

MEDIA LAW AND ETHICS: COMM 3404

Monday | 6:00-8:45 p.m. | DE 253 | P: 216.280.9715

Class Website: u.osu.edu/milano.35

THE PROFESSOR:

Jay Milano, Esq. | Milano Attorney and Counselor at Law | milano.35@osu.edu |
Office Hours by Appointment, 440.356.2828, milanolaw.com

COURS WEBSITE: u.osu.edu/milano.35

COURSE DESCRIPTION:

It is the purpose of this class to provide you with a model by which to analyze, understand, and act upon the law and ethical considerations which journalists face. We will use the writings of the Supreme Court, the Ethical rules of the Society of Professional Journalists, and actual events to build an analytical model. You will compile a “Reporter’s Notebook” of what we learn. The purpose of the notebook is to give you a living reference, which you can use and add to as you pursue your career.

There is no profession more important to a democracy than journalism -when vigilant and diligent and resolute. In order to perform that role, you will need to understand both the law and the ethics that govern it.

As long as you are willing to do the work, this class will provide you a foundation upon which to build.

RULES:

You will be treated as professionals. That means:

1. You will need to put forth a professional effort.
 - a. Read and understand the assignments.
 - b. Participate in class discussion.
2. This class will be built upon the ideas and concepts fleshed out in our classroom discussions. You will need to speak fearlessly and argue zealously for your point of view.
 - a. We will respect the right of each of us to have an individual opinion (that does not mean we all need to agree).
 - b. We will treat each other with the respect due a colleague.
 - c. “The essence of the independent mind lies not in what it thinks. But in how it thinks.” – Christopher Hitchens
3. You need to show up to each and every class. If you miss, you need to email in advance of class with the reason.
 - a. If the reason is legitimate and the occurrences are few (very few) we will be fine.
 - b. You need to stay until the end of the class period.
4. There are no facts- there is only evidence.
5. There is no syllabus for life.

REQUIRED TEXT:

Instead of requiring a textbook for this course, I have selected a number of relevant articles from sources such as Poynter, the Reporters Committee for Freedom of the Press, the Society of Professional Journalists online blog, etcetera. The Assignment Syllabus will list the sections assigned for each class, and you will be responsible for following the links and becoming familiar with the assigned material.

In addition to the weekly readings, you will be responsible for purchasing and reading **“The Journalist and the Murderer” by Janet Malcom**. It is available for purchase on Amazon for approximately \$9. While I will not assign specific pages to be read for particular class days, we will discuss and analyze the book; you will need to finish it by halfway through the semester.

ADDITIONAL RESPONSIBILITIES:

Reporter’s Notebook:

The purposes of the Reporter’s Notebook:

The RN is designed to provide you with lifetime repository of information on Media Law and Ethics. It is my hope that it will grow as your career progresses.

Then it is designed to compel you to analyze the reading on an ongoing and timely basis. Finally, the class entry informs me of your attendance and attention.

Students must create a course blog at u.osu.edu. Each student’s blog will be linked to the class blog and each week you will be responsible for posting a specific analysis of the assigned material before that week’s class. After class, and before the next class, each of you must re-visit your blogs and “comment” with something new you learned during class (this need not be much longer than a paragraph). In other words, every week you have two mandatory assignments: analyzing material for the upcoming Monday, and commenting upon your previous post after our class discussion. While these are two assignments, students need only develop one blog post for each week. **It will contain the your analysis of the weekly reading assignment and your comment on the in-class discussion.**

Here is the model to be used for the Reporter’s Notebook.

For each article and case assigned each week:

- What is the issue?
- What are the arguments regarding the issue?
- Are there extrinsic factor related to the issue?
- What is the Author’s/Courts position?
- What is my position?

Then after each class. Log a paragraph or two, or more (if you choose) about what was discussed and your position on the issues

Read the weekly assignments. Note what is important about them in the blog. Then go back to the same post and add your comments on the class discussions. You need to do both each week.

