

Best Practices in Teaching the *1st* *Amendment*

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Association for Education in Journalism
and Mass Communication

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San Francisco

Best Practices in Teaching the First Amendment

Panelists for the Session

First Place: Nancy Cornwell, Linfield College

Second Place: George E. Padgett, Elon University

Third Place: Brian Carroll, Berry College

Honorable Mention: Emily Erickson, Louisiana State University

Honorable Mention: Jennifer Jacobs Henderson, Trinity University

Respondent: Sandra Chance, University of Florida

Moderator: Kenneth Campbell, University of South Carolina

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Best Practices in Teaching the First Amendment

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Bringing the First Amendment to Life

First Place Winner

Nancy Cornwell, Linfield College

Instead of writing a traditional research paper on some aspect of the First Amendment, this class project allows students to *exercise* their First Amendment right to freedom of expression.

1. Explanation of teaching /methodology

a. Introductory course material:

After introducing the basic theoretical justifications and the historical development of the First Amendment, the course explores four basic themes: (1) the conditions under which the government might punish a citizen for speech or otherwise limit a citizen's free speech rights; (2) the inherent tension between competing individual First Amendment rights as well as First and 14th Amendment rights; (3) media and individual expression and; (4) the limits of expression within the workplace.

b. Project proposal:

While discussing these four themes, students identify a public issue about which they feel strongly (and may be unrelated to the topic of free expression). Then students prepare a project proposal that includes an explanation of how they intend to express their views about this issue. This explanation must include a justification for why this venue is the best way to express their views.

c. Research requirements:

Students research both their issues and the rights, responsibilities and limitations associated with their chosen manner of expressing their views. For example, if a student wants to speak out on the issue of abortion by holding a rally, she would research abortion in order to be as knowledgeable as possible about the subject so that her views would be well informed. She also would research the law and judicial decisions pertinent to holding a rally. All relevant court decisions would be briefed and law reviews summarized. As part of this process students are introduced to basic legal research and the process of brief writing.

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d. Exercising one's First Amendment rights:

This is where the First Amendment comes alive. Students plan and organize how they will bring their issue to a larger audience. They learn about the permit process for community rallies. They learn about buffer zones for abortion clinics. They learn about who exactly holds the right to free press when they want to publish something in the newspaper. They learned how broadcasting struggles with some unique expressive challenges as the medium juggles judicial precedent and administrative law. Students learn about [what] they can do and then invariably begin a conversation about what they should do as the plans to exercise their free speech rights start to materialize.

e. Final document:

The final project includes the original proposal, an introduction to the issue at hand, a justification for the chosen means of expression, case briefs, law review summaries, a reflection essay on the experience of actively exercising the right to freedom of expression, and documentation of the manner used to express one's views (a videotape of the demonstration for example). In the past, my students have held demonstrations on the university quad advocating for the legalization of hemp or protesting an increase in student parking fees. Students have submitted guest viewpoint articles to the local paper, or appeared on talk radio shows. They have distributed pamphlets to advocate for student tenant rights in off-campus housing, and have held simultaneous prolife and pro choice demonstrations at the entrance to the local Planned Parenthood facility.

2. Rationale

I have two primary reasons why I incorporated this specific exercise into my freedom of expression course.

- a. I think those of us who teach the First Amendment have had an intuitive feeling about the growing apathy toward public discourse and ignorance about expressive rights long before the Knight Foundation's Future of the First Amendment study was released last year. Furthermore, it has been my sense from my students that they [are] feeling increasingly powerless to facilitate productive change in the conditions affecting their lives. Anthropologist, Margaret Mead said, "Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has." I believe this. I wanted to expand the reach of this class because I

think that an understanding of First Amendment rights is crucial in contemporary society. Therefore, I wanted this class to have meaning and appeal for students outside of my home department (mass communications). By allowing students to freely pick an issue to engage publicly, I think the course developed more obvious relevance for students outside the department.

- b. I wanted to move beyond the purely intellectual discussion of what it means to speak out on issues of the day. I have experienced too many students willing to play the easy intellectual game of arguing for expressive rights, without fully understanding the lived experience of putting your ideas into the public sphere with all the personal and public implications of that decision. It can be intimidating for some students. These students might chose a to distribute pamphlets instead of holding a demonstration. But even students who are quiet or more timid, come to realize that there are ways to express themselves meaningfully and within their "comfort zone."

3. Outcomes

The outcome of this project has been better than I could have anticipated. In the reflection papers that accompanied these projects, students have consistently reported that they found this project to be a rich and meaningful experience independent of their chosen major. They commented that exercising their First Amendment rights was both empowering and, at times, intimidating. They learned about rules and regulations, both valid and invalid, which guide expressive freedoms on their campus. They also learned more about their chosen issues, a result they felt was beneficial given that they had a vested interest in the issue to begin with. I saw no drop in exam grades. In that sense, learning seemed to stay consistent. But it was the personal experience interacting with the rights, responsibilities and liberties associated with the First Amendment that I believe makes this a special teaching exercise and one that takes the students to a deeper understanding and appreciation for the right to free expression.

