

First Place

Blogging and the First Amendment

Steven Helle

University of Illinois at Urbana-Champaign

Introduction and Rationale – Cultivating Constant Curiosity

It is the Holy Grail of Teaching: Infusing one's students with such a deep and abiding interest in a topic that questions regarding that topic occur to the students without prompting and they independently pursue answers outside of classtime. Especially with regard to freedom of speech and press, it is such an appealing goal, because the opportunities are so diverse and rich for out-of-class exploration.

Yes, I might get the occasional e-mail from current or former students about a recent case they came across or a question they have regarding their rights in a certain situation. Those are gratifying, of course. But, for the most part, I know that when those students hit the classroom door on their way to the next class or social pursuits, they are already thinking of other things and they certainly are not actively looking for real-world connections to what we might have just discussed. My fervor for the subject notwithstanding, for most students it is likely just another class. How best to instill constant curiosity?

I have long been a proponent of and participant in the “active learning” approach.¹ But two-minute essays, consult-with-your neighbor, and even the Socratic method all might be engaging, yet they still relegate learning to the classroom setting. As I tried to envision a new way to engross students in First Amendment law outside the classroom, my thoughts turned to writing. As Barbara Gross Davis noted, writing is “an essential tool for learning a discipline.”² Yet even though the typical research paper is done outside the classroom, such “papers often produce much frustration and little satisfaction in students and teachers alike,” according to Joseph Lowman.³ I only vaguely remember my own frustrations as a student cranking out term papers, but I am acutely familiar with this scenario:

[W]e write comments in great quantity – working slowly down through thick stacks of papers on our desk. It is often late at night and we are usually in a hurry.

And truth be told, we are often writing in a discouraged or grumpy mood.⁴ Furthermore, the research on the extent to which students actually absorb and learn from our carefully considered comments is profoundly discouraging.⁵ The typical research paper just did not seem an attractive option to engender the constant curiosity I was seeking.

But students *love* to write outside of the classroom. With Facebook, texting, blogging, chatboards, Twitter – has there ever been a time when young people engaged more avidly in written communication? How to harness this passion and channel it toward the First Amendment?

Blogging.

The statistics should be taken with a grain of salt, but some studies show that 77% of active Internet users read blogs, the total number of blogs exceeds 130 million, and *Wired* magazine at one time claimed nine new blogs were going up every minute (at

which rate, it's been noted, that soon there would be more blogs than people).⁶ But especially if one includes Facebook and MySpace blogs, it is clear that our students are very familiar with the concept and practice.

Blogging would provide the kind of continuous practice that would hone critical thinking as well as writing skills.⁷ Especially intriguing was the prospect that it would encourage female participation of the sort that is sometimes discouraged through classroom participation. At least in law courses, research has shown that male students ask twice as many questions in class as female students, and the Socratic method, in particular, seems to “alienate female law students and adversely affects their performance.”⁸ Furthermore, and perhaps most significantly, blogging about the First Amendment would take on an air of exercising First Amendment rights while writing about them. And maybe, just maybe, it would produce the constant curiosity for which I was hoping.

Explanation and Assessment

I have taught the course twice and am in the middle of teaching it a third time. We spend the first half of the semester discussing First Amendment history, cases, values, and contemporary problems. We continue meeting once a week throughout the latter half of the semester, but during 6-8 weeks of that latter half, students are assigned to write 6-8 blog posts on any free speech or press topic of their choosing. Each must have 4-5 sources and be at least 500 words long. They are research papers with an attitude, but because they are “blogs,” they are much more appealing than the typical research paper. The students must post before class and then each student is expected to comment on two other blogs, one assigned (so everybody gets a comment and nobody feels left out) and one at their discretion, within the course of the class period (although they are not physically in the classroom).

It becomes an online discussion section, or what I like to think of as a marketplace of ideas. I cannot remember the last time I had everybody participate in class discussion to this extent. I cannot remember the last time I had everybody participate in class discussion. And we all learn from each other. The topics they come up with are just amazing – federal statutory restrictions on pornography on military bases, whether sexually harassing speech in the workplace ought to be protected, is torture a violation of the speech rights of detainees, libel tourism, cryptography as speech, and a host of other edgy subjects as well as many one might expect (publishing names of rape victims, reporter privilege, etc.). Every week is a First Amendment feast.

Has it worked? Beyond my wildest dreams. I try new things all the time. They never work. This one clicked.

Do you know how you walk into class and ask if there are any questions and there never are? I always get questions. I sometimes have to turn off the spigot at some point just so I can collapse coverage of the assigned material into the last half of the period. Is this fun or what? Students are constantly looking for topics, asking questions about everything from state action to conflict of laws.

