

Law & Policy Division Teaching Competition 2014 – Entry #13

Media Law: The Playlist (A Musical Introduction to Key Concepts)

Introduction

If you ask journalism students about their favorite courses, it's a good bet that for most, media law won't be at the top of the list. In the heavily vocational discipline that journalism is, media law is hard. It's among a handful of substantive, conceptual courses that requires deep reading and thinking, and it often comes packaged in a traditional lecture format. So it's no shock that media law courses don't engender the same excitement as competing courses that delve into hands-on skills, new technologies and media production.

But media law is also important. Learning the rules of the road for newsgathering, freedom of information and copyright – to name a few critical media law topics – has never been more critical for aspiring journalists and other communications professionals. So how do we engage students and foster better retention of the material in this vital subject area?

Listening to my iPod one day, it occurred to me that the song lyrics I was hearing were right on point with what I was teaching in my media law class. I can't recall which song it was – it might have been Public Enemy's "Fight the Power" or Van Morrison's "What's Wrong with this Picture?" or "Accuracy" by the Cure. Regardless, an idea was born. Why not use music to capture students' attention?

Rationale

We know from studies of learner engagement that "students perceive classrooms as sterile environments where silence, docility, and amiability are valued and assertiveness and imagination are viewed with a certain amount of skepticism" (Baines 2008, 13). Further, we know from pedagogical research that students learn best when more than one sense is engaged in learning. In essence, comprehension is enhanced by a teaching approach that alternates varied sensory experiences to create a more dynamic learning space and more memorable lessons.

Although that atmosphere is more challenging in a conceptual course than a skills course, and particularly so in large lecture courses, it is not unachievable. This is essentially the thinking behind the Media Law Playlist. The aim is to introduce major media law concepts by connecting them to an area of interest for most students – music – and in doing so decrease the rigid formality that can attend lectures on the law. A prepared lecture gives structure to the lesson, but the integration of a carefully-selected soundtrack provides an unexpected and stimulating learning experience that is fun for the students and leaves them with numerous mnemonics to help in recall of important cases and concepts.

Implementation

Development of the playlist involved adapting an existing introductory media law lecture which covered, in broad strokes, key concepts including First Amendment theory, defamation, privacy, reporter's privilege, prior restraint, freedom of information and copyright. Once I had the idea of using music to

underscore these concepts, I simply searched my library of MP3s for songs that had names or lyrics that could be connected to media law in some way. My mix of music ranges across just about every genre, and in the end, so did my playlist.

Some songs were seemingly written for the job: “Yell Fire” by Michael Franti, “Truth” by Alexander, the Brandenburg Concerto by Bach, “Check Yo Self” by Snoop Dogg, “Never Gonna Give You Up” by Rick Astley (yes, the students get Rickrolled in this lecture), “Ashes of American Flags” by Wilco, “F the CC” by Steve Earle, “Secret Meeting” by the National, “Acuff-Rose” by Uncle Tupelo.

Lots of songs could be tied to the concept of retraction: “I Stand Corrected” By Vampire Weekend, “All My Mistakes” by the Avett Brothers, “Oops” by the Gap Band and “Take it Back” by John Hiatt, to name a few. And Public Enemy rapping about freedom of speech was a slam dunk.

Some other connections were not as obvious and took some teasing out in the lecture. For instance, I used “Killing Lies” by the Strokes to introduce defamation. For the elements of libel, I used “I Call Your Name” by the Beatles (identification) and “Only One” by the Goo Goo Dolls (publication and audience size). Etta James’ “Standing on Shakey Ground” works to introduce the risks inherent in aggressive newsgathering practices such as deception and hidden cameras. “Ticket to Ride” by the Beatles can be used to discuss the legalities of police ride-alongs, and “Talking in Your Sleep” by the Romantics works for freedom of information (“I hear the secrets that you keep...”).

In all, I listed 89 songs on my slides and created an iPod playlist to use during the lecture. The playlist is highly adaptable within the framework of the lecture. I can play as many or as few clips as needed for pacing and can keep the music at a low volume in the background as the class discusses details of each concept.