Building First Amendment Awareness

Second Place Winner

George E. Padgett, Elon University

As a part of a university that increasingly values the integration of professional and community service into courses across the curriculum, I recently founded the 5 Freedoms Initiative to get students involved in a variety of First Amendment awareness projects.

Because the Media Law class that I teach is largely limited to discussion of speech and press freedoms, I created a new elective course titled *The Five Freedoms: First Amendment Under Attack*. In addition to teaching traditional content utilizing traditional pedagogical techniques, I also am implementing a community service project to create First Amendment awareness in a local elementary school.

I believe students are more passionate about a topic when actively involved and applying learning to a cause. The need in this case was vividly illustrated by recent reports from the First Amendment Center and the Future of the First Amendment project funded by the Knight Foundation. Students of all ages simply do not know the five freedoms and do not value the importance of First Amendment freedoms.

Our community service First Amendment project was to design a program to teach fifth graders about the five freedoms in the First Amendment. We split the class into two teams and assigned one team to create a brochure and series of PowerPoint productions on religion, speech, press, assembly and petition. The other group was assigned to produce a short play or series of vignettes illustrating the importance of the First Amendment.

Script writing was a conjoint effort resulting from a series of brainstorming class sessions. Following completion of the script (copy attached), the class went into production: rehearsing, gathering props, and deciding on costumes. A member of the university's theater faculty read the script and sat in on some rehearsals to hone the students' presentation. In order to provide continuity to what will be a continuing production using different student actors each semester, I serve

as master of ceremonies providing an introduction to the program.

Brief First Amendment history and commentary are provided by a costumed James Madison who storms onto stage when I tell the children that barely one percent of those interviewed in a survey could name all five freedoms in the First Amendment. "That's pathetic," Madison says, "absolutely pathetic. I toiled for days, no weeks, to put the right words down and modern Americans can't even bother to read the blasted document . . . 45 simple words."

The targeted audience of fifth graders was chosen after consulting with the local elementary school principal and a fifth grade teacher/group leader. The initial program will be presented to 123 fifth graders on November 21. The five fifth grade teachers, who were enthusiastically receptive to the idea, are being asked to have students respond to the simple open-ended question, "What is the First Amendment?" a few days before the program is presented. A few days following the program, students will be given a short quiz to assess the effectiveness of the project.

As an added incentive, each student will be given a business card size copy of the First Amendment and encouraged to learn the words. Students who can recite the words to the amendment within two weeks of the program will receive a lapel button (on order) with the words to the First Amendment. Each class in which 100 percent of the students learn the words will receive a Newseum First Amendment poster to hang in their classroom. If all the students in the fifth grade learn the amendment, they will receive a "First Amendment School" banner.

In addition to the outreach to the elementary school, students in the college class are passing out copies of the First Amendment on campus and in the community and are conducting a "Support the First Amendment" petition drive. People are being asked to sign the following:

I pledge to support the First Amendment Freedoms of religion, speech, press, assembly and petition and to oppose political and social pressures that threaten those basic rights in any way.

I also encourage my state representatives and members of the U.S. House of Representatives and the U.S. Senate to support the five freedoms of the First Amendment and to oppose any legislation that threatens to limit those rights in any way.

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Other goals of the Five Freedoms Initiative include development of a website, establishment of an on-campus free speech zone, organization of a speaker's bureau made up of Media Law and First Amendment students to teach First Amendment awareness in local public high schools, and continued distribution of copies of the First Amendment.

Beginning in the 2006 spring semester, Five Freedoms Initiative projects including a continuation of The First Amendment Players awareness production will be incorporated into a Great Ideas senior seminar capstone course, and the program will be performed in other local grade schools.

While traditional lecture and discussion of historical legal cases and theories, as well as research on contemporary First Amendment issues, will continue to be important, involving students in projects that require them to learn, teach and serve the community in non-traditional ways creates a passion that will continue long after the class ends.

Methodology: Mock Courtroom Trials

Third Place Winner

Brian Carroll, Berry College

1. Explanation of teaching/methodology

Toward the end of each major section of the course, I set up a hypothetical court case in which the entire class participates. In the hypotheticals, all of the students are lawyers, half of them counsel for the defendant(s) and the other half for the plaintiff(s). Occasionally, as for the hypothetical on school censorship, there are two defendant parties, so the class subdivides into three attorney groups.

