



JOMC 740.01: Media Law – Fall Semester 2016

Mondays and Wednesdays, 2:00-3:15 p.m. in CA 143

School of Media and Journalism

University of North Carolina at Chapel Hill

Instructor

Michael Hoefges, J.D., Ph.D.

- Office: 355 Carroll Hall (third floor in the “new” part of the building)
- Weekly Office Hours: 3:30-5:00 p.m., Mondays and Wednesdays
- Appointments made for office hours will be honored first – make appointments via email. Otherwise, it will be first-come, first-served. Other days and times are available – just ask.
- Telephone: 843-0971 (direct line to my office, equipped with voice mail)
- Email: mhoefges@email.unc.edu
- Twitter: @mhoefges (you should please follow me on Twitter for the semester)
- **Graduate Teaching Assistant:** Nicholas (“Nick”) W. Gross, J.D., Roy H. Park Doctoral Fellow
 - Weekly Office Hours: By appointment but will have announced hours for certain weeks
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Course Description and Objectives

Welcome to JOMC 740 –Media Law (Section 1 – Hoefges)

The purpose of the course is to foster and develop a substantial and intensive knowledge of important and evolving principles and concepts in the field of media law and policy. You should expect to master skills needed to access, comprehend, analyze and synthesize secondary legal resources, such as legal texts, legal articles in trade publications, articles in academic and scholarly legal journals and law reviews; as well as primary legal documents such as court briefs and opinions, statutory legislation and related materials, and various administrative documents including agency rules and guidances. You should expect to develop proficiency in communicating legal knowledge and analysis of legal materials and cases both in writing and orally. You should expect to learn how to formulate original legal research questions and conduct original legal research to answer these questions using appropriate, sufficient and relevant secondary and primary legal sources and documents located with various legal indexes and computerized databases. You should expect to learn to produce an original piece of legal research that includes appropriate introduction, background, literature review, research questions/methodology, analysis, and conclusion sections. **Please note:** This section is designated for students who are studying such fields as advertising, public relations, strategic communication and other related areas including health communication.

ACCREDITATION: Our School’s professional M.A. program is proud to be accredited by the Accrediting Council on Education in Journalism and Mass Communication (ACEJMC). Among the Professional Values and Competencies for accreditation is “understanding and applying the principles and our laws of freedom of speech and press in the United States, as well as having an understanding of the range of systems of freedom of expression around the world, including the right to dissent, to monitor and criticize power, and to assemble and petition for redress of grievances.” In addition, our students should be able to “think critically, creatively and independently.” No one course can cover all of these topics completely. Our focus in this course will be U.S. law, including relevant international treaties to which the United States is a signatory, but the course also will incorporate relevant international and foreign media law principles and concepts that affect expression and other rights globally.

Required Course Materials and Resources

- (1) ROBERT TRAGER ET AL., *THE LAW OF JOURNALISM AND MASS COMMUNICATION* (5th ed. 2016)
- (2) THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 20th ed. 2015)
- (3) Website: *MEJO 740 – Section 1 (Hoefges)*, <http://guides.lib.unc.edu/mejo740-1/home>

Please be sure to have the correct edition of each of the required books (the first two items above). They should be available for purchase at the campus bookstore among other local and online sources. The third item is an online website containing resources for our class available on the Roy H. Park Library website that our wonderful Park librarian has set up for us – **Stephanie Willen Brown** at swbrown@unc.edu. Stephanie is always very helpful for our students, especially with regard to research projects and sources.

PowerPoint Slides and Online Resources: In addition to our course resources website listed above, PowerPoint slides for daily classes will be available online – but on the course **Sakai site**. Before coming to class each day, please access and read the PowerPoint slides for that day's class so that you'll have your own copy of the slides in class and be familiar with the content before class. Readings from Internet and other sources are indicated in the schedule. You will need Internet access and will need to monitor the course Sakai site and your UNC email account on a regular basis for important course information, announcements and digital "handouts" and materials. And, be sure to watch my Twitter feed as it may well contain cases and issues that we discuss in class. All course **email** messages will be sent to your official UNC email address only. Please check your UNC email account regularly, and clean out your "inbox" so that incoming email messages will not get "bounced." **IMPORTANT NOTE:** Please send class-related email to the instructor **ONLY** via your UNC email account because email from other domains, including attachments, are subject to being screened out by the University "spam" filters and may not be received. Please do not send any assignments via email from any other email address or server (i.e., Gmail, MSN, Yahoo, etc.) other than the UNC server using your UNC email address in order to best ensure that the email and attached documents are delivered timely.

