

61-412 Law of Mass Communication                      Fall 2006  
3:30 p.m. – 5 p.m. Monday and Wednesday      Clow 107  
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Office hours are 2 p.m. until class time Monday and Wednesday and by appointment.

Text and readings:

Pember and Calvert. *Mass Media Law*, 2007–2008

Coll. *Mass Communication Law in Wisconsin*, 1996

Additional reading materials will be handed out from time to time or otherwise assigned. Handouts and assigned readings become course material for purposes of discussion and testing. The Web offers a good many helpful resources for a student of free expression. The best way to master course material is to read assignments carefully and critically before the topics and cases they cover are discussed in class. Bring texts to each class if that helps. Be prepared to join the discussion. It may help to read the screened sections of the text labeled “summary” before beginning the text section they summarize. These sections also make good study guides for exams.

Our most important objective is to establish a context for understanding the First Amendment and the developing law of mass communication and how it affects us, both as citizens and as professional communicators. Mass communicators cannot afford to be ignorant of the law. They must be aware of the state of the law in regard to such important (and contemporary) issues as prior restraint, access to government information, invasion of privacy, protection of sources, free press-fair trial, copyright and trademark, obscenity and indecency and advertising.

When you have successfully completed this course, you will be able to:

- better appreciate the importance of the First Amendment to both our individual civil rights and to the proper functioning of communities in a democratic society
- discuss knowledgeably the history and development of the First Amendment law in the U.S., its current state, and its likely future
- discuss knowledgeably judicial principles and philosophies that guide judges in America’s courts in general and especially in the courts of Wisconsin and the U.S. Supreme Court
- find, read and understand and speak and write intelligently about U.S. Supreme Court and Wisconsin court decisions involving expression
- recognize the kinds of expression that tend to lead to legal difficulties for professional communicators, and be able to suggest ways to avoid some of the more common problems
- understand the interrelationship between law and ethics and how professional communicators learn to apply them to situations they confront

Mock Interviews;

The Department of Journalism and Career Services is sponsoring a mock interview session on October 12, between 3 p.m. and 5 p.m. Each student in this class will have two interviews, with professionals (Advertising, Public Relations, Advertising/Public Relations, News-Editorial), with feedback sessions for each student immediately following each interview. This is a good opportunity for each student to learn more about how to interview – in a relatively non-threatening setting. Full particulars will be discussed in the second class session.

Grading:

Your course grade will be determined by your performance on four one-hour exams and two written case briefs. Exams and briefs are graded blind. Only after grading is completed and a letter grade determined for each exam does the instructor look up identification numbers and record letter grades. Each exam is worth about 20 percent of the course grade and each brief about 10 percent. Your attendance and participation in class will also be factors in your grades. Regular class attendance, class participation and

engagement with the subject is the minimum expected of all members of the class; not attending class will lower your grade. If you expect not to be able to take an exam at the scheduled time, you must make prior arrangements with the instructor to take the exam at some other time, or you will receive an F on the missed exam. Vacations and personal plans are not sufficient reasons for not taking an exam at its scheduled time; medical and family emergencies usually qualify. Make-up exams may not be offered until the final week of the semester and may not be identical in form to exams missed.

#### Briefs:

Each class member will study two law cases (one federal and one state) and craft a law brief and a news story for each. Cases are assigned by the instructor. When you know your cases, find them the library (in *U.S. Reports* or in the *Northwestern Reporter*), or on a web law resource such as Lexis-Nexis Academic Universe/Legal Research (available through the University's library site) or even by entering the case name in Google. Make sure you allow plenty of time read and understand your case before the brief is due. We will spend a bit of time early in the semester learning how to read a law case and how to write a brief. Two copies of each brief are due, in person, at the beginning of class on the day it is due. One copy will be graded and returned to you. A model brief (taken from another law text) is a part of this syllabus. Briefs will be no longer than two pages double-spaced, with standard margins, in 12-point A Garamond, on one side of the sheet. Each brief will be accompanied by a news story, written by you, of the type that might appear in a newspaper the day the court decision was handed down. The objective of the news story is to tell readers about the court's action regarding the case and how it will affect people's lives. The news story will be on a separate sheet and should be no more than two pages; you will also write a suitable headline (two lines of 24 units each). You might want to dredge up your news writing, reporting and editing notes for this assignment, and review how news stories are written. Briefs turned in late will be penalized one letter for each day or part of a day they are late.

