of “A”; 440 points (or 88% of 500) = a semester grade of “A-”; 425 points (or 85% of 500) = a semester grade of “B+”; 400 points (or 80% of 500) = a semester grade of “B”; 390 points (or 78% of 500) = a semester grade of “B-”; 375 points (or 75% of 500) = a semester grade of “C+”; 350 points (or 70% of 500) = a semester grade of “C”; 340 points (or 68% of 500) = a semester grade of “C-”; **339 points or below = a semester grade of “F”.**

Late Papers: With respect to all assignments other than the two examinations which will be taken in class, note that late papers will be accepted, but at a price. They will be penalized at the rate of one grade for each day or part thereof that they miss their assigned deadline. This, of course, puts a premium on your ability to make good choices where there are conflicts and to plan your time both wisely and well ahead. A year ago, unfortunately, three of my best students did not receive the final course grades they had earned, because, in each case, they chose to miss class deadlines in favor of pursuing student media “obligations.” **There will be no exceptions to this rule.**

Stuff They Made Me Include:

Add/Drop Dates for Session 001 (15 weeks: 1/8/18 – 4/27/18)

Friday, January 26: Last day to register and add classes for Session 001

Friday, January 26: Last day to drop a class without a mark of “W,” except for Monday-only classes, and receive a refund for Session 001

Tuesday, January 30: last day to drop a Monday-only class without a mark of “W” and receive a refund for Session 001

Friday, February 23: Last day to drop a course without a mark of “W” on the transcript. [Please drop any course by the end of week three (or the week three equivalent for short sessions) to avoid tuition charges.]

Friday, April 6: Last day to drop a class with a mark of “W” for Session 001

Support Systems:

Student Counseling Services (SCS) – (213) 740-7711 – 24/7 on call

Free and confidential mental health treatment for students, including short-term psychotherapy, group counseling, stress fitness workshops, and crisis intervention. engemannshc.usc.edu/counseling

National Suicide Prevention Lifeline – 1 (800) 273-8255

Provides free and confidential emotional support to people in suicidal crisis or emotional distress 24 hours a day, 7 days a week. www.suicidepreventionlifeline.org

Relationship and Sexual Violence Prevention Services (RSVP) – (213) 740-4900 – 24/7 on call

Free and confidential therapy services, workshops, and training for situations related to gender-based harm. engemannshc.usc.edu/rsvp

Sexual Assault Resource Center

For more information about how to get help or help a survivor, rights, reporting options, and additional resources, visit the website: sarc.usc.edu

Office of Equity and Diversity (OED)/Title IX Compliance – (213) 740-5086

Works with faculty, staff, visitors, applicants, and students around issues of protected class. equity.usc.edu

Bias Assessment Response and Support

Incidents of bias, hate crimes and microaggressions need to be reported allowing for appropriate investigation and response. studentaffairs.usc.edu/bias-assessment-response-support

The Office of Disability Services and Programs

Provides certification for students with disabilities and helps arrange relevant accommodations. dsp.usc.edu

Student Support and Advocacy – (213) 821-4710

Assists students and families in resolving complex issues adversely affecting their success as a student EX: personal, financial, and academic. studentaffairs.usc.edu/ssa

Diversity at USC

Information on events, programs and training, the Diversity Task Force (including representatives for each school), chronology, participation, and various resources for students. diversity.usc.edu

USC Emergency Information

Provides safety and other updates, including ways in which instruction will be continued if an officially declared emergency makes travel to campus infeasible. emergency.usc.edu

USC Department of Public Safety – UPC: (213) 740-4321 – HSC: (323) 442-1000 – 24-hour emergency or to report a crime. Provides overall safety to USC community. dps.usc.edu

Honesty/Plagiarism/Academic Integrity Policy

1. USC Statement on Academic Integrity

USC seeks to maintain an optimal learning environment. General principles of academic honesty include the concept of respect for the intellectual property of others, the expectation that individual work will be submitted unless otherwise allowed by an instructor, and the obligation both to protect one's own academic work from misuse by others as well as to avoid using another's work as one's own. All students are expected to understand and abide by these principles. *SCampus*, the Student Guidebook,

contains the Student Conduct Code in Section 11.00, while the recommended sanctions are located at <http://scampus.usc.edu/university-governance>. Students will be referred to the Office of Student Judicial Affairs and Community Standards for further review, should there be any suspicion of academic dishonesty. The review process can be found at <http://www.usc.edu/student-affairs/SJACS>.

2. School of Journalism Plagiarism/Academic Integrity Policy

The following is the School of Journalism's (relatively) new (effective January, 2012) policy of plagiarism/academic integrity that each faculty member has been required to place in each School of Journalism course syllabus:

Plagiarism is defined as taking ideas or content from another and presenting it as one's own, either verbatim or recast in your own words. It is a serious academic offense with serious consequences. Please familiarize yourself with the discussion of plagiarism in *SCampus* in Section 11, *Behavior Violating University Standards* <https://scampus.usc.edu/b/11-00-behavior-violating-university-standards-and-appropriate-sanctions/>. Other forms of academic dishonesty are equally unacceptable. For instance, it is assumed that the work you submit for this course is work you have produced entirely by yourself, and has not been previously produced by you for submission in another course or Learning Lab, without approval of the instructor.

The following is the School of Journalism's policy on academic integrity as published in the University Catalogue:

"Since its founding, the USC School of Journalism has maintained a commitment to the highest standards of ethical conduct and academic excellence. Any student found plagiarizing, fabricating, cheating on examinations, and/or purchasing papers or other assignments faces sanctions ranging from an "F" on the assignment to dismissal from the School of Journalism." All academic integrity violations will be reported to the office of Student Judicial Affairs and Community Standards (SJACS), as per university policy, as well as journalism school administrators and the school's academic integrity committee."

