

**MC 3080 SECTION 002  
CRITICAL THINKING PAPER ASSIGNMENT  
SPRING 2021**

**DESCRIPTION AND PURPOSE**

This assignment is designed to give you an opportunity to discuss the material and use the legal reasoning skills that you've learned throughout this semester in media law.

**ASSIGNMENT**

The goal of this assignment is for you to identify a recent First Amendment or free speech news story or legal case that has been in the news in the past two to three years and currently either remains unresolved (eg. if it is a legal case, has not yet been decided by the U.S. Supreme Court, or the highest court in the state where the situation is playing out), or was resolved in a way that you believe should have ended differently (so that you would discuss how you argue the law suggests it should have been resolved). You need to:

- clearly articulate the free speech question(s) raised in that story/case which you are analyzing and trying to answer or suggest a conclusion for in your paper;
- research and explain the legal issues involved in the question(s) you are wrestling with in your paper; and
- propose a resolution for the question(s), based either in legal case law you've learned or in theory based on U.S. Supreme Court First Amendment-related decisions handed down to date that we have discussed in class. Think of this as working through a problem set assignment with questions such as are laid out in the example problem laid out below, except you are the one providing the facts, the key questions and the answers.

Your paper should be between 1,500 and 2,000 words long, not including references. This means your paper will be double-spaced, use 1-inch margins and 12-point font, reading at least six to eight pages long.

Your paper should critically explore a current media/first amendment law issue, topic, or case as described above in the assignment description and should include the following four components:

**COMPONENTS**

**Background:** Spend approximately one to two (1-2) pages explaining the key facts of the case/topic or the news story you're going to explore. For example, you may be interested in changes over the last several years to the FCC's network neutrality rules, or to the responsibility of social media platforms such as Facebook or Twitter when it comes to "fake news". So in this section, you would for example explain what net neutrality is and how recent disputes about net neutrality arose, or how the controversy over "fake news" items arose as it relates to Facebook and/or Twitter, and what consequences are currently weighing on these organizations as a result of how they have dealt with the issue.

**Issues:** Spend approximately a half to one (1/2 – 1) page explaining the relevant legal issues raised. This section should include a statement discussing the dispute or issue raised by the current

event or case you have selected. For example, in the net neutrality example mentioned above, you could explain the legal issues that currently exist around the FCC's authority to regulate the traffic over the internet, or in the case of "fake news" on Facebook or Twitter, for example what are the currently legal challenges and issues being raised around the behavior of these corporations.

**Analysis and Discussion:** Spend approximately three to five (3-5) pages explaining how the case (if it is a particular legal case) or news event/controversial issue should be resolved, given the status of U.S. Supreme Court First Amendment law on this issue. In whose favor? Why? How should the key stakeholders in the case move forward?

**Conclusion:** At the end of your paper, you need to reach and suggest a conclusion that you advocate for settling the controversy you have selected to write about, or you should suggest how you believe the US Supreme Court would decide the case in question, given the state of First Amendment law right now. Your conclusion should not be something as simple as "they should settle." That would be oversimplifying the matter. However, if you think there are good faith arguments for the opposing parties in a case reaching a settlement, you should detail what that settlement would look like and what the advantages and disadvantages are for each party under the settlement you envision. This is probably a more difficult and exhaustive task than determining whom the law favors on a particular issue.

## TOPIC SELECTION INSTRUCTIONS

**Before you begin writing your paper, I need to approve your topic. Therefore, please email me and feel free to discuss with me your research topic for approval before you begin writing and researching. You will need to email me your topic at the latest by 10:00pm, Tuesday, March 23, 2021.**

(No more than three (3) students may explore the same topic. I am keeping a list of paper topics students have chosen for reference.)

## SOURCES

You should use *primary resources* (e.g. case law, statutes, administrative rules and other black-letter law) and *secondary resources* (e.g. news articles, law review articles, scholarly works) to complete this assignment. You must use at least two (2) primary and four (4) secondary resources in your piece. However, an "A" paper will probably be more heavily researched. Please make sure you use reputable resources to explore the issues.

## FORMAT

Please use double-spaced type, one-inch (1") margins, and 12-point Times New Roman font. Make sure to cite material clearly using APA style for internal citations and a reference list (refer to the syllabus for instructions on APA style). Please include your name and a topic heading at the beginning of your paper.