The hypothetical requires parts of three classes. On Monday (typically), I present the hypothetical, or the case they will try. This requires the last 10 minutes or so of the class time. Between Monday and class on Wednesday, they have to prepare for the case, not knowing yet which side they will be arguing. The Wednesday class is devoted to assigning counsel, allowing the groups to plan their arguments, and, finally, to presentation of the arguments. The students present to the judge (me), who wears full judicial regalia and whose entrance is announced by a bailiff (my colleague, Blaine Hall).

The first half of the Friday class is devoted to announcing the decision by the judge and to a reading of excerpts from the ruling. The decision invariably relies upon and, therefore, reinforces the applicable U.S. Supreme Court-decided precedent cases. We then discuss how the judge's decision was reached.

Typically, I conduct mock courtroom trials in First Amendment areas of the law that include school censorship (print and online), libel, and confidential sourcing/reporter's privilege/shield law.

2. Rationale

All semester long, the students are encouraged and rewarded for their legal reasoning. They are discouraged, therefore, from arguing based on merely personal opinion. The mock trial exercise is designed to engage them in the law by presenting them with a specific set of circumstances upon which First Amendment-based legal rationales can be applied. The trials force students to take a position that is based on precedent and on the rule of law, then to articulate that position in front of their peers.

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The students are presented the circumstances on Monday. While preparing for the case, they do not yet know which side they will be arguing. This blind preparation encourages the students to consider all sides and the possible legal justifications for each.

On a more basic level, the trials serve to spice up the course through the interaction and constructivist social learning. The classroom is abuzz the weeks of mock trials. I use the formality of a judge's robes as a counterpoint to the humor that always infuses our class times (at least it's humor to me). The costume keeps us in character.

Because the students invariably, inevitably want to win, regardless of their own personal views and allegiances, the mock trial subtly exposes them to the chess games that judicial proceedings are, to the gamesmanship and to the importance of procedure. We talk about this gamesmanship during the de-briefing in the third class.

3. Outcomes

Perhaps the most valuable outcome is engagement by the students with the First Amendment and legal issues and tensions related to its articulated freedoms. The idiosyncratic nature of the law, as well as its priorities and its process, are lived, if only microcosmically and fleetingly. The students get emotionally involved and invariably invest of themselves in the process. The public nature of the exercise and their co-dependence on one another virtually guarantees this investment.

Because the experience is interactive and social, the learning seems to occur naturally and its products seem to last longer. As evidence, the students perform better as a group on aspects of my tests that relate to the areas of media law in which we've had the mock trials.

Not unimportantly, the trials break up the data dump the course inevitably becomes because of the amount of material and the number of cases that we must cover during what is a very short period of time (a common professor's lament, I'm sure). The trials serve also to mark the course, dividing it into thirds, and give us a warm spot on the calendar toward which we can look forward. They are fun. The class laughs a lot. We all get to let our hair down a little and in a low-risk environment. We get to experiment with our thinking. I'm sure I learn as much if not more from the exercise as the students, which makes us all full-fledged members of the learning community that I think we have, that I very consciously attempt to encourage.

The First Amendment and Advertising

Honorable Mention

Emily Erickson, Louisiana State University

Explanation

This is a project I have students do toward the end of Media Law. They must:

- create an advertisement that has five legally questionable items (30%)
- write up an analysis that determines whether each item in the ad is actionable or prosecutable (70%)

The five items must raise five different legal issues (note: copyright and trademark are both within “Intellectual Property”!) and must come from five different sections of the course. Higher scores are given to students who create more complex and interesting legal issues within their ad. (Misappropriation and trademark infringement are, for example, rather obvious.) *At least* one item must raise a potential First Amendment question, i.e., invite potential government action, although I let students explain additional components in their analysis to make this easier – such as a recent law by Congress to restrict violent videogame ads directed at children, thus requiring a *Central Hudson* analysis.

The advertisement itself can be in any media format – a radio script, a storyboard, a magazine ad, etc.

The ads, upon completion, are “submitted” to an in-class competition. That day, students get into small groups and review batches of the ads (these are blind-reviewed, of course, and students may not review their own ads), then advocate for the best ad in each batch. This must be based on the same dimensions as the graded project - including creativity, complexity and accuracy of the analysis. The class then votes on the runner-up and winner, who receive a prize of enormous symbolic value (like a bumper sticker with a pro-First Amendment quote by Thomas Jefferson ... and a Snickers bar from the downstairs vending machine).

Rationale

This is, first and foremost, an effective way to help students review an often intimidating body of course material. It provides a vehicle to 1) have

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fun with the material and 2) engage substantively with it – as opposed to just passively rereading their notes and textbook.

Most of us who teach media law, including the First Amendment, use scenarios to help students practice applying rules and precedents. This project takes that a step further by making them go back to those rules and precedents, then formulate hypothetical problems themselves, then solve them, then evaluate how others solved them.