Before the second class, after you have created your individual blogs, please email me the link so that I can group and link your blogs to the class blog page. Use both addresses- jam@milanolaw.com and kp@milanolaw.com

The subject line of all emails should be 3404 (your last name) and be emailed to both addresses.

Ethical Analysis: A Model of Ethical Analysis

An ethical analysis should contain the following information:

- The relevant or potential **issues**.
- The **evidence** that pertain to that issue.
- The **extrinsic factors** that led to the alleged misconduct or controversial material.
- The **relevant section of the Code of Ethics** that governs the ethical issue.
- What is **the precedent?**
- Your **overall conclusion**. Do you the reporter acted ethically? Unethically? Why?

In terms of the pertinent Supreme Court cases, your blog post should be a “case brief” of the specific Supreme Court decision and a short analysis of the conclusion, discussing how you feel about the outcome and what impact you think it will have on the field.

Case Briefs: A Model of Case Law Analysis

A case brief should contain the following information, in respective order:

- The **facts**: Generally outlined at the very beginning of the case, the facts set the stage for the overall issue of the case.
- The **issue**: The issue is the question that the Supreme Court is answering. It should be in question-form on your brief.
- The **rule**: The rule is what ultimately comes out of the case. The Supreme Court of the United States doesn’t “make laws,” per se, but their decisions become binding on all of the states because of the Supremacy Clause of the Constitution. Thus, the rule is very important.
- The **holding**: The holding is generally a one-sentence statement that answers the question asked by the issue of the case.
- The **rationale**: The rationale is the Court’s reason for making their decision. It is sometimes difficult to ascertain exactly *why* the Court came to their conclusion; sometimes the rationale is one sentence and other times it is one paragraph. Do the best you can.
- The **disposition**: Did the Court affirm the lower court’s judgment? Reverse? Reverse and remand?

Hot Topics:

Hot topics are issues in the news about ethics, law, society, journalism, or anything else interesting that is catching publicity that your group will be responsible for explaining and presenting to the class.

Groups will be assigned alphabetically and will work collaboratively. Each group will be assigned a particular topic by the professor and will have two weeks to prepare the analysis for class.

Your group will present the issue and an analysis to the class. Your analysis should be focused on identifying the particular issue, the evidence or facts that pertain to that issue, extrinsic factors (i.e. why did the reporter publish the story? Why was a particular source sensitive about what was published?), the relevant Code section, and your overall conclusion. During the last 5 minutes you will need to stimulate class discussion, answer questions, and ask questions of your peers. You will be responsible for meeting with your group outside of class throughout the course of the two-week period to organize your presentation.

CLASS PARTICIPATION:

This course will be structured based upon lively and compelling class discussions. Each student must come to class prepared to ask questions and offer points of discussion based upon the assigned readings. You are all professionals. You will not be graded based upon the “correctness” of your answer, but your participation grade will be based on your ability to give a thought out and individualized answer.

Open discussion and the Socratic method are beneficial to both the classroom experience and the way that you will all learn. This method is employed universally throughout law schools. It involves the professor calling a random student’s name from the roster after asking the class a question or upon beginning the discussion for that day.

An article in the Stanford University Newsletter distributed in the fall of 2003 reads the following:

“In the Socratic method, the classroom experience is a shared dialogue between teacher and students in which both are responsible for pushing the dialogue forward through questioning. The ‘teacher,’ or leader of the dialogue, asks probing questions in an effort to expose the values and beliefs which frame and support the thoughts and statements of the participants in the inquiry. The students ask questions as well, both of the teacher and each other.”

Class participation is not included in the overall grade distribution. You can achieve an A in this class and never say a word. However, I will note participation and it can raise your grade as much as a full letter grade based upon the quality.

GRADE DISTRIBUTION:

Reporter’s Notebook Assignments	300
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Midterm	100
Final	200

ACADEMIC MISCONDUCT:

All forms of conduct prohibited by the Code of Student Conduct are likewise prohibited in this classroom and course. Detailed information, including a list of specifically prohibited conduct, can be found in Section 3335-23-04 of the Code of Student Conduct. The online version of the Code can be found at: <http://studentaffairs.osu.edu/csc/>.