I tell students that they can get a “free pass” for one post, so if they are sick or submerged in other work, they can skip that week, no questions asked. Most students wait for the last post to use their pass, but some students write every single post.

The female students write on everything from virtual pornography to campaign finance law, and some of the comments made by females on other posts are among the most pointed. Performance of females begins to lag that of males in math and science about sixth grade, but they never lose their edge over males in verbal skills – and do those skills ever shine in these posts! No evidence of alienation here.

It is a tremendous amount of work for students, and for me, because I prepare what can be a lengthy individualized critique of each post and e-mail it to the student. I think of each e-mail as continuing the discussion. But it can take almost three days to grade 18 posts each week. About the time I finish, the next batch is already being posted (sometimes days before the deadline). I had no idea how incredibly much more time-consuming it would be to grade online writing, because every source is in the form of a link and must be checked for the research component of the grade.

One might think that the students would wilt, even rebel, under this constant demand on their time and thinking. But their assessment has been overwhelmingly positive. On a five-point scale, ratings on the course evaluation have been 4.9 (fall 2007) and 4.8 (fall 2008) on the global core question asking students to rate the “instructor’s overall teaching effectiveness,” thus qualifying for the select campuswide list of courses ranked as excellent.

As one student noted in response to an open-ended question on the course evaluation, “This was an amazing class.”

¹ See Bonwell, C. Active Learning Site, <http://www.active-learning-site.com/index.html> ; Sutherland, T. & Bonwell, C., Eds. *Using Active Learning in College Classes: A Range of Options for Faculty*. San Francisco: Jossey-Bass, 1996; Silberman, M. *Active Learning: 101 Strategies to Teach Any Subject*. Boston: Allyn and Bacon, 1996. I wrote the successful proposal for my campus’s participation in the Carnegie Academy for Scholarship of Teaching and Learning (CASTL) program sponsored by Carnegie Foundation.

² Davis, B.G., *Tools for Teaching* 205. San Francisco: Jossey-Bass, 1993.

³ Lowman, J., “Assignments That Promote and Integrate Learning,” in Menges, R.J., Weimer, M., & Associates, *Teaching on Solid Ground: Using Scholarship to Improve Practice* at 218. San Francisco: Jossey-Bass, 1996.

⁴ Elbow, P., “High Stakes and Low Stakes in Assigning and Responding to Writing,” *NEW DIRECTIONS FOR TEACHING AND LEARNING* 5, 8 (Spring 1997).

⁵ See *id.* at 8-9.

⁶ See Technorati: State of the Blogosphere 2008, <http://technorati.com/blogging/state-of-the-blogosphere/> ; Caslon Analytics Blogging, <http://www.caslon.com.au/weblogprofile1.htm>

⁷ See Davis, B.G., *supra* at 205-06.

⁸ Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, 1998 *BYU Educ. & L.J.* 1, 16-17.

Second Place

Multimedia Course Project for Mass Comm Law Survey Class

Robert Kerr

University of Oklahoma

I developed this approach to the course project in response to three concerns: (1) The increasing emphasis on development of multimedia skills in our college's curriculum; (2) the requirement that all majors in our college — journalism, advertising, PR, broadcast & electronic media, and professional writing — take the Mass Communication Law course; and (3) the size of each of the two sections of the course that I teach each semester exceeding more than 100 students on a regular basis (making the grading of more than 200 individual research papers each semester inordinately time-consuming).

Ultimately, I settled upon a plan that would require students to utilize the specialized skills they develop in their respective majors in order to examine media-law topics. The resulting assignment helps students to think of law less as abstract rules and more as an organic and dynamic element in society and in their respective professions — by requiring them to understand and apply law in that context. This approach also has raised the relative level of enthusiasm and energy associated with the project process each semester. And it has also made the grading of projects for these large classes more manageable.

Rationale

In this project, students in each major utilize the specialized communication skills of their respective majors in relation to media law. This contributes to the broader objective of a converged curriculum for the media-law course that more effectively engages students from all of our college's five diverse majors. To that end, I have focused on integrating media law significantly into the educational experience of all students, regardless which media profession they plan to pursue.

The multimedia course project complements that effort through a five-track approach focused upon current issues in media law in terms of communication practices of the respective majors. Advertising and PR students work in teams to develop campaigns focused on such issues. Journalism students work individually to develop print or video news reports. Broadcast & electronic media students work in teams to develop video presentations. Professional writing students work individually to develop works of fiction.

Topics are usually chosen from a list I develop each semester, and presentations of completed projects are made in class near the end of each semester. Within their

respective topics, the ways that each team or individual chooses to develop any particular message is for the most part limited only by their own imagination and creativity.