This project is assigned at a point during the semester (2-3 weeks before finals) that is often full of stress and difficult papers, etc. It may be very Mary Poppins-esque, but I think it's the perfect time for them to get a little sugar with their medicine. It lets them be creative and – best of all – naughty . . . and thus more likely to put additional effort into the endeavor. And the in-class portion serves as a great review session as well.

Outcomes

There is an enormous spectrum of results, in terms of artistry and creativity, but the students very consistently put a lot of effort into this project – thus accomplishing my primary goal of getting them to review the course material well before dead week.

Most students do visual-layout ads. One might call them magazine ads, except they are sometimes done on large poster boards. The lazy students will turn in ads with obvious instances of misappropriation, trademark infringement and potential obscenity – although I make it clear at the outset that this grouping is boring and will receive a lower grade. The other trap that I warn students to avoid is the hypercreative ad with the weak accompanying analysis.

But in general, the public nature of the project and the “naughty” format itself provide the best review vehicle I’ve found in teaching media law. Moreover, the First Amendment portion of the project is often the most challenging and provides great material to discuss during the “competition.”

Understanding the First Amendment in Daily Life

Honorable Mention

Jennifer Jacobs Henderson, Trinity University

To make the First Amendment meaningful to citizens and media practitioners, it must be moved from an abstract concept to something that is used. The incorporation of role-playing into mass communication law courses is not only an interesting diversion from the discussion of cases and litigants, but a valuable way for future media practitioners and engaged citizens to see the influence of First Amendment decisions in their daily lives.

Explanation

A role-playing scenario that has proven to be extraordinarily successful at expanding the understanding of First Amendment protections for media practitioners and student-citizens alike is a city council meeting where various community groups appear to express their support or concern for a new zoning ordinance affecting adult businesses in their community. Students are divided into interest groups: the Spring Point Homeowners Association, the Spring Point Small Business Association, the Adult Business Owners Guild of Ohio, the Spring Point Elementary PTA, a fictional chapter of Women Against Pornography, members of the city council, and journalists.

For the exercise, each interest group is given a copy of the ordinance, a short summary of the current status of adult businesses in the community (where they are currently located and how many new businesses want to enter the market), and a brief synopsis of their concerns. The interest groups are then asked to prepare a three-minute statement regarding their position, based on the three-part legal test for what constitutes a constitutional zoning regulation learned earlier in class, to present before council.

After the groups have all presented their initial arguments and briefly refuted opposing positions, the city council members then meet to determine whether the ordinance should stay the way originally written, alter the ordinance to include suggestions by organizations at the hearing or removed from the agenda completely.

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Students whose primary interest is in news writing are assigned the role of reporter in the scenario. During the mock city council meeting, these students take notes and ask questions as they would at any “real” city council meeting. For the next class period, the reporters are required to submit a Metro Section story on the meeting, including references to community group positions and the legal requirements necessary for the proposed ordinance to be constitutionally valid. In the next class period, the reporter’s stories are distributed to the city council and interest group members. Each interest group and the city council must then convene and prepare a letter to the editor that either 1) reiterates their legal position or 2) refutes their legal position as (they would claim inaccurately) presented by the journalist. These editorials are then read in class at the end of the second class period and followed with a discussion between journalists and council participants regarding the accuracy of the arguments as presented and subsequent news coverage.

Rationale

Van Ments¹ has described role-playing as, a “particular type of simulation that focuses attention on the interaction of people with one another. It emphasizes the functions performed by different people under various circumstances.” This teaching method is widely believed to be a way for students to become actively engaged in classroom learning and is an excellent match for the teaching of First Amendment issues. This role-playing scenario also engages students with the three criteria - awareness, understanding and application - that ACEJMC recommended should guide assessment of student learning in mass communication programs. Role-playing scenarios such as the one described above allow future media practitioners and citizens to learn how to use their First Amendment rights of speech and press.

Outcomes

Role-playing is one of the most useful teaching and assessment tools available for faculty. Assessments of role-playing can be formal or informal, formative or summative. For example, faculty may 1) comment on and/or correct incorrect procedures or understandings as the scenario progresses, 2) stop the role-playing at key points to ask questions and/or underscore important element or 3) grade each student following the role-playing scenario on a series of criteria such as: understanding of legal principles, use of facts or expression of ideas.

The use of the Spring Point City Council Meeting role-playing scenario

and others like it involving libel and privacy trials and FCC hearings to teach First Amendment issues has proven extremely successful by direct assessment measures in my media law and policy courses. During semesters where I did not incorporate the Spring Point scenario, for example, only 30% of students were able to recall the key three-part legal test for determining whether a zoning ordinance for adult businesses is constitutional, while more than 70% of students were able to recall this information when the scenario was used.

¹Van Ments, M. *The Effective Use of Role Play: A Handbook for Teachers & Trainers*. Revised ed. (New York: Nichols, 1989): 186.