SPECIAL ACCOMODATIONS:

Any student in need of special accommodations due to a disability should contact me via phone, email, or before/after class to discuss your needs. Students with disabilities should call the Office for Disability Services at 614.292.3307 or visit the office at 150 Pomerania Hall to document those disabilities and coordinate reasonable accommodations.

ASSIGNMENT SYLLABUS

The materials listed on your syllabus are located online. The plan is to spend the first half of class discussing the cases and allowing for Hot Topic presentations. These assignments are tentative. If, throughout the course of the semester, relevant issues in the news come to light, it is a possibility that we will nix the reading assignment for that day and focus on the current issue instead.

Date	Subject Matter	Assignment
Class 1	Introduction	<p>Introduction to the class; In-class presentation</p> <p>For next class: -The Rolling Stones: <i>A Rape on Campus: A Brutal Assault and Struggle for Justice at UVA</i> (article will be emailed) -Columbia Journalism Review: <i>Rolling Stones Investigation: 'A Failure that was Avoidable'</i> (http://www.cjr.org/investigation/rolling_stone_investigation.php)</p>
Class 2	Seek Truth & Report: Accuracy	<p>Case law discussion; Hot Topic presentation <i>Rolling Stones</i> article and ethics discussion;</p> <p>For next class: -Media Shift: <i>Why Journalism Professors Should Teach Accuracy Checklists</i> (http://mediashift.org/2015/02/journalism-professors-should-teach-accuracy-checklists/) -USA Today: <i>Dangers of Speed vs. Accuracy</i> (http://usatoday30.usatoday.com/news/opinion/forum/story/2012-04-24/journalism-social-media-giffords-paterno-nikki-haley/54513448/1) -Poynter: <i>How Journalists Can Do a Better Job of Correcting Errors on Social Media</i> (http://www.poynter.org/news/mediawire/181508/how-journalists-can-do-a-better-job-of-correcting-errors-on-social-media/)</p>
Class 3	Seek Truth & Report: Accuracy, Correcting Errors	<p>Case law discussion; Hot Topic presentation Ethics discussion on accuracy and corrections</p>

		<p>For next class:</p> <ul style="list-style-type: none"> -SPJ: <i>Anonymous Sources</i> (http://www.spj.org/ethics-papers-anonymity.asp) -SPJ: <i>When Sources Won't Talk</i> (http://www.spj.org/ecs19.asp) -Poynter: <i>5 Tips for Journalists Who Want to do a Better Job of Cultivating Sources</i> (http://www.poynter.org/how-tos/writing/176219/5-tips-for-journalists-who-want-to-do-a-better-job-of-cultivating-sources/) -RCFP: <i>The Landmark Food Lion Case</i> (http://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-spring-2012/landmark-food-lion-case) -Poynter: <i>ABC and Food Lion: The Ethics Questions</i> (http://www.poynter.org/uncategorized/2125/abc-and-food-lion-the-ethics-questions/) -SPJ: <i>Who's the Predator?</i> (http://www.spj.org/ecs8.asp)
Class 4	Seek Truth & Report: Sources, Information Gathering	<p>Case law discussion; Hot Topic presentation Ethics discussion on sources and information gathering</p> <p>For next class:</p> <ul style="list-style-type: none"> -SPJ: <i>Open Doors: Accessing Government Records</i> (http://www.spj.org/opendoors.asp) -RCFP: <i>Sunshine Laws</i> (https://www.rcfp.org/first-amendment-handbook/sunshine-laws) -SPJ: <i>Red Flags</i> (http://www.spj.org/opendoors6.asp) -Poynter: <i>3 Things Journalists Can Learn From 'Linsanity'</i> (http://www.poynter.org/news/mediawire/162785/three-things-journalists-can-learn-from-linsanity/) -The New York Times: <i>Drawing a Clearer Line Between News and Opinion</i> (http://www.nytimes.com/2006/09/24/opinion/24publiceditor.html?pagewanted=all&_r=0) -Nieman Reports: <i>Attitudes and Mindsets Hinder Journalists In...</i> (http://niemanreports.org/articles/attitudes-and-mindsets-hinder-journalists-in/)
Class 5	Seek Truth & Report: Access to Information, Duty as Watchdog, Stereotypes & Opinion	<p>Case law discussion; Hot Topic presentation; Ethics discussion on access to information, our duty as watchdogs, and stereotypes/opinions</p>