Implementation

More specifically, here are summaries of the respective assignments:

- **ADVERTISING MAJORS** — Students work in a team to produce an advertising product designed to heighten awareness, encourage change, and/or communicate other important messages concerning media law. That must include producing at least three visual ads and a PowerPoint presentation on each team's topic. It can include developing video, Web, or other electronic elements that contribute to the respective campaigns.

Within their respective topics, teams are expected to focus upon developing their campaign objectives, rationale, strategies, tactics, etc. The grade for the project is based 40 percent on the effectiveness of the use of advertising, 40 percent on the effectiveness of the use of law, and 20 percent on the effectiveness of the presentation.*

- **PR MAJORS** — Students work in a team to produce a public relations product designed to heighten awareness, encourage change, and/or communicate other important messages concerning media law. That must include a media-relations package and a PowerPoint presentation on the team's topic. It can include developing video, Web, or other electronic elements that contribute to the respective campaigns.

Within their respective topics, teams are expected to focus upon developing their campaign objectives, rationale, strategies, tactics, etc. The grade for the project is based 40 percent on the effectiveness of the use of public relations, 40 percent on the effectiveness of the use of law, and 20 percent on the effectiveness of the presentation.*

- **JOURNALISM MAJORS** — Students work individually to develop works of print or video journalism that focus upon an important controversy or issue in media law. For print, the project should be approximately 60 column inches (or 2,000 words); for video, 10 minutes.

Each project must include at least six substantial interviews. "Substantial" means that it must be evident in the project that is turned in just how each interview clearly and strongly contributed to the project. Interviews conducted in-person count the most in determining the grade. The grade for the project is based 50 percent on the effectiveness of the use of journalism, 50 percent on the effectiveness of the use of law.**

- **BROADCAST & ELECTRONIC MEDIA MAJORS** — Students work in a team to produce a video designed to communicate an important message about media

law. Most important is that it is done well enough to communicate its message effectively.

The general objective can be to heighten awareness or encourage change — but these teams are not limited strictly to those approaches, if they develop a better one. For example, teams may choose to focus on utilizing a news-oriented approach, an entertainment-oriented approach, or some combination of the two.

This project can include developing video, Web, or other electronic elements. The grade for the project is based 40 percent on the effectiveness of the use of broadcast and electronic media, 40 percent on the effectiveness of the use of law, and 20 percent on the effectiveness of the presentation.*

• PROFESSIONAL WRITING MAJORS — Students work individually to develop works of professional writing that focus upon or utilize in an interesting way an important aspect of media law. It must be a work of fiction. It could be a short story, a screenplay for a short film, part of a novel, etc. Examples of this type of fiction would include novels such as John Grisham's and television dramas such as *Law and Order*.

While some flexibility is allowed on the length of this assignment, it is recommended that students think in terms of a range of at least 10 and no more than 25 pages. However, I emphasize that their professor will be more impressed with good writing than with long writing that is not good, and therefore they are discouraged from padding the length in hopes that it will help their grade. No matter how long the finished product is, the length should be justified by the quality of the writing, and thus the ultimate page length should be appropriate to the story told.

The grade for the project is based 50 percent on the effectiveness of the use of professional writing, 50 percent on the effectiveness of the use of law.***

Student Learning Outcomes

This project assignment for this course is designed to involve all of our majors in conducting research and evaluating information through methods appropriate to the communications professions in which they plan to work, in communicating correctly and clearly in forms and styles appropriate for the professions, audiences and purposes they serve, and in applying tools and technologies appropriate for the communications professions in which they work.

More broadly, the project contributes to fulfilling expectations that over the course of this class, students will be expected to (1) understand and apply the principles and laws of freedom of speech and press, including the right to dissent, to monitor and criticize power, and to assemble and petition for redress of grievances; (2) demonstrate an

understanding of the diversity of groups in a global society in relation to the law of mass communication; and (3) demonstrate an understanding of professional ethical principles in relation to the law of mass communication and in pursuit of truth, accuracy, fairness and diversity.

* TEAM TOPIC EXAMPLE: Develop a campaign for a client who wants the public to urge the Obama administration and the Congress to enact the proposed federal shield law that is stalled in Washington.

** JOURNALISM TOPIC EXAMPLE: Develop a report on HB 1049, legislation before the Oklahoma legislature that proposes amending the Law Enforcement section of the state Open Records Act to make all incident records open to the public.

*** PW TOPIC EXAMPLE: Develop a fictional dramatization based on a futuristic world in which laws such as proposed revisions to the federal College Opportunity and Affordability Act now require colleges to aggressively assist movie and music companies in policing suspected illegal online file sharing.