Classroom Environment

It's important to the success of class discussion for everyone to feel comfortable asking questions, discussing issues, and expressing opinions and viewpoints. Please feel free to raise questions or comments that relate to our topic of discussion, and please be respectful of others when they are speaking. Free and open discussion of various viewpoints often helps us better understand issues and concepts. Also, to best utilize our class time, let's all do our part to prevent our various electronic devices from disturbing the class. Your participation in class discussion is a key component of the course, and class participation is a component of your final grade (see below).

Important University Policies

Honor Code: According to the **University Office of Student Judicial Conduct:** "The University of North Carolina at Chapel Hill has had a student-led honor system for over 100 years. Academic integrity is at the heart of Carolina and we all are responsible for upholding the ideals of honor and integrity. The student-led Honor System is responsible for adjudicating any suspected violations of the **Honor Code** and all suspected instances of academic dishonesty will be reported to the honor system. Information, including your responsibilities as a student, is outlined in the **Instrument of Student Judicial Governance**. Your full participation and observance of the Honor Code is expected. . . . [For example,] **plagiarism** in the form of "deliberate" or "reckless" representation of another's words, thoughts, or ideas as one's own without appropriate attribution to the original author in connection with submission of academic work, whether graded or otherwise, is a serious breach of the academic integrity demanded by the Honor Code and one of the most common forms of academic misconduct processed by the Honor System. . . . [To help prevent plagiarism:] Quote and cite any words that are not your own. If you paraphrase the words of another, you must still give proper attribution. If you look it up, write it down. . . .

[Regarding **unauthorized versus authorized collaboration**:] All academic work in this course . . . is to be your own work, unless otherwise specifically provided. It is your responsibility if you have any doubt to confirm whether or not collaboration is permitted." (Emphasis added.) The University requires that written work be submitted with a signed statement of Honor Code compliance. We'll also discuss how the Honor Code applies to assignments in class. Throughout the semester, please see me immediately if you have any questions about how the Honor Code applies in the context of the course or specific assignments. For details, please read the **Instrument of Student Judicial Conduct** at:

<https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>

For more information, please visit the website for the **Office of Student Judicial Conduct** at:

<https://studentconduct.unc.edu/>

Accessibility Resources and Service (ARS): According to ARS: "The University of North Carolina at Chapel Hill facilitates the implementation of reasonable accommodations, including resources and services, for students with disabilities, chronic medical conditions, a temporary disability or pregnancy complications resulting in difficulties with accessing learning opportunities. All accommodations are coordinated through the Accessibility Resources and Service Office."

- ARS can be reached by telephone at 919-962-8300 or by email at accessibility@unc.edu.
- Detailed information about the registration process is available at <https://accessibility.unc.edu/about-ars/policies/student-and-applicant-accommodations>.
- Additional information about ARS is available at <https://accessibility.unc.edu/about-ars>.

Please know that I am fully committed to working with you and ARS confidentially if accommodations are recommended for you in this course. (ARS contact information above reformatted for clarity.)

Diversity and Inclusivity: The University's "Commitment to Diversity" states: "The University of North Carolina strives for excellence both in academic engagement and cocurricular support. Sustaining a diverse and inclusive community is critical to achieving educational excellence." You may read the entire commitment statement at <http://catalog.unc.edu/about/introduction/> and learn more information, including policies and procedures, by visiting the University's Diversity and Multicultural Affairs (DMA) website at <http://diversity.unc.edu/>. Please know that I am fully committed to these policies and procedures.