**Please turn in your paper by submitting it by 10:00pm on Thursday, April 8, 2021 to the appropriate Moodle assignment submission link provided on our Moodle course page.**

## **EXAMPLE PROBLEM SET**

**Description:** The goal of this assignment is for students to explain key principles of media law and how they will likely apply in a hypothetical situation. Just as you are being asked to analyze the legal issues in the media law topic you select to address in your paper, see below some example legal issues presented in the hypothetical scenario below. You would want to respond to the questions like these that you pose in your paper with clear, concise answers that reflect accurate understanding of the relevant legal principals and course materials (including readings, lectures, and class discussions).

### **Hypothetical Scenario with Example Issue and the Types of Legal Issues/Questions you might pursue:**

Tanner Fitzgerald is a football player at LSU in his final year of eligibility. Fitzgerald came to Baton Rouge as a heralded high school player. During his high school career in Texas, he was rated as a five-star athlete by major football recruiting services and received scholarship offers from every major Power 5 school. During his junior season, he was awarded the Doak Walker award, which recognizes the nation's best running back. He decided to return for his senior season shortly thereafter. Fitzgerald is known regionally and solely for his past football success.

Fitzgerald has had a tumultuous senior year. Early in the season, he sprained his ankle during team drills which required him to sit out the first half of the season. This sent Fitzgerald on a personal spiral. He attended class less frequently and was called before the honor court for cheating on an exam. He was eventually exonerated and allowed to stay in school, but he continued to struggle personally. Fitzgerald began associating with Baird Pressley, a friend of one of Fitzgerald's cousins who was recently released from federal prison after serving a sentence for trafficking heroin in Louisiana and Alabama. On October 1, 2019, the police visited Pressley's residence, located a 908 North 5<sup>th</sup> Street Baton Rouge, Louisiana, to respond to a domestic violence call. The police report included the following information:

"Officers responded to a call by Dan Miles (Victim), roommate of Baird Pressley (Accused). Victim alleged that Accused, on the night of October 1, 2019, threatened Victim with physical violence by pointing a firearm at Victim, which constitutes assault with a deadly weapon in the State of Louisiana. Witnesses: None. Other persons of interest/suspects: Tanner Fitzgerald. Fitzgerald was in the dwelling unit when officers arrived."

The police did not charge Fitzgerald with a crime. The day following the incident, the Reveille published a story with the headline "LSU Football Player Person of Interest in Domestic Violence Case." The story recounted the basic facts of the incident and published the police report in full. One problem with the story is that the police report included a glaring error. Fitzgerald was not a person of interest or suspect to the police. The arresting officer had mistakenly entered Fitzgerald's name in the wrong field on the report form. He had intended to mistakenly enter Fitzgerald's name in the wrong field on the report form. He had intended to enter Fitzgerald's information in the witness field. The story also included the following description of Fitzgerald's senior year: "Tanner Fitzgerald has succumbed to the pressures of big college life as an athlete at LSU. Fellow

students say he has totally stopped going to class, and they attribute his failures to the horrifying ankle injury he suffered in practice several weeks ago. He's a shadow of his former vibrant and promising self." Fitzgerald is irate about the story and wants to sue the Reveille for defamation, among other claims. Please answer the following questions about this matter.

**Question 1:** The Reveille claims that its article about Fitzgerald is not defamatory because it merely reported true facts about his whereabouts surrounding the events that occurred on October 1, 2019. Please assess the Reveille's argument and determine whether the allegations against Fitzgerald are defamatory.

**Question 2:** If you find that they are defamatory, are they libel per se? Why or why not? What is the significance of finding that allegations are libelous per se?

**Question 3:** The Reveille argues that Fitzgerald is an all-purpose public figure for the purposes of the lawsuit. Fitzgerald argues that he is a private figure. What standard of fault will Fitzgerald have to prove in his libel case against the Reveille? Fully explain the standard of fault required and the legal basis for your conclusion. Make sure to identify and define all key terms.

**Question 4:** What affirmative defense does the Reveille have against Fitzgerald's defamation claim? Explain the basis of the claim, and what the Reveille will have to prove to prevail on this defense.

**Question 5:** In addition to the defamation claim, Fitzgerald also brings a false light invasion of privacy lawsuit against the Reveille. Please fully explain what Fitzgerald will have to prove to win a false light claim, and explain how his claim differs from his defamation claim. (You do not need to apply the standard to the facts).