Student Learning Outcomes

This musical introduction to media law can be used as an overview for beginning journalism students (as in my Foundations of Journalism and Mass Communication classes) or as an introduction to a dedicated media law course. Because the breadth of the material is quite large, the lecture takes up more than one class session, but it easily could be tailored to suit other needs.

I have used the playlist twice so far and can report anecdotally that student engagement in my large lecture class was much higher than it had been previously, and student scores on the media law portion of the exams were also notably better. Informally, many students also told me they thought the unique approach to the material was helpful to them in mastering the dense subject matter. The Media Law Playlist breaks up dry spells in discussion and provides interplay between abstract and sensory material, effectively engaging students by forcing them to ponder connections between song lyrics and important legal concepts.

Reference

Baines, L. (2008). *A Teacher’s Guide to Multisensory Learning: Improving Literacy by Engaging the Senses*. Alexandria, VA: Association for Supervision and Curriculum Development.

“We got to fight the powers that be!”

- * Press licensing and seditious libel in merry old England
 - * It was a crime to criticize government – regardless of whether the criticism is true! (“The greater the truth, the greater the libel.”)
- * Milton’s *Areopagitica* (marketplace of ideas) and Locke’s natural rights (government as servant)
- * Zenger case (1735) – speaking truth to power
- * <http://www.in.gov/legislative/ic/code/title5/ar14/ch3.html>

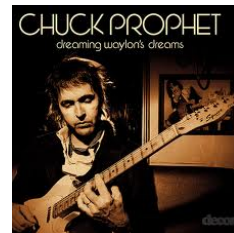
The music:
 Fight the Power, [Public Enemy](#)
 “Our freedom of speech is freedom or death;
 We got to fight the powers that be!”



“Let Freedom Ring”: 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 **petition** the government for a redress of grievances.

The music:
 Free Speech, [Joshua Redman](#)
 Let Freedom Ring, [Chuck Prophet](#)



Two Questions (with answers!)

- * Is the First Amendment absolute?
 - * No. Some speech isn't protected.
 - * Defamation
 - * Obscenity
 - * Disruptive speech
- * What about the states?
 - * [The Fourteenth Amendment](#)

“Killing Lies”: Defamation

- * A statement that tends to harm a person's or corporation's reputation or to expose them to public hatred, contempt, or ridicule, or to injure an individual in his or her business or profession.
 - * Libel – published defamation
 - * Slander – spoken defamation
 - * Libel vs. actionable libel
- * Who can be libeled? Living people, businesses, even agricultural products.

The music:
Killing Lies, [The Strokes](#)



“The Fake Headlines,” or, What can be libelous?

- * News story
- * Editorial
- * Headline
- * Photograph (edited)
- * Letter to the editor
- * E-mail
- * Facebook, Twitter, etc.



The music:
The Fake Headlines, [New Pornographers](#)
Daily News, [Tom Paxton](#)
What's Wrong With This Picture? [Van Morrison](#)
Kodachrome, [Paul Simon](#)
Letter to the New York Post, [Public Enemy](#)

Proving libel – four elements

- * Defamatory message stated as fact
 - * Opinions can be actionable (pure vs. fact-based)
- * Identification (clearly concerns the victim, or plaintiff)
 - * Statement “of and concerning” the plaintiff



The music:
Name, [Goo Goo Dolls](#)
I Call Your Name, [The Beatles](#)

Proving libel (cont.)

- * Publication
 - * Audience size – it takes “Only One.”
 - * Republishing
 - * Internet Service Providers
 - * Telecommunications Act of 1996

The music:
 Two of Us, [The Beatles](#)
 Only One, [Goo Goo Dolls](#)
 Message in a Bottle, [The Police](#)



Proving libel (cont.)

- * Fault – the *NYT v. Sullivan* (1964) standard
 - * False message
 - * Actual malice (public figure) or negligence
 - * Publishing a falsehood with knowledge of its falsity or with reckless disregard for the truth
 - * Why treat public figures differently?
 - * Judge Stephen Reinhardt: “Part of our American heritage is the right of all citizens to express their views about politicians, officeholders and umpires, frequently in highly unfavorable terms.”