Course Requirements and Grading

Graded components: Your course grade will be determined based on the following components:

Class Participation	15%
Problem-solving Exercises	30% (three at 10% each)
Legal Research Project	Topic Memorandum – 5%
	Introduction and Literature Review – 10%
	Research Questions and Methodology – 5%
	Final Legal Research Paper – 30%
Project Presentation	5%

Grading: Generally, grades will be assigned based on the following criteria:

H (clear excellence and superiority): The grade of "H" is earned by students who clearly, convincingly and constantly demonstrate a superior ability to critically analyze, synthesize and apply assigned readings through class discussion and all written problem solving work; and who produce outstanding legal research projects that demonstrate a superior ability to formulate, conduct and present an original legal research paper that utilizes a variety of highly relevant and appropriate secondary and primary legal sources, contributes substantial and original knowledge to the field, and is excellently documented and sourced using *The Bluebook: A Uniform System of Citation*.

P (entirely satisfactory): The grade of "P" is earned by students who consistently demonstrate a clear and substantial ability to critically analyze, synthesize and apply assigned readings through class discussion and all written problem-solving work; and who produce sound legal research projects that demonstrate a clear and substantial ability to formulate, conduct and present an original legal research

paper that utilizes sufficient, relevant and appropriate secondary and primary legal sources, contributes original knowledge to the field, and is well documented and sourced using *The Bluebook: A Uniform System of Citation*.

L (low passing): The grade of “L” is earned by the student who demonstrates substantial achievement in most requirements necessary for the grade of “P” but has not fully demonstrated sufficient achievement in each area necessary to earn the higher grade. The grade of “L” is earned by the student who achieves the minimum passing requirements for all components of the course but whose work is, on average, below the level of being worthy of the grade of “P.”

F (failure): The grade of “F” is reserved for the student who occasionally misses class, does not demonstrate having completed assigned readings or other assignments, and fails to meet the minimum requirements for each problem-solving exercises, the legal research project and/or class participation.

Attribution: These descriptions are based in part on those prepared by Drs. Jane Brown, Pat Curtin and Rhonda Gibson.

Attendance and Class Participation

Attendance and Class Preparation: Please plan now to attend every scheduled class meeting on time and in full. Absences from class or portions of class periods will negatively affect your participation grade and, perhaps, your final course grade. When you arrive to class each day for lecture and discussion, please have your copies of all assigned readings and notes for that particular day. You should carefully read all assigned readings for each class meeting prior to the day on which they are scheduled for discussion. In other words, the readings are listed in the schedule below for the day on which they will be discussed in class. If you need to miss class because of a serious illness or other emergency beyond your control, please contact me as soon as possible. More information on preparing for class is found below. If you need to miss class for a primary holy day for religious observance recognized by the University, please let me know in writing two weeks in advance. These days are listed here: www.interfaithcalendar.org. The University encourages reasonable accommodations for such days.

Class Participation: Class participation is a component of your course grade. Reading and analyzing the assigned materials before class and then participating actively and intelligently in class discussion of those materials is one of the most effective methods of learning and analyzing legal concepts that we will cover. Please be prepared to participate in a focused class discussion of the assigned readings at each class session. You should be able demonstrate that you've read the assigned materials carefully, critically and thoughtfully. It is helpful to take notes when you read to synthesize your comments and thoughts. Be sure to bring the assigned readings along with your notes to class each day. This will help facilitate class discussion. During the course, each of you will have the opportunity to select at least one of the assigned court opinions to lead the discussion on that case (part of your participation grade). Missing class (unless excused) will negatively affect your class participation grade.

Problem-solving Exercises

We'll have three “take-home” problem-solving exercises during the semester. These will be distributed for you to complete on your own time within the parameters of an assigned due date and time, and page limitation. You may not collaborate in any way with anyone else and must complete the problem-solving exercises entirely on your own. You'll receive more instructions for completing the problem-solving exercises including the materials you may utilize to complete them. If emergency circumstances arise that prevent you from completing the problem-solving exercises on time, please let me know as soon as possible in advance of the due date. Extension of problem-solving exercise due dates are at the discretion of the instructor with good cause demonstrated in advance. **We'll set the due dates for these exercises in the first week or two of the course.**