		<p>For next class:</p> <ul style="list-style-type: none"> -Poynter: <i>Where the Journal News Went Wrong in Publishing Names, Addresses of Gun Owners</i> (http://www.poynter.org/news/mediawire/199218/where-the-journal-news-went-wrong-in-publishing-names-addresses-of-gun-owners/) -SPJ: <i>Naming Victims of Sex Crimes</i> (http://www.spj.org/ecs11.asp) -Recommendations for Reporting on Suicide (http://reportingonsuicide.org/Recommendations2012.pdf) --Poynter: <i>How a Minneapolis Journalist Turned a Difficult Situation into a Human Triumph</i> (http://www.poynter.org/uncategorized/2137/how-a-minneapolis-journalist-turned-a-difficult-situation-into-a-human-triumph/) -RCFP: <i>Liability for Intrusive or Harassing Newsgathering Activities</i> (https://www.rcfp.org/browse-media-law-resources/digital-journalists-legal-guide/liability-intrusive-or-harassing-newsgath)
Class 6	Minimizing Harm: Legal Access vs. Ethical Justifications, Sensitivity, Harassment	<p>Case law discussion; Hot Topic presentation; Ethics discussion on the difference between legal access and ethical justifications to publish, sensitivity in reporting, and harassment in newsgathering</p> <p>For next class:</p> <ul style="list-style-type: none"> -American Bar Association: <i>Balancing Act: First and Sixth Amendment Rights in High-Profile Cases</i> (http://www.americanbar.org/content/dam/aba/images/public_education/04_mayjun05_balancingact_landman.pdf) -American Journalism Review: <i>Dilemma of Interest</i> (http://ajrarchive.org/Article.asp?id=4042) -Richard Jewell Case Study (article will be emailed)
Class 7	Midterm	
Class 8	Guest speakers	Today will be one of the most interesting classes to attend. James McCarty and Lisa Abraham will be coming to speak to the class.
Class 9	Minimizing Harm: Prior	Case law discussion;

	<p>Restraint, Criminal Suspects Right to a Fair Trial vs. the Public's Right to Know</p>	<p>Hot Topic presentation; Ethics discussion on reporting in criminal trials and prior restraints</p> <p>For next class: -NYU Journalists: List of Potential Conflicts (http://journalism.nyu.edu/publishing/ethics-handbook/potential-conflicts-of-interest/) -NPR's Ethics Handbook (http://ethics.npr.org/category/e-independence/) -American Press Institute: <i>Readers Have Mixed Feelings About Journalists Interacting on Facebook</i> (http://www.americanpressinstitute.org/publications/research-review/mixed-feelings-journalists-interacting-facebook/) -SPJ: <i>Reigning on the Parade</i> (http://www.spj.org/ecs16.asp)</p>
<p>Class 10</p>	<p>Acting Independently: Conflicts of Interest</p>	<p>Case law discussion; Hot Topic presentation Ethics discussion on conflicts of interest</p> <p>For next class: -Columbia Journalism Review: <i>Native Ads Aren't As Clear As Outlets Think</i> (http://www.cjr.org/behind_the_news/ftc_workshop_on_sponsored_cont.php) -American Society of Magazine Editors: Editorial Guidelines (distinguishing between advertising and editorial) (http://www.magazine.org/asme/editorial-guidelines) --SPJ Ethics Committee Blog: <i>Yet Again, ABC Has Disclosure Problems</i> (http://blogs.spjnetwork.org/ethics/2010/06/22/yet-again-abc-has-disclosure-problems/) -SPJ: <i>Cooperating with the Government</i> (http://www.spj.org/ecs1.asp) -Michigan Needs a New Voice: <i>Challenging Censorship in the Wolverine State</i> (http://www.huffingtonpost.com/neel-swamy/michigan-needs-a-new-voic_b_7852278.html) -USA Today: <i>Charlie Hebdo' Satirical Journalism Drew Fans, Critics</i> (http://www.usatoday.com/story/money/business/2015/01/07/charlie-hebdo-profile/21386729/) -The New York Times: <i>Terrorists Strike Charlie Hebdo Newspaper in Paris, Leaving 12 Dead</i> (http://www.nytimes.com/2015/01/08/world/europe/charlie-hebdo-paris-shooting.html)</p>