Third Place

Using Literary Works to Teach Mass Media Law

John Bender

University of Nebraska-Lincoln

I. Introduction

Journalism and mass communications students must learn to apply the principles of mass media law to the situations they will encounter once they start working in advertising, broadcasting, news or public relations. Some classroom exercises and tests can foster that ability, but they rarely have the depth of complexity and ambiguity that one encounters in real life. Accomplished writers of fiction and nonfiction, however, often create situations that raise issues from media law and replicate closely many of life's complexities.

II. Rationale

My students read more than 30 court opinions during a semester, plus excerpts from a textbook on media law. The cases often involve interesting factual situations, but those facts are presented in a manner that strips them of much of their emotional context. The harms inflicted on people who are the victims of defamation or invasion of privacy or other wrongs seem diminished when rendered in the language of judges.

What may be more important from a pedagogical perspective is that the situations described in court opinions are already resolved. The court has ruled, and young students almost reflexively accept the court's decision as correct. To sharpen their critical thinking, students must grapple with conflicts that no court has yet settled.

Literary works can present issues in media law in ways that preserve both the immediacy of the situation and the emotional stakes involved in these cases. The characters are usually interesting and fully developed, the situations unusual and rich with complexities and ambiguities. These factors challenge students to think through the principles of media law they have learned from the textbook, court opinions and lectures and apply them to situations that may resemble the ones they will encounter after they graduate.

III. Implementing the Idea

I have used a number of works over the years. For the last two semesters, I have been using Zoe Heller's novel *What Was She Thinking [Notes on a Scandal]*.

Heller tells the story of Sheba Hart through the eyes of Barbara Covett. Hart is the

new art teacher at St. George's school in London, a comprehensive school similar to a U.S. high school. At St. George's, Hart meets Covett, and they eventually become friends. As their friendship grows, Covett discovers Hart has begun a love affair with one of her students. Eventually, the rest of the world learns of the affair, and Hart is fired from her teaching job, becomes estranged from her family and faces criminal prosecution. Covett, however, sticks by Hart, but secretly she writes down her conversations with Hart along with her own recollections of events. In those conversations Hart reveals intimate details about her affair with her student and her life with her family. Covett's writings form the text of the novel.

The novel presents situations that raise questions about how the law of publicity to private facts might apply if Covett published the manuscript. I instruct students to assume that Covett decides to publish her manuscript in light of the public interest in Hart's affair and that after the book is published, Hart sues Covett for invasion of privacy by giving publicity to private facts.

I recruit six students to serve as attorneys for the case, three each for the plaintiff and the defendant. The plaintiff's attorneys select about a dozen passages from the book they will argue are actionable as publicity to private facts. (To make the exercise a little more challenging to the rest of the class, I tell the plaintiff's attorneys to insert "ringers," passages that will not fulfill all the elements of the tort.) The plaintiff's attorneys and the defendant's attorney's then prepare briefs arguing how the passages do or do not give publicity to private facts, using as precedents the cases studied in class and in the readings and additional cases they find through their own research. Those briefs are posted on Blackboard for the rest of the class to read in preparation for oral arguments.

We devote a class period to oral arguments. Each side has about 15 minutes to present its case with the remaining time left for the rest of the class members (usually about 90 to 100 students) to ask questions. The attorneys are done with the assignment after oral arguments; their grades are based on their briefs and oral presentation. The remaining students act as judges and have 10 days to write a paper deciding which, if any, of the contested statements satisfy all of the elements of an action for publicity to private facts.

As the students work on the project, they are instructed to assume Covett's manuscript is accurate in every factual detail. They are also told to assume the setting for the story is not London but is a hypothetical U.S. city called Vapid City in the state of Nirvana, and St. George's is a U.S. high school.

I can vary the terms of the assignment from semester to semester, focusing on different issues or changing the way the students approach the material. Sometimes I might, for instance, tell them to imagine themselves editors of a publishing company and

write a memo assessing the legal dangers from publication of Covett's diary.

Before using Heller, I have used such works raising issues in defamation (Lillian Hellman's "The Children's Hour"), copyright infringement (Malcolm Gladwell's "Something Borrowed" from *The New Yorker*) intrusion (Burkhard Bilger's, "God Doesn't Need Ole Anthony," also from *The New Yorker*). Switching among these and other works and changing the specific terms of the assignment keep the project fresh for the students and me and help deter plagiarism.

IV. Learning Outcomes

This assignment contributes directly to several of the learning outcomes I have identified for the media law course.