Legal Research Project and Presentation

Each of you will complete an original work of legal research in the form of a legal research paper with sufficient, relevant and appropriate use of secondary and primary legal sources and authorities. You'll receive further and detailed instructions on completing the legal research paper. But, we'll be proceeding in steps – identifying a topic that fits your interests and area of study, writing the introduction and literature review sections, writing the section that sets out your research questions and methodology, writing the section that analyzes your primary legal sources (usually court opinions but could be other sources like federal agency materials and decisions from the Federal Trade Commission, for example), and writing your conclusion. Your paper should be approximately 5,000 words in length not including footnotes about 20 pages). The sourcing and documentation in the paper should conform to *The Harvard Bluebook: A Uniform System of Citation* (19th ed. 2010) (we'll have a "Bluebook" session conducted by one of our excellent Park Fellow Ph.D. students who not only taken this course but has a law degree – this will help you learn the most typical types of citations that you'll need to use). We'll discuss the legal research project in more detail in class, and I'll post instructions on Sakai for each of the steps. The due dates for various components of the research project – including the final paper – are listed in the syllabus along with the due date for the final paper. Extensions of these due dates are only available for good cause demonstrated in advance and at the discretion of the instructor. During the last week of the course, each of you will prepare and deliver a presentation of your research project for the class – think of this as a great way to learn about all of the interesting topics that you and your colleagues have learned about and also as a means to help develop and sharpen your presentation skills. There likely will be many times in your professional careers that you'll need to deliver a presentation. You'll receive further instructions on how to prepare and deliver your presentations for the course.

Course Schedule

Our schedule for the semester including the assigned readings is listed below. Please be sure to note important due dates. The schedule may change due to unforeseen circumstances, and you'll be notified accordingly in such circumstances. For the reading assignments, "Trager" refers to the main text and others should be self-explanatory. Some readings are accessible on the Internet or Sakai as indicated. Also, you'll receive instructions on accessing court opinions by citation in the legal databases we'll be using. Additional topical readings may be added with prior notice. You should please complete all readings before the date listed in the class schedule below.

Week 1

- **8/24/16 [W] – Course Overview, and Class Meet-and-Greet**
 - READ: Course Syllabus (distributed in class and available on Sakai site)
 - DISCUSS: Specific areas of media law that interest you and relate to your program of study and how to start exploring potential topics for your individual research project

Week 2

- **8/29/16 [M] – Sources of Law**
 - READ: Trager, Ch. 1 (stop at *Citizens United* case excerpt on p. 44) (focus on the sources of law today)

- **8/31/16 [W] – State and Federal Court Systems in the United States**
 - REVIEW: Trager reading from previous date (focus on the court system today)
 - VISIT: The Federal Courts website (2016) at <http://www.uscourts.gov/FederalCourts.aspx>
 - READ: From the menu on the left, use the drop down menu – “About the Federal Courts” – click on each subtitle and read each page (“The Federal Courts and the Public,” “Court Role and Structures,” and “Types of Cases” – and click on the hyperlinks in each section and read those pages as well). Explore the website including the map of the federal circuits – in what federal circuit is North Carolina?
 - DISCUSS: How to locate a court opinion and learn the previous history of the case as well as where the case has been subsequently cited (other cases, court briefs, articles, etc.)



Week 3:

- **9/5/16 [M] – Labor Day Holiday – No Class**
- **9/7/16 [W] – Court Systems, cont’d, and How to Read a Court Opinion**
 - REVIEW: Trager, Ch. 1, “Reading Case Law” and *Marbury v. Madison* (excerpt) (pp. 36-44)
 - READ: Greater New Orleans Broad. Ass’n, Inc. v. United States, 527 U.S. 173 (1999)
 - READ: Bluebook, Rule 10 (all) and review Tables 1, 6-8 (what are these tables for?)
 - **DISCUSS: Writing the Topic Memorandum (due 9/21/16) (read instructions on Sakai)**
 - REVIEW: Papers by prior 740 students posted on Sakai – many thanks to these students who have graciously allowed us to use their excellent papers as samples (please honor their copyrights in these papers – we’ll how in class)

Week 4:

- **9/12/16 [M] – First Amendment: Theories and Prior Restraint**
 - READ: Trager, Ch. 2 (except read full cases below rather than excerpts at end of chapter)
 - READ: Case: Near v. Minnesota, 283 U.S. 697 (1931)
 - READ: Case: New York Times Co. v. United States, 403 U.S. 713 (1971)
- **9/14/16 [W] – First Amendment: Content v. Content-Neutral Regulation**
 - REVIEW: Trager, Ch. 2 (focus on content and content-neutral regulation)
 - READ: Cases:
 - Simon & Schuster, Inc. v N.Y. Crime Victims Bd., 502 U.S. 105 (1991)
 - Reed v. Town of Gilbert, 135 S.Ct. 2218, (2015)
 - O’Brien v. United States, 391 U.S. 367 (1968)
 - McCullen v. Coakley, 134 S.Ct. 2518 (2014)

Week 5:

- **9/19/16 [M] – Speech Distinctions: Focus on Harmful Speech and Illegal Advertising**
 - READ: Trager, Ch. 3 (just skim the section on “Speech in the Schools” and the *Tinker* case excerpt in the “Cases for Study” section – read these though if interested in that topic)
 - READ: Trager, Ch. 11, p. 512 (“Emerging Law” box on “Online Adult Advertisements and Sex Trafficking”)
 - READ: Article: P. Brooks Fuller, *Evaluating Intent in True Threats Cases: The Importance of Context in Analyzing Threatening Internet Messages*, 37 HASTINGS COMM. & ENT. L.J. 37 (this article is a revised version of a student paper written for this class and is an example of a published law review article – a secondary legal source)
 - READ: Trager, Ch. 11, pp. 496-513 (“Obscenity” section) (example of another category of speech that is unprotected under the First Amendment)

- **9/21/16 [W] – In-class Research Session: Using WestlawNext® and Other Legal Resources**
 - **Guest Speaker:** Allison Symulevich, Reference Librarian, UNC School of Law
 - **READ:** Instructions for Legal Research Project posted on Sakai
 - **READ:** Sample papers by prior 740 students posted on Sakai
 - **DUE: Topic Memo (via email before class starts – Word® file – no PDFs please)**

Week 6:

- **9/26/16 [M] – In-class Research Workshop: Focus on Using Secondary Sources**
 - **DISCUSS:** Writing the Introduction and Literature Review sections (and how these sections will lead to the Research Questions and Methodology, Analysis, and Conclusion Sections – more instructions on these sections later)
 - **REVIEW:** Sample papers by prior 740 students – posted on Sakai
 - **REVIEW:** Instructions for Legal Research Project posted on Sakai
- **9/28/13 [W] – Political Advocacy: Referenda, Public Issues and Political Elections**
 - **READ:** Reading for today will be on electronic library reserve.
 - **READ:** Case: Citizens United v. FEC, 558 U.S. 310 (2010) (this is a very lengthy opinion so just read the “Syllabus” on pp. 310-316)
 - **WATCH:** Aaron Byrd and Quynhanh Do, *Campaign Money With No Fingerprints*, N.Y. TIMES (June 2, 2015), <http://nyti.ms/1Gj12yY>.

Week 7:

- **10/3/16 [M] – Political Advocacy, cont’d: Political Candidate and Issue Programming Lobbying – When is public relations “lobbying?”**
 - **READ:** Reading for today will be on electronic library reserve.
 - **READ:** Jesse McKinley, *Public Relations Firms Sue New York Ethics Panel Over New Disclosure Rule*, N.Y. TIMES (March 8, 2016), http://www.nytimes.com/2016/03/09/nyregion/public-relations-firms-sue-new-york-ethics-panelover-new-disclosure-rule.html?_r=0 (and click on the hyperlink in the article to “an advisory opinion” and read that document also)
 - **READ:** Jacqueline Renfrow, *What’s next in the legal fight between the PR industry and New York State*, PR WEEK (March 11, 2016), <http://www.prweek.com/article/1387087/whats-next-legal-fight-pr-industry-new-york-state#WukW8rYEVFeEBv4Q.99>.
 - **SKIM:** Trager, Ch. 10 (you may skip “Cases for Study), so that you will have grounding in how electronic media are regulated (or not) in the United States
- **10/5/16 [W] – Defamation Law**
 - **READ:** Trager, Ch. 4 (including “Cases for Study) (specific reading assignment each day TBA including topical court opinions, legislative and regulatory materials, and/or articles)