Class 11	Acting Independently: Denying Favored Treatment (advertisers, donors), External Pressure to Influence Coverage	<p>Case law discussion; Hot Topic Presentation Ethics discussion on denying favored treatment from advertisers & donors and how to deal with external pressures to influence coverage</p> <p>For next class: -American Press Institute: <i>The Best Ways for Publishers to Build Credibility Through Transparency</i> (https://www.americanpressinstitute.org/publications/reports/strategy-studies/transparency-credibility/) -The New York Times: <i>Do Times Journalists Pay Attention to Readers' Comments?</i> (http://publiceditor.blogs.nytimes.com/2014/03/10/do-times-journalists-pay-attention-to-readers-comments/) -SPJ Ethics Committee Blog: <i>Do you Trust Rolling Stone?</i> (http://blogs.spjnetwork.org/ethics/2015/04/06/do-you-trust-rolling-stone/) -Mike Sisak's Tumblr Post on Brian Williams (NBC news anchor) (http://thesak.tumblr.com/post/110195051742/lyin-williams) -SPJ Ethics Committee Blog: <i>What We Should Ask About Williams' Mistake</i> (http://blogs.spjnetwork.org/ethics/2015/02/06/what-we-should-be-asking-about-williams-mistake/)</p>
Class 12	Accountability & Transparency: Credibility	<p>Case law discussion Hot Topic presentation Ethics discussion on accountability & transparency (credibility)</p> <p>For next class: -The Buttry Diary: <i>Reasons Why Linking is Good Journalism; 2 Reasons Why Linking is Good Business</i> (https://stevebuttry.wordpress.com/2012/02/27/4-reasons-why-linking-is-good-journalism-2-reasons-why-linking-is-good-business/) -Poynter: <i>5 Ways News Organizations Respond to 'Unpublishing' Requests</i> (http://www.poynter.org/news/mediawire/104414/5-ways-news-organizations-respond-to-unpublishing-requests/) -Rolling Stone: <i>A Note to Our Readers</i> (http://www.rollingstone.com/culture/news/a-</p>

		<p>note-to-our-readers-20141205)</p> <p>-Poynter: <i>How Journalists Can Do a Better Job of Correcting Errors on Social Media</i> (http://www.poynter.org/news/mediawire/181508/how-journalists-can-do-a-better-job-of-correcting-errors-on-social-media/)</p>
Class 13	Accountability & Transparency: Credibility cont'd, Requests to "Un-publish", Updating or Correcting Information	<p>Case law discussion Hot Topic Presentation Finish up ethics discussion on credibility; discuss requests to "un-publish" as well as updating/correcting information</p> <p>For next class: -New Republic: <i>Hello, My Name is Stephen Glass, and I'm Sorry</i> (http://www.newrepublic.com/article/120145/stephen-glass-new-republic-scandal-still-haunts-his-law-career) - Optional, but recommended: watch "The Shattered Glass," a 2003 film based on the rise and fall of Stephen Glass' journalism career.</p>
One class left blank for guest speakers and/or Midterm		