

*American High Teacher's Guide*  
Lesson Four: Legal and Ethical Aspects of Reality TV

**Target Audience:** High School Students

**Subject Area:** Media Arts Production

**Objective:** Students will learn about the basic legal and ethical responsibilities shouldered by people making “reality” videos (i.e. videos with non-actors).

**Equipment:** VCR and Video Monitor, Show #2 of *American High* (“Who Am I?”), other “Reality TV” programs.

**Concepts:**

- A. Privacy.** Videomakers can get themselves into legal trouble if they violate the privacy rights of others. Securing personal releases and location releases can alleviate this concern.
- B. Libel.** When we disseminate untrue things about people that might harm their reputations, we run a serious risk of lawsuit. The best defense against libel is to double check our facts and make sure our videos speak the truth.
- C. Filming Illegal Activities.** If we film illegal activities, we are creating evidence that may be used against the participants in legal proceedings. Sometimes invoking the journalist’s first amendment right can protect us against this possibility.
- D. Distinction between Law and Ethics.** Students should understand that ethical responsibilities hold videomakers to higher standards than mere legal requirements. Treating our participants ethically is not only the right (moral) thing to do. It is, surprisingly, the smart (effective) thing to do.
- E. Fairness.** At the end of the day, we want the participants of our videos to feel that they haven’t been exploited or harmed by our videos. The two most important tools available to the videomaker in this regard are the fully informed consent and the opportunity for the participant to review the video before completion and broadcast. In between, videomakers should put themselves into the shoes of their participants and ask at every step of the way, “How would I feel if I were portrayed this way?”

**Class Procedure:** The legal and ethical dimensions of making “Reality TV” are sufficiently complex to merit graduate level coursework and much legal exegesis. The outlined lesson plan is schematic but lengthy. Instructors will want to pick and choose among the many

issues worthy of discussion. The key thing is to get your students to consider the dangerous minefield, which confronts them when making reality TV, and how they can best avoid fatal explosions.

I. Screen Show #2 of *American High* (“Who Am I?”). Have your students get in the head of one of the characters—particularly Morgan or Brad. Ask them to brainstorm and discuss the pros and cons of participating in documentaries or “reality TV” shows. Ideally, they’ll hit on some of these key issues:

A. Advantages

- i. To be famous: 15 minutes of fame, to get exposure (actor wannabe’s)
- j. To make money (e.g. \$1,000,000 from *Survivor*)
- k. To tell a particular story or promote a cause (e.g. Morgan wanting to tell people about his battle with ADD in *American High Show #2*)
- l. To gain greater confidence or self awareness (e.g. Brad in *American High Show #2*)
- m. To be analytical about one’s life (e.g. Allie in “Pressure High”)
- n. For fun and kicks – to hang out with cool videomakers

B. Disadvantages

- i. Invasion of privacy
- j. Embarrassment, humiliation, harm to reputation
- k. Getting in trouble with the law, with the boss, with friends or parents

C. Ask your students to distinguish between short run consequences of participation and long range ones. Lead them to acknowledge that the long-range consequences are more uncertain. We don’t know who we’ll be, what we’ll be, where we’ll be in five, ten, or twenty years.

II. Ask your students to research the following legal terms in small groups and report the meaning of each to the whole group. Ask the entire class to discuss the relevance of these terms to reality television. Can your students imagine how an unethical videomaker could get herself in trouble vis-à-vis these concepts? Ask them to dream up hypothetical situations or cite real cases with which they may be familiar.

- A. Libel
- B. Invasion of Privacy
- C. Trespass
- D. Fraud
- E. Negligence Resulting in Property Damage or Bodily Harm
- F. Subpoena for Criminal Proceeding

III. Also ask your students to research the following videomaker tools in small groups and report the meaning of each to the whole group. Ask the entire class to discuss the relevance of these terms to reality television. Can your students imagine how a smart and ethical videomaker can avoid trouble by availing herself of these tools? Ask them to show how the use of these tools would help in the hypotheticals or actual cases mentioned in above.

- A. Personal Release
- B. Location Release
- C. Informed consent

IV. Ask your students to investigate cases in media law such as

- A. *Westmoreland v. CBS* (1984) [see Edwin Moise: Vietnam War Bibliography: The Order of Battle Dispute and the Westmoreland Lawsuit at <<http://www.lbjlib.utexas.edu/shwv/mb/ob.htm>>, also Review of Renata Adler's book *Reckless Disregard* at <<http://www.lawyersandjudges.com/products/old/notable/recklessdisregard.html>>]
- B. *Food Lion v. ABC* (1996) [In Focus: Food Lion vs. Capital Cities/ABC interactive case study at <http://www.akingump.com/foodlion/intro.html>, Also "The Food Lion Case: Are Journalists Above the Law? At <<http://www.cato.org/dailys/9-04-97.html>>]
- C. *Anderson v. Fisher Broadcasting* (1986) [Legal Opinion at <<http://jcomm.uoregon.edu/~tgleason/j385/Anderson.htm>>, See also "Privacy Law in the US" at <<http://www.rbs2.com/privacy.htm>>]
- D. *Falwell v. Flynt* (1986) [see Media Libel Web Site Map at <[http://www.hfac.uh.edu/comm/media\\_libel/webmap.html](http://www.hfac.uh.edu/comm/media_libel/webmap.html)>]
- E. *WDAF-TV v. McCaskill* (1996) [see Legal Opinion at <<http://www.law.umkc.edu/faculty/projects/ftrials/communications/WDAF-TV.html>>]

V. Ask your students to describe these cases to the rest of the class.

- a. What were the facts in each case?
- b. What are the competing interests involved in each case? (E.g. Individual's privacy v. the Public's right to know. E.g. Police need to prosecute crime v. Journalist's right to protect sources)
- c. What was the legal outcome of each case? Why did it turn out that way?

