

MEDIA LAW AND ETHICS: COMM 3404

Learn to Think-Think to Learn

Monday | 6:00-8:45 p.m. | Journalism 360 | Off: 440.356.3838, Cell: 216.280.9715

MEET THE PROFESSOR:

Jay Milano, Esq. | Milano Attorneys at Law | milano.35@osu.edu
Office Hours by Appointment – 3107 Derby Hall

For over 30 years, I have practiced law with a concentration in litigation (trials), criminal and civil.

For over 25 years I have taught at the university level, at Case Western Reserve University School of Law and now at The Ohio State University.

I have represented and worked with journalists my entire career.

My work and my interests have been built upon an understanding of the ethical obligations of professionals - lawyers, doctors, and journalists. In my opinion, a common set of ethical principles can be applied to all professions, only adapted to the idiosyncrasies of each.

See www.milanolaw.com for more background.

COURSE DESCRIPTION:

Communications 3404 will examine how the media (from social media to international news organizations) deal with the most important issues - race, religion, politics, sexual assault, etc. See the Assignment Syllabus, attached, for more details.

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 considerations of the profession, and actual events to build an analytical model.

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. There is no syllabus for life. Circumstances sometimes force change.
2. You will need to put forth a professional effort.
 - a. Read and understand the assignments.
 - b. Do every analysis and reflection.
 - c. Participate in class discussion.
3. 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
4. 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.
5. There are no facts- there is only evidence.

Communication:

Canvas contains all course materials. You will receive announcements periodically and messages from me within Canvas.

All messages-emails- should be sent through Canvas. That way everything stays in one place.

REQUIRED TEXT:

Instead of requiring a textbook for this course, I will post, as an announcement a week or so before class, relevant news articles for you to read and analyze in advance of class.

In addition to the articles you will be responsible for reading, there are cases we will review during class. The cases for each week are outlined in the Assignment Syllabus and posted in the Assignments section of Canvas.

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; it is in your best interest to finish it.

ADDITIONAL RESPONSIBILITIES:

Class Submissions

Given the fact that Ohio State's Canvas platform allows for file-upload submissions to weekly assignments, the weekly assignments will be posted and submitted directly on the Canvas "Assignments" tab.

Before class each week you will be responsible for submitting (via file upload) a synopsis (analysis) of the assigned material. The writing need not be exhaustive, but should answer the question “What’s the point?” After class, and before the next class (due by 11:59 p.m. the Sunday after each class), each of you must submit (also via file upload) a reflection related to your original submission (the initial analysis) with something new you learned during class. This need not be much longer than a paragraph or 2.

In other words, every week you have two assignments but they will be submitted under the same entry in the Assignments tab: analyzing the assigned material for class on Monday, and submitting a reflection discussing what you learned after our class discussion but prior to 11:59 p.m. the following Sunday.

The weekly analyses and reflections are collectively worth 25 points each.

With some thought you will note that the RN allows me to see, in real time, that you are preparing for class, attending class, and paying attention in class. Those are the reasons it so heavily weighted in the grading.

You must keep up with timely class submissions.

A Model of Ethical and Case Analysis

This is the Method of Analysis that we will use for Ethical and Legal Questions:

For an ethical situation:

- What do I have in front of me?
 - What is the evidence?
 - How reliable is the evidence?
 - What follow-up do I need?

For a case:

- What are the facts?
- What are the issues?
- Are there extrinsic factors?
 - What weight do I give them?
- Is there a rule or a precedent that applies?
- What are the arguments regarding the issues?
- What is the rule of the case?
- What is my position?

Hot Topics:

Hot topics are issues in the news about ethics, law, society, journalism, or anything else interesting that relates to our discussions. Individuals or groups will be responsible for presenting and explaining the topic to the class.

They offer each student a chance for extra credit. They are not mandatory, but you should consider presenting.

They are 5 to 10 minute presentations on a topic related to the subject of any given class. You submit to me a possible topic at least 2 weeks before your proposed date. I need to approve the topics and make sure we are not duplicating. We have room for up to 4 presentations per class.

If you wish to present on a given class but are not yet sure of the topic, reserve the class by email. Once you do that, however, you must present on that night.

Note: in lieu of a hot topic presentation based on a particular topic as described above, students are welcome to present on the case assigned for a particular class, but the Method of Case Analysis outlined above must be used for your presentation.

FINAL EXAM

Based upon the course structure for any given semester, the final exam may be either in the traditional form given on Monday April 29 at 8 PM-or as an 8-page final paper.

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 is posted on Canvas. Read it. It is summarized as follows.