The music:
 Dance Little Liar, [Arctic Monkeys](#)



Damages in a libel case

- * Actual
- * Presumed
- * Punitive
- * What are they after? MONEY, that's what they want!

The music:
Money (That's What I Want), [Buddy Guy](#)



“I Stand Corrected”

- * A timely apology can lessen your liability
 - * Retraction!
 - * “Take it back,” “Take it down,” say “Oops!” or “Sari” or “It’s a Mistake”
 - * Many states, including Indiana, have laws under which timely and legally adequate retractions reduce the risks of libel lawsuits.

The music:
I Stand Corrected, [Vampire Weekend](#)
Oops, [The Gap Band](#)
All My Mistakes, [Avett Brothers](#)
It's a Mistake, [Colin Hay](#)
Take it Back, [John Hiatt](#)
Take it Down, [John Hiatt](#)
Sari, [Nellie McKay](#)



“Prove it All Night”: Defenses to Libel



- * Truth
 - * By far the most effective.
 - * Not always easy to prove.
 - * Confidential sources, hearsay.
 - * State of mind

The music:

Truth, [Alexander](#)

Prove it All Night, [Springsteen](#)

Don't You Wish it Was True, [John Fogerty](#)

If Only it Were True, [The Walkmen](#)

Proof, [Paul Simon](#)

Read My Mind, [The Killers](#)

Avoid a lawsuit – “Check Yo Self!”

- * Accuracy, accuracy, accuracy!
- * Check your facts. Then check them again.
- * Use middle initials, especially in crime stories, which cause most libel lawsuits.
- * Be extra careful with headlines.

The music:

Check Yo Self, [Snoop Dogg](#)

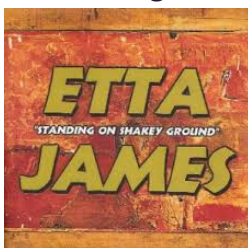
Accuracy, [The Cure](#)

Before You Accuse Me, [Clapton](#)



Which brings us to journalistic conduct...

- * Libel law → content; privacy → conduct
- * You have a Constitutional right to be left alone
 - * Where in Constitution? First, Third, Fourth, Fifth and Ninth amendments (Griswold v. Connecticut, 1965)
- * Careless journalists can easily commit intrusion, or the violation of someone's legally protected sphere of privacy – that's "Standing on Shakey Ground"



The music:
Shakey Ground, [Etta James](#)

Aggressive newsgathering

- * Intrusive newsgathering can include:
 - * Eavesdropping (Bartnicki v. Vopper)
 - * Hidden cameras (Sanders v. ABC, Deteresa v. ABC)
 - * Police ride-alongs (Wilson v. Layne)
- * Better get consent! Newsworthiness a tough sell.

The music:
Telephone Song, [The Vaughan Brothers](#)
Videotape, [Radiohead](#)
Porch, [Pearl Jam](#)
Ticket to Ride, [Beatles](#)
Ride on Josephine, [Thoroughgood](#)
Let My Baby Ride, [R.L. Burnside](#)
When My Ride Comes Along, [Curtains for You](#)



Rickroll!

Can you keep a source confidential?

- * That's called "reporter's privilege"
 - * "Privilege" is an exemption from normal duty to testify about confidential matters (doctors, lawyers, spouses)
- * So, do journalists have to reveal their sources, or does the Press Clause allow them to say, "Never Gonna Give You Up"?

The music:

Never Gonna Give You Up, [Rick Astley](#)

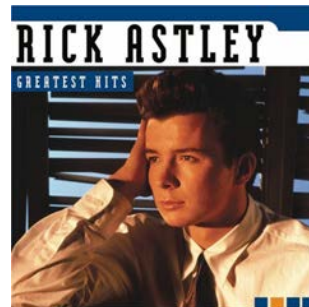
Never Gonna Give You Up, [Black Keys](#)

The Promise, [Springsteen](#)

I Know What I Know, [Paul Simon](#)

Heard it Through the Grapevine, [CCR](#) (or [Aretha](#))

Somebody Told Me, [The Killers](#)



SCOTUS says:

"You Got to Give It Up!"