Academic dishonesty is taken very seriously by the university, the department and by the instructor and will be dealt with according to the provisions of UWS Section 14. Dishonesty in class-related work will lead to serious consequences, including failure in the course. So there can be no confusion, here is the appropriate portion of the code:

#### **Source: UW Oshkosh Student Discipline Code**

#### **UWS 14.03 Academic misconduct subject to disciplinary action.**

- (1) Academic misconduct is an act in which a student:
  - (a) Seeks to claim credit for the work or efforts of another without authorization or citation;
  - (b) Uses unauthorized materials or fabricated data in any academic exercise;
  - (c) Forges or falsifies academic documents or records;
  - (d) Intentionally impedes or damages the academic work of others;
  - (e) Engages in conduct aimed at making false representation of a student's academic performance; or student's academic performance; or
  - (f) Assists other students in any of these acts.
- (2) Examples of academic misconduct include, but are not limited to: cheating on an examination; collaborating with others in work to be presented, contrary to the stated rules of the course; submitting a paper or assignment as one's own work when a part or all of the a paper or assignment as one's own work when a part or all of the paper or assignment is the work of another; submitting a paper or assignment that contains ideas or research of others without appropriately identifying the sources of those ideas; stealing examinations or course materials; submitting, if contrary to the rules of a course, work previously presented in another course; tampering with the laboratory experiment or computer program of another student; knowingly and intentionally assisting another student in any of the above, including assistance in an arrangement whereby any work, classroom performance,

examination or other activity is submitted or performed by a person other than the student under whose name the work is submitted or performed.

Schedule of topics for discussion, by week. Because of the nature of this material, expect changes to the schedule below. Read all material before we address it in class. Members of the class will also want to avail themselves of some of the material Pember offers on the CD that accompanies the text.

#### Weeks

- 1 Law and courts, the legal process  
Pember Chapter 1, Glossary, pp. 725–732. Coll Preface and Introduction.
- 2 First Amendment history and scope, Pember Chapter 2.
- 3 Contemporary problems, censoring speech/compelling speech, Pember Chapter 3.
- 4 First Amendment issues concluded.  
Exam on September 27
- 5 Libel introduction – Pember Chapters 4 and 5. Coll Defamation.
- 6 Libel, continued and introduction to Invasion of Privacy – Pember Chapters 6, 7 and 8.  
Coll Invasion of Privacy.  
Federal case brief due October 11
- 7 Invasion of privacy, concluded.  
Exam on October 23
- 8 Gathering information, Freedom of Information – Pember Chapter 9. Coll Open Meetings and Open Records.
- 9 Gathering information continued, reporting from the courtroom – Pember Chapters 11 and 12. Coll Fair Trial-Free-Press.  
State law brief due November 1
- 10 Fair trial issues continued, protection of sources. – Pember Chapter 10
- 11 Access issues concluded.  
Exam on November 15
- 12 Regulating speech: Obscenity and Advertising – Pember Chapters 13 and 15. Coll Obscenity and Advertising.
- 13 Advertising and copyright– Pember Chapters 15 and 14
- 14 Copyright  
Exam on December 13

Model law brief

Citation: Rideau v. Louisiana, 373 U.S. 723 (1963).

Facts: In 1961, Wilbert Rideau robbed a bank in Lake Charles, LA, kidnapped three of its employees, and killed one of them. Rideau was arrested. The next morning, Rideau was "interviewed" on film, with the sheriff of Calcasieu Parish asking questions. Rideau admitted robbery, kidnapping, and murder. The 20-minute filmed interview was telecast three times over the next three days, reaching an estimated two-thirds of the residents of Calcasieu Parish. At a hearing two weeks later, Rideau's lawyers moved for a venue change, arguing he could not get a trial by an impartial jury as guaranteed by the Sixth Amendment. The interview and telecasts were attacked as prejudicial. The trial court denied the venue change, and Rideau was convicted. His conviction was upheld by the Supreme Court of Louisiana. The case reached the Supreme Court of the United States after certiorari was granted.

Issue: Was the denial of a change of venue a denial of due process of law as guaranteed in the U.S. Constitution? (That's a short way of saying the Sixth Amendment's right to a fair trial is applied to the states through the due process clause of the Fourteenth Amendment. Section 1 of that Amendment says, in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, not deny to any person within its jurisdiction due process of law; not deny to any person within its jurisdiction the equal protection of the laws.")

Decision: Yes. Rideau's conviction was reversed by a vote of 7-2.

Reasoning: (Majority opinion by Justice Potter Stewart).

The people of Calcasieu Parish were exposed repeatedly to the spectacle of Rideau confessing he had committed the crimes. This spectacle, to the tens of thousands of people who saw and heard it, ". . . in a very real sense was Rideau's trial . . . Any subsequent court proceeding in a community so pervasively exposed to such a spectacle would be but a hollow formality." Under the constitutional guarantee of due process, a person accused of a crime has the right to be tried in a courtroom presided over by a judge. Here, the people saw a "trial" presided over by a sheriff, where there was no lawyer to advise Rideau of his right to stand mute.

Dissent: (Justice Tom. C. Clark, joined by Justice John Marshall Harlan).

Said he could find no due process deprivation under the 14th Amendment; only three of the 12 members of the jury panel had seen the televised interview, which was broadcast almost two months before the trial. The record did not show that the three jurors testified to holding preconceived opinions of Rideau's guilt.

(Note: Wilbert Rideau was released in January 2005, after having served 44 years of a life sentence. Over the years, he became known as the most rehabilitated prisoner in America.)