“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 and hot topics are not included in the overall grade distribution. You can achieve an A in this class and never say a word. However, I will mark your participation and presentation and it can raise your grade as much as a full letter grade based upon quality.

GRADE DISTRIBUTION:

Class Submissions	300
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 Pomerene Hall to document those disabilities and coordinate reasonable accommodations.

ASSIGNMENT SYLLABUS – COMM 3404, Spring 2019

Class 1:

1: Read the Syllabus

2: Read the Article, "Rolling Stone Rape on Campus....."

<http://web.archive.org/web/20141119200349/http://www.rollingstone.com/culture/features/a-rape-on-campus-20141119>

If you would like to better understand my point of view:

<http://milanolaw.com>

Class 2:

Read:

-<http://www.spj.org/ethicscode.asp>

-<https://www.nytimes.com/editorial-standards/ethical-journalism.html#>

Read and Comment:

-https://www.cjr.org/investigation/rolling_stone_investigation.php

-<https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/what-is-ethics/>

-<https://www.theatlantic.com/education/archive/2017/09/the-uncomfortable-truth-about-campus-rape-policy/538974/>

-<https://www.nytimes.com/2018/01/15/nyregion/mccoy-louisiana-lawyer-larry-english.html>

Class 3:

The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Chapter 1, First Amendment Handbook

All case summaries in Oyez:

<https://www.oyez.org>

Read and comment:

- New York Times v. Sullivan

- Gertz v. Robert Welch

- Hustler Magazine Inc. v. Falwell

Read and comment

<https://www.theatlantic.com/national/archive/2014/03/today-is-the-50th-anniversary-of-the-re-birth-of-the-first-amendment/284311/>

<https://www.rcfp.org/digital-journalists-legal-guide/libel>

Class 4:

Read and comment:

The Lantern

https://www.cjr.org/local_news/ohio-state-strauss.php (Links to an external site.)Links to an external site.

How Americans get news

<http://www.pewresearch.org/topics/state-of-the-news-media/>

(Stop after Public Broadcasting Fact Sheet)

-<https://www.theguardian.com/commentisfree/2018/aug/06/online-conspiracy-theory-journalism-qanon>

-<https://www.rollingstone.com/politics/news/taibbi-blame-media-for-creating-world-dumb-enough-for-trump-w499649> (Links to an external site.)Links to an external site.

-<http://www.niemanlab.org/2017/05/study-more-americans-than-ever-are-getting-their-news-on-mobile-but-there-are-huge-partisan-divides-over-the-medias-proper-role/>

Class 5:

Read and comment:

Case summary on Oyez:

<https://www.oyez.org>

- Near v. Minnesota

Read and comment

Chapter 5, First Amendment Handbook

A free press needs you

-<https://nyti.ms/2MNqB0o?smid=nytcore-ios-share>

-<https://www.cjr.org/analysis/fake-news-media-election-trump.php>

-http://www.cjr.org/covering_trump/journalists-trump-media-press-calling-fake.php

-<https://www.cjr.org/analysis/breitbart-media-trump-harvard-study.php>

-<http://thehill.com/opinion/campaign/399446-in-the-age-of-trump-the-press-just-cant-stop-playing-the-victim>

Class 6:

Read and comment:

Case summary on Oyez:

<https://www.oyez.org> (Links to an external site.)Links to an external site.

- New York Times Co. v. United States
- Chapter 9, First Amendment Handbook

Read and Comment:

- https://www.washingtonpost.com/news/the-fix/wp/2018/01/09/the-stephen-miller-dilemma/?utm_term=.64fa69ccf656
- <https://www.gq.com/story/michael-wolff-white-house-trump-access>
- <https://www.politico.com/magazine/story/2017/12/27/trump-press-war-winning-216160?cid=apn>
- <https://www.mediamatters.org/research/2017/06/19/right-wing-media-figures-declare-first-shots-second-american-civil-war-have-already-been-fired/216966>
- <https://fivethirtyeight.com/features/the-media-needs-to-stop-rationalizing-president-trumps-behavior/>
- <https://www.vanityfair.com/news/2017/07/new-york-times-washington-post-donald-trump>
- https://www.washingtonpost.com/lifestyle/style/heres-the-best-thing-the-media-can-do-when-reporting-on-antifa/2017/09/02/e387e6a6-8e71-11e7-84c0-02cc069f2c37_story.html?utm_term=.ce505a4c44af

Class 7:

Chapter 4, First Amendment Handbook

Read and comment:

Case summaries on Oyez:

<https://www.oyez.org>

- Branzburg v. Hayes
- Cohen v. Cowles Media Company

Read and Comment

- <https://ethicaljournalismnetwork.org/resources/publications/ethics-in-the-news/handling-sources>
- <https://www.politico.com/story/2018/03/09/mueller-russia-probe-leaks-media-narrative-448682?cid=apn>
- https://www.washingtonpost.com/opinions/sessions-wants-a-leak-investigation-rule-change-that-could-cripple-the-free-press/2017/09/13/322e466a-94da-11e7-aace-04b862b2b3f3_story.html
- https://www.cjr.org/opinion/when_will_courts_realize_that_leaks_are_vital_to_the_american_public.php

Class 8:

Read and comment

-<http://ethicaljournalismnetwork.org/regulate-social-media-platforms>
-<https://www.theatlantic.com/technology/archive/2018/03/largest-study-ever-fake-news-mit-twitter/555104/>
-<https://www.theguardian.com/commentisfree/2018/mar/18/facebook-extremist-content-user-data>
-<http://time.com/4783932/inside-russia-social-media-war-america/>
-<https://www.propublica.org/article/facebook-hate-speech-censorship-internal-documents-algorithms>
-<http://dashboard.securingdemocracy.org>

How Twitter Killed the First Amendment

-<https://www.nytimes.com/2017/10/27/opinion/twitter-first-amendment.html>

Class 9:

Chapters 2 and 3, First Amendment Handbook

Read and Comment:

-<https://www.rcfp.org/browse-media-law-resources/news-media-law/news-media-and-law-spring-2012/landmark-food-lion-case>
-<https://www.poynter.org/news/abc-and-food-lion-ethics-questions>
-http://archives.cjr.org/campaign_desk/the_ethics_of_undercover_journalism.php
-<https://www.theguardian.com/us-news/2017/nov/29/project-veritas-how-fake-news-prize-went-to-rightwing-group-beloved-by-trump>

Take a look

<https://www.projectveritas.com> (Links to an external site.)Links to an external site.

<https://www.newyorker.com/magazine/2016/05/30/james-okeefe-accidentally-stings-himself>

Class 10:

Watch the video in article and comment

<https://shorensteincenter.org/nadine-strossen-free-expression-an-endangered-species-on-campus/>

Read and comment:

https://www.washingtonpost.com/opinions/academic-freedom-goes-on-trial/2017/12/29/81cb9268-ebf6-11e7-9f92-10a2203f6c8d_story.html

The Free Speech-Hate Speech Trade-Off

<https://www.nytimes.com/2017/09/13/opinion/berkeley-dean-erwin-chemerinsky.html>

Case summaries on Oyez:

- Tinker v. Des Moines Independent Community School District

- Hazelwood School District v. Kuhlmeier

- Board of Education v. Pico

Class 11:

Read and comment

-<http://www.bbc.com/news/world-europe-30708237>

-<https://cpj.org/2013/02/attacks-on-the-press-journalism-and-religion.php>

-<https://thinkprogress.org/dismantling-the-religious-liberty-talking-points-used-to-justify-anti-lgbt-discrimination-be37ecd70278/>

-https://www.washingtonpost.com/outlook/a-year-into-trumps-presidency-christians-are-facing-a-spiritual-reckoning/2017/11/17/551dc318-cafd-11e7-b0cf-7689a9f2d84e_story.html

Class 12:

Read and Comment

-https://www.cjr.org/first_person/should-we-cover-right-wing-extremism.php

-https://www.washingtonpost.com/outlook/2017/12/29/a374a268-ea6d-11e7-8a6a-80acf0774e64_story.html?utm_term=.4bf92ce3bf60

-<https://www.truthdig.com/articles/ever-deadlier-police-state/>

-<https://www.theatlantic.com/magazine/archive/2017/10/the-first-white-president-ta-nehisi-coates/537909/>

-<https://www.theatlantic.com/notes/2017/09/ta-nehisi-coates-george-packer-white-president/539976/>

-<http://www.npr.org/sections/codeswitch/2014/12/06/368713550/four-lessons-from-the-medias-conflicted-coverage-of-race>

<https://shorensteincenter.org/joy-ann-reid/>

-https://www.washingtonpost.com/posteverything/wp/2016/07/21/white-people-think-racism-is-getting-worse-against-white-people/?utm_term=.1a5bd6b39eb1

<https://www.washingtonpost.com/news/grade-point/wp/2016/04/04/law-school-professors-say-posting-all-lives-matter-flier-was-an-incident-of-intolerance/>

-<http://www.salon.com/2016/09/21/why-are-cops-ok-with-killing-black-people-because-american-history-teaches-that-we-arent-fully-human/>

Class 13: The Journalist and the Murderer

We will discuss the issue presented in the book in this class

Comment on those issues in thier order of significance.

This comment, if we'll done, is a chance to make up some points.