- * Supreme Court has dealt with reporter's privilege just once
 - * *Branzburg v. Hayes* (1972), 5-4 against journalists
 - * Court said journalists have same duty as other citizens to appear in court when called
- * A shield law would help, but not all states have them (Indiana does, since 1941), and there is no federal shield.



The music:

Give it Up, [Public Enemy](#)

I Fought the Law, [Dead Kennedys](#) (or [The Clash](#))

Long Arm of the Law, [Kenny Rogers](#)

About that promise of anonymity...

- * Don't make it lightly. If you later breach confidentiality, you could be sued!
- * Cohen v. Cowles Media (1991) – promissory estoppel
- * In other words, you gotta dance with the one who brung ya!

The music:
You Gotta Dance (With Who You Came to the Dance With)
[The Hold Steady](#)
Release, [Pearl Jam](#)
I Shall Be Released, [Dylan](#)



Other Controls on Press/Speech

Prior restraint

- * “A prior restraint is an act of government censorship to prevent facts or ideas that the government considers unacceptable from ever being disseminated.” – Overbeck and Belmas, 2010
- * It is rarely allowed under the Constitution, but often sought in cases of disruptive speech – speech that goes against need to maintain safety and order in civil society (national security, “hate speech”)

The limits of free speech: Don't yell fire unless there's a fire!

- * Clear and Present Danger test
 - * Doctrine established in *Schenck v. United States* (1919), one of a line of cases involving subversive activity
- * “Pentagon Papers”: *New York Times Co. v. U. S.* (1971)
 - * Government failed to make a case for justifying restraint (exceptional case of danger to national security)

The music:

Yell Fire, [Michael Franti](#)
 Revolution, [The Beatles](#)
 Commie Drives a Nova, [Ike Reilly](#)
 Rise Up, [Medeski, Martin and Wood](#)
 A Slip of the Lip (Can Sink a Ship)
 Talkin' 'bout a Revolution, [Tracy Chapman](#)
 Another Revolutionary, [Eddy Grant](#)
 Revolution Rock, [The Clash](#)



This Bach symphony has nothing to do with media law, except that it shares the name of an important case dealing with unpopular speech

- * *Near v. Minnesota* (1931) – involving a racist, anti-Semitic newspaper
 - * Supreme Court ruled against prior restraint, saying there is a heavy burden of proof to justify censorship
- * *Brandenburg v. Ohio* (1969)
 - * Speech at Klan rally calling for blacks to be sent to Africa and Jews to Israel
 - * Court ruled even a call to action is protected as long as it is not likely to produce imminent lawless action.

The music:
 Brandenburg Concerto No. 3 in G Major,
 BWV 1048: I. Allegro, [Bach](#)
 Brandenburg Concerto No. 2, [Bach](#)



“Light Up Ya Lighter”: Unpopular speech

- * Can you burn a cross?
 - * Yes, but not to intimidate (*Virginia v. Black*, 2003)
- * Can you burn the flag in protest?
 - * Yes, it’s symbolic speech (*Texas v. Johnson*, 1989)
- * Can you wear a shirt that says, “Fuck the draft”?
 - * Yes, Cohen did (*Cohen v. California*, 1971)

The music:
 Light up Ya Lighter, [Michael Franti](#)
 Light My Fire, [Jose Feliciano](#)
 I Burn Today, [Frank Black](#)
 Burnin’ Up, [Goo Goo Dolls](#)
 Burn, [Ray LaMontagne](#)
 Ashes of American Flags, [Wilco](#)
 Fire of Freedom, [Black 47](#)
 Fuck You, [CeeLo Green](#)



Obscenity vs. indecency

- * Obscenity is “hard core” sexual expression.
 - * *Roth v. U.S.* (1957), landmark case in which court ruled obscene materials not protected by the First Amendment
 - * *Jacobellis v. Ohio* (1964): “I know it when I see it.” ~ Potter Stewart
 - * *Miller v. California* (1973) – A work is obscene if...
 - * It appeals to the prurient interest of the average person applying contemporary community values
 - * It depicts sexual conduct in a patently offensive way
 - * The work, taken as a whole, lacks Serious Literary, Artistic, Political or Scientific value (SLAPS test)



The music:
 Les Amants de Paris, [Edith Piaf](#)
 Nude, [Radiohead](#)
 Naked, [Goo Goo Dolls](#)

Obscenity vs. indecency



- * Indecency ≠ Obscenity. Indecency is explicit material (Seven Dirty Words?) that can be regulated in broadcast, but not necessarily other media.
- * 2004 (post-wardrobe malfunction) – Broadcast Decency Act raised fine caps from \$32,500 to \$325,000 per incident.