VI. Present your students with the following two hypothetical cases and ask them to apply their common sense and what they learned by researching legal cases to the hypotheticals.

- A. Hypothetical #1. You live in a small town where there is a relatively large use of heroin. In spite of the widespread use of heroin, there is little awareness of the situation by non-users, and there are few treatment options available to users. You want to remedy both situations by making a video documentary about heroin users in your community. Ask your students how do go about making this documentary? How would they present the activities of heroin users? The following issues should surface is classroom discussion
  - 1. Use hidden cameras?
    - a. What are the pros and cons?
    - b. Is filming with hidden cameras illegal or just unethical?
  - 2. What is the difference between "illegal" and "unethical"
    - a. Is it illegal or unethical to violate someone's privacy to reveal that person's illegal or unethical behavior?
    - b. What about the practical danger of shooting such events?

3. Consider shooting heroin users **with** their permission. Why might you want to protect the participant? (Because they're disclosing important information to the public at great personal risk through participation in a documentary video).
4. Obtain an informed consent from the participants. Have a lengthy and wide-ranging discussion with potential participants before asking them to sign personal releases.
  - a. Determine exactly who is the right person to discuss participation.
  - b. Is the participant a minor? Then you have to obtain consent from a parent or guardian.
  - c. Give as much information as possible about what the video will be like, who will see it, what the consequences will be. Discuss with the participant/decision-maker what his or her fears or anxieties are. Try to predict what some of the problems or conflicts will be. Ask potential participants how they might feel about revealing their shortcomings. We all have shortcomings. How many of us would be willing to be presented "warts and all?"
5. How do we protect our participants who are doing illegal things?
  - a. Blurring faces, shooting in silhouette, concealing participants' names.
  - b. Destroying camera tapes once the final program has been mastered.
  - c. Asserting the first amendment right of journalists by refusing to surrender tapes to the police? What is this right, and what is its purpose? Do you have to be a journalist to assert this right? Why? What are the dangers of asserting this right? (Imprisonment until the case is adjudicated.)

D. Hypothetical #2. Ask your students to imagine making a video documentary about a public figure in their community, like the mayor. The mayor has been very generous is granting you access to her public **and** private life. Without this cooperation, it would be hard to imagine making a documentary. Suppose you find out from a couple of sources that the mayor has a serious drinking problem. Ask your students if they can incorporate this information into their documentary? Should they? Ask your students to discuss the following:

1. Are the rules different for public figures than for private ones?
  - a. What are the elements of "libel" again?
  - b. Can a videotape that is critical of a person, but tells the truth be considered libelous? Of course not. Why not? Why is the element of truth a legal bar to proving libel in court?
  - c. Videotape provides a photographic record of things that actually happened, right? Ask your students how videotape programs can lie all the same.
    - i. Narration can contain untrue elements
    - ii. Participants could say untrue things about others. Hearsay. Why is that ultimately the responsibility of the videomaker?
    - iii. Editing and framing distort things (they remove the context, change the chronology, leave out important facts necessary to get the whole truth)

- d. Do your students recognize that there is a different standard for public figures than for others?
  - i. What does this mean? Why is this so?
  - ii. Who is a public figure?
  - iii. Does this mean that public figures have no privacy? Can a videomaker invade the privacy of a public figure?
- e. Ask your students to discuss how they could avoid libel in this situation
  - i. Double-check your facts.
  - ii. Show the video to the person who might feel libeled. Get their feedback. This is easier said than done. Why?

**Recommended Reading and Reference Links:**

<http://wwwsecure.law.cornell.edu/topics/media.html>

<http://www.supnik.com/coprcite.htm>

<http://www.law.umkc.edu/faculty/projects/ftrials/communications/home.html>

<http://www.law.umkc.edu/faculty/projects/ftrials/communications/SuppReadings.htm>

**About the Author:** Jonathan Mednick is both an award-winning filmmaker and an experienced educator in the fields of film/television production and media studies. This past year, Mednick was a producer and director on the critically acclaimed PBS TV series *American High*. Mednick's role on *American High* included teaching video production to the students at Highland Park High School and supervising the making of the student-produced video diaries that are featured so prominently in the show. Mednick's latest film, *Dita and the Family Business* -- a personal documentary about the family behind New York City's fabled Bergdorf-Goodman Department Store -- will begin its theatrical run in New York City in September 2001. Jonathan Mednick is currently teaches film directing and producing at the University of Central Florida. He has also taught media production at New York University, Wesleyan University, and at the University of Iowa.