(For the (historical) record, the following was how the School of Journalism defined and dealt with plagiarism prior to January, 2012, and for many decades prior thereto:

"Plagiarism is defined as taking ideas or writings from another and passing them off as 'one's own; in journalism, this includes appropriating the reporting of another without clear attribution."

And because in the journalism business plagiarism has always been viewed as among the most serious of transgressions a reporter could engage in, prior to January, 2012, a charge and subsequent finding of guilt in committing plagiarism, led, without exception, to the immediate expulsion from the School of Journalism. Said the old, pre-January 2012 policy:

"Any student found guilty of plagiarism, fabrication, cheating on examinations, or purchasing papers or other assignments will receive a failing grade in the course and will be dismissed as a major from the School of Journalism."

You will note immediately two major differences between the old policy and the current one: First, under the prior policy, "appropriating the reporting of another without clear attribution" was included within the definition of plagiarism.

While this language has been dropped from the current “definition,” rest assured that in **THIS** class, failure to properly attribute the work of another and passing it off as one’s own will be dealt with as plagiarism, as it is in the rest of the world outside of the current School of Journalism. Moreover, don’t even try to use the defense of “innocent” aggregation of information. Doing so may get you off the hook in other classes where aggregation of information without permission or proper attribution is acceptable, but not in this one. Stealing—that is aggregating without permission or attribution—is never innocent. Nor is it ever acceptable.

The other major difference between the old policy on plagiarism/academic integrity and the current one is in the penalties that might be imposed subsequent to a finding of guilt. Under the old policy, one strike and you were out (of the School of Journalism). That is how serious a transgression plagiarism was thought to be. Under the current policy regarding possible penalties, however, it is a crapshoot. But be assured, there WILL be a penalty of some sort for violating the current policy, even if the guilty perpetrator does not know in advance of committing the offending act what it will be. Do you feel lucky? Is it worth the risk?

3. Internships

The value of professional internships as part of the overall educational experience of our students has long been recognized by the School of Journalism. Accordingly, while internships are not required for successful completion of this course, any student enrolled in this course that undertakes and completes an approved, non-paid internship during the semester shall earn academic credit herein of an amount equal to 1 percent of the total available semester points available for this court (which is five (5) points). To receive instructor approval, a student must request an internship letter from the Annenberg Career Development Office and bring it to the instructor to sign by the end of the third week of classes. The student must submit the signed letter to the media organization, along with evaluation form provided by the Career Development Office. The form should be filled out by the intern supervisor and returned to the instructor by the last day of class. Note: The internship must be unpaid and can only be applied to one journalism class.

A few words about class attendance and cell phone and in-class computer use

It is never acceptable to miss class because you have a conflict with an assignment or obligation in another class (or with a student activity). **As soon as such a conflict becomes apparent**, it is incumbent upon the student to inform the professor, instructor or advisor in the course or activity who/that has created the conflict that you have an academic obligation elsewhere. Thereafter, it is the professional responsibility of the said professor/instructor/advisor to respect your **prior** obligation and to take whatever steps are necessary to ameliorate the conflict which his/her course or activity assignment created. These conflicts, created by others, are not your problem. Do not make it one by remaining silent, attempting to be two places at once, or worse, cutting class. These are bad, unprofessional work habits, and surely will catch up with you in the future. (If in the unlikely event that you are unable to resolve the time conflict, as aforesaid, immediately notify the professor in THIS class so that you are not caught in the middle of a situation for which you are not responsible.)

If, however, you *ARE* going to miss class (for some reason other than an academic/activity conflict, as aforesaid), prior notification (that is, prior to the start of class you intend to miss) is both the courteous thing to do, and is expected.

Please note: This class is a “phubbing” free zone. The use of cell phones during class (including consulting same to receive messages or sending text messages) **is strictly prohibited**. When class begins your cell phones should be turned off and should remain that way (except, during the official class break, if you so choose). Serial violators of this rule will be asked to leave class for the duration of the session during which they are in violation of this rule. As for computer usage, of course you may use them to take notes during class. But using them to send or receive personal messages or to surf the Web is likewise forbidden.

David Carr, the late *New York Times* journalist and part-time journalism instructor used to include the following in his course syllabi: “If you text or email during class, I will ignore you as you ignore me. It won’t go well.” Consider his words as if they were mine, as well.

About your professor:

An attorney by profession, Jonathan Kotler has been on the faculty of the USC School of Journalism (from which he graduated in 1967) since 1983, where he has taught courses on media law, media history, media ethics and international journalism, among others. A graduate also of the UCLA School of Law, Kotler has represented clients at every level of the American judicial system, including at the United States Supreme Court. For a period of ten years, Kotler was at the USC Graduate School, where he served as Associate Dean, Dean, and finally, as Director of Graduate and Professional Programs in the Office of the Provost. He has lectured frequently on the law of higher education throughout the United States and Canada, both for the Council of Graduate Schools (CGS) and the Western Association of Graduate Schools (WAGS), of which organization he served as President in 2000-2001. In addition to his journalism and law degrees, Kotler also holds two other graduate degrees (in liberal arts and in history), both from USC. While pursuing the latter, he served as the teaching assistant for the late Dr. John R. Hubbard, then USC’s President. Kotler has two sons, Ryan, who is a graduate of Oberlin College and the Eastman Conservatory of Music and works for Google, Inc., and Brendan, a four year member of the USC baseball team and graduate of both the Annenberg School and the UCLA School of Law. He currently works as an executive for the Westfield Corporation.