The music:
 F the CC, [Steve Earle](#)



Other Media Law Issues

Freedom of Information

- * Access to records is granted by statute
- * Freedom of Information Act – federal
 - * Nine exceptions cover things like national security, trade secrets, personal privacy
 - * Redactions and “reasonably segregable” material
 - * “CIA realizes it’s been using black highlighters all these years”



The music:

Talking in Your Sleep, [The Romantics](#)

When No One's Watching, [Craig Finn](#)

State Access Laws

- * All 50 states have access laws
- * Indiana – Access to Public Records Law
- * Record: any writing, paper, report, study, map, photograph, book, card, tape recording, etc. created, maintained, received, or retained by public agency.

The music:
Do You Want to Know a Secret, [The Beatles](#)



Access to Government Meetings

- * Government in Sunshine Act
 - * Requires 50 federal agencies to meet in public.
 - * Exemptions similar to FOIA.
- * Indiana Open Door Law
 - * Meeting requires 48-hour notice, posted agenda before meeting, and quorum.

The music:
Secret Meeting, [The National](#)



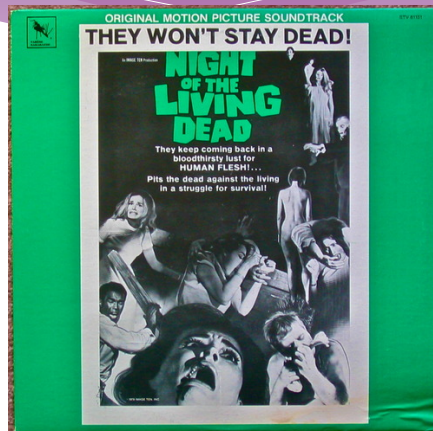
Copyright

- * A right granted to the author or originator of certain literary or artistic productions giving that person the exclusive privilege to multiply, publish and sell.
- * Copyright Act of 1976 protects “original works of authorship” that are “fixed in a tangible medium of expression.”

Claiming your copyright

- * Notice no longer required
 - * George Romero should have been so lucky!
- * But registration is required if you want to sue over an infringement

The music:
Driveway to the Cemetery



Infringement?

- * Using any part of a copyrighted work without the permission of the copyright holder.
- * Plaintiff must prove direct copy OR Substantial similarity
- * Contributory infringement
 - * Sony v. Universal Studios
 - * “Betamax” case



The music:
 Viva La Vida, [Coldplay](#)
 If I Could Fly, [Joe Satriani](#)



Fair use

- * Purpose and character of the use
 - * News reporting
 - * Comment and criticism
 - * Parody
 - * *Campbell v. Acuff-Rose Music* (1994)



The music:
 Acuff-Rose, [Uncle Tupelo](#)
 Oh, Pretty Woman, [Roy Orbison](#)
 Pretty Woman, [2 Live Crew](#)



Digital Copyright

- * Digital Millennium Copyright Act (1998)
 - * Added protection for copyright holders over the Internet.
 - * Bars anti-circumvention technology
- * File-sharing as infringement – direct or contributory
 - * *A&M Records v. Napster* (2001)
 - * *MGM Studios v. Grokster* (2005)
- * Sampling

The music:
All Day, [Girl Talk](#)



What to do if you find yourself on the wrong side of the law

- * Be polite.
- * Check your notes.
- * Tell your editor/news manager.
- * Call your lawyer. (Zevon: “Send lawyers, guns and money. The shit has hit the fan.”)
- * If a suit is filed, keep your mouth shut.



The music:
Lawyers, Guns and Money, [Warren Zevon](#)