Week 8:

- **10/10/16 [M] – Defamation, cont’d**
 - **READ:** Specific reading assignment for today will be announced
 - **DUE (via email before class starts submitted as Word® document – no PDFs please):**
 - **Introduction and Literature Review sections of legal research project paper**
- **10/12/16 [W] – Defamation, cont’d**
 - **READ:** Specific reading assignment for today will be announced

Week 9:

- **10/17/16 [M] – In-class Research Workshop – Beyond the Introduction and Literature Review**
 - DISCUSS: Preparing the Research Questions and Methodology sections (due 10/31)
 - DISCUSS: Preparing the Analysis and Conclusion sections (due with the revised Introduction, Literature Review, and Research Questions and Methodology sections – the final paper – on 11/22)
- **10/19/16 [W] – Defamation Law – Defenses and Privileges**
 - READ: Trager, Ch. 5 (including the “Cases for Study”)
 - READ: Topical reading(s) (TBA)

Week 10:

- **10/24/16 [M] – Privacy Law and Emotional Distress Claims**
 - READ: Trager, Ch. 6 (plus “Cases for Study”) (specific reading assignment each day TBA including topical court opinions, legislative and regulatory materials, and/or articles)
- **10/26/16 [W] – Privacy, cont’d**
 - READ: Specific reading assignment for today will be announced
 - READ: Matthew D. Bunker and Clay Calvert, *Video Games and the Right of Publicity: The Courts Drop the Ball*, 93 JOURNALISM & MASS COMM. QUARTERLY 627 (2015)

Week 11:

- **10/31/16 [M] – Privacy, cont’d**
 - READ: Specific reading assignment for today will be announced
 - READ: Trager, Ch. 5, pp. 191-201 (“Emotional Distress” and related sections) (plus *Hustler Magazine, Inc. v. Falwell* excerpt in “Cases for Study”)
 - **DUE (via email before class starts submitted as Word® document – no PDFs please):**
 - **Research Questions and Methodology section of legal research project paper**
- **11/2/16 [W] – Commercial Speech**
 - READ: Trager, Ch. 13 (including “Cases for Study”) (specific reading assignment each day TBA including topical court opinions, legislative and regulatory materials, and/or articles)

Week 12

- **11/7/16 [M] – Commercial Speech, cont’d**
 - READ: Specific reading assignment for today will be announced
- **11/9/16 [W] – Commercial Speech, cont’d**
 - READ: Specific reading assignment for today will be announced

Week 13

- **11/14/16 [M] – Intellectual Property – Copyright and Trademark Law**
 - READ: Trager, Ch. 12 (including “Cases for Study”) (specific reading assignment each day TBA including topical court opinions, legislative and regulatory materials, and/or articles)

- **11/16/16 [W] – Intellectual Property, cont’d**
 - READ: Specific reading assignment for today will be announced
 - READ: Jesse Abdenour, *Documenting Fair Use: Has the Statement of Best Practices Loosened the Fair Use Reins for Documentary Filmmakers?*, 19 COMM. L. & POL’Y 367 (2014) (this is another article that is based on a paper written by a prior 740 student)

Week 14 – Final Legal Research Papers Due this Week

- **11/21/16 [M] – Class will not meet – office hours for questions about papers (due tomorrow)**
- **11/22/16 [T] – DUE by 5 P.M. (submitted via email as Word® document – no PDFs please)**
 - Final Research Paper
- **11/23/16 [W] – No Class – Thanksgiving Recess begins – Enjoy the long weekend!**

Week 15:

- **11/28/16 [T] – Intellectual Property, cont’d**
 - READ: Specific reading assignment for today will be announced
- **11/30/16 [W] – What Strategic Communication Professionals Should Know about Access Law, and the Media and the Courts**
 - READ: Trager, Ch. 7 (including the “Cases for Study”) (but skip “Covert Recording” section)
 - READ: Trader, Ch. 9 (including the Cases for Study)

Week 16

- **12/5/16 [M] – Presentations of Research Projects**
- **12/7/16 [W] – Presentations of Research Projects, cont’d**

ENJOY THE WINTER BREAK!