- § It furthers the students' understanding of media law principles by requiring them to study the law of publicity to private facts (in the case of the Heller novel) and how that law would apply to a complicated factual situation.
- § It enhances their understanding of the American legal system by requiring them to research legal issues and think about how lawyers argue cases and judges decide them.
- § It requires students to synthesize information from a variety of sources – the textbook, cases they have read for class, their independent research, the briefs of the attorneys and the text of the novel itself – identify the information that is germane to the problem and employ that information to solve it.
- § It requires the student to construct clear, logical arguments to support their conclusions about how the law should apply to the facts presented in the novel (or other work).

No single assignment or approach guarantees students will complete a media law class having learned all they should, but this project does seem to engage them emotionally and intellectually to a greater extent than other assignments I have used.

Third Place

First Amendment in Practice: Free Expression & Local Action

Brian Carroll

Berry College

Introduction

There is evidence that Americans know more about “The Simpsons” animated TV show than the First Amendment to the United States Constitution.¹ Only one in four Americans polled in March 2006 could name more than one of the five freedoms the First articulates, yet more than half could name at least two members of the cartoon TV family. Far more could name all three “American Idol” judges than the First’s articulated freedoms, and about one in five thought the right to own a pet is one of these freedoms.

To address this alarming First Amendment illiteracy, my department and I offered a new course, Freedom of Expression, to first- and second-year undergraduates. As part of the course, I asked them each to thoughtfully put the First Amendment into practice. The core of their graded work was a two-stage, course-long project that asked them first to research a cause or issue or question about which they deeply cared, then, as we discussed their rights of expression in class, to develop a multi-pronged communication strategy for raising awareness of their cause or issue.

Rationale

Rather than study the First Amendment as abstract doctrine, I wanted students to make the First’s 45 words real and empowering, even exhilarating, as they put them into practice. I wanted my students to connect global thinking with local action while gaining first-hand First Amendment literacy.

The second aspect of the rationale was to endeavor to holistically connect the students’ activities of research, writing, public speaking (their presentations), study, and expression and communication. Students researched their chosen issues, as well as the possible modes of expressing their studied views on those chosen issues.

Implementation

In the first phase of the project, students researched an issue and their First Amendment rights, responsibilities and limitations. One student, for example, endeavored to raise college students’ awareness of media consolidation, the FCC’s new media ownership rules, and the corrosive effect on expression of this consolidation. She first researched

media consolidation, relying heavily on literature from Freepress.net. She then researched how to best raise awareness in developing a multi-pronged communication strategy. She determined to throw a house party, inviting friends and acquaintances, and give to a brief presentation on media consolidation. She also decided to write letters to her Congressperson and to the campus newspaper, the latter of which was published. In developing her strategy, she researched the law and College policy on social gatherings in dorms. For example, as part of the research phase, she (as well as all of the students) abstracted key cases, such as *SUNY v. Fox*. (Each student was required to abstract three U.S. Supreme Court cases relating either to his or her issue or to one or more of the First Amendment's five freedoms.

Other forms of expression students selected included participating in a Right to Life "Life Chain," filing FOIA requests for information on the Southern Leadership Council and FBI involvement in resisting the civil rights movement, setting up a blog for discussion on affirmative action programs in higher education (a really well-written, well-received blog), and developing before-and-after surveys of and for fellow students on sexuality and transgender issues. We used Freepress.net's *Media Reform Action Guide* as a sort of cookbook for FIP implementation ideas. Most students, for example, wrote a letter to the editor using the template provided in the Guide.

The second phase of the project involved simply executing the strategy and monitoring the results. Most students had their letters published. One had a column published in the student paper. And most who wrote their state legislators got some form of response. Using FOIA was deemed an unmitigated disaster, which was a valuable lesson for us all. The FBI declined fulfill the request, calling it too vague. A followup FOIA request is as yet unanswered. The house parties (there were two) were a lot of fun and well received. The blog was a smash hit, with people all over the world posting very civilly on whether affirmative action has outlived its purpose or not, among other questions.

Student Learning Outcomes

In and through the FIP project, I wanted students to demonstrate an understanding and appreciation of the:

- First Amendment and its role in society
- legal and philosophical principles underlying the freedom of expression
- scope and applicability of the First Amendment "free speech" clause
- lawful limits on freedom of expression
- tensions in society, law and policy that challenge the First Amendment's vitality
- importance of research and how to conduct issue-based research
- the potential effectiveness of a multi-pronged communication strategy

¹ “Simpsons ‘trump’ First Amendment,” BBC News, 1 March 2006, available: <http://news.bbc.co.uk/1/hi/world/americas/4761294.stm>. The poll was conducted in February.