

MEJO 840
Seminar in Media Law
Tuesday, 12:30 p.m. – 3:15 p.m.
CA 338
Spring 2020
Tori Ekstrand

Welcome to MEJO 840. In this seminar, students explore free expression theory and the research perspectives and methods used in the study of media law. The main goals of the course are to 1) familiarize students with First Amendment theories and interpretations; 2) expose students to an array of legal research focusing on communication law; 3) teach students to critically read and evaluate such research; and 4) provide students with experience in legal research and writing. Each student will identify a legal research question he or she will investigate, write a paper proposal, produce a research paper, and present his or her research findings to the class. It is expected that all papers will be of high enough quality to be presented at a scholarly convention and/or published in a scholarly journal. Prerequisite: JOMC 740 (or an equivalent course) or a law school course in media law. Please note: Students are expected to have already obtained a thorough grounding in the field of media law – including substance and procedure – and also have learned how to conduct legal research (including primary and secondary legal sources), especially in the field of media law, before taking JOMC 840.

Course objectives. You will have the opportunity to develop substantive expertise in a particular theoretical or conceptual framework (or, perhaps, one particularly significant First Amendment scholar) that you select with the instructor as most relevant to your legal research project, and, ideally, to your overall studies and goals (i.e., your thesis or dissertation). You will have the opportunity to develop a publication-quality manuscript of original legal research that you will develop and complete with the instructor and classmates. Through this process, you will have the opportunity to further develop your expertise – and hone your skills – in legal research methods. You will have the opportunity to further develop your expertise in a substantive area of mass communication law that you also will select with the instructor for your legal research project. You will be expected to utilize legal research methodology as the primary method for completing your research project in the course. You'll receive further instructions on completing the research proposal and the legal research paper.

Customization. Because of the limited enrollment in this course, there will be many opportunities to customize the course for each student depending on her or his particular interests, goals and course of study – through targeted readings and through the research project, for example. In other words, it is the aim of the course to best serve your program and course of study here and, ultimately, your professional goals upon graduating from the program – while ensuring that we cover the overarching goals and objectives set out above for MEJO 840.

Honor Code: The Honor Code is in effect for this course and all others at the University. Please make sure that you are thoroughly familiar with the terms of the Honor Code including your rights and responsibilities as set out in the most current edition of *The Graduate School Record* available online at <http://www.unc.edu/gradrecord/front/univregulations.html#honor>.

Throughout the semester, please see me if you have questions about how the Honor Code applies in the context of the course or specific assignments. Please read the current version of *The Instrument of Student Judicial Governance*:

<https://studentconduct.unc.edu/sites/studentconduct.unc.edu/files/documents/Instrument.pdf>. Please be sure to read Section B titled “Academic Dishonesty” that begins on page 5 of *The Instrument*. I am fully committed to making sure we abide by the Honor Code in this course.

Please note: All work is assumed to be yours and only yours unless otherwise indicated. In other words, by enrolling in this course, you have agreed to the Honor Code provisions above.

Accessibility Resources and Service: The University of North Carolina – 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. In the first instance please visit the ARS website at <http://accessibility.unc.edu>, or call the ARS office at 919-962-8300, or contact ARS via email at accessibility@unc.edu. A student is welcome to initiate the registration process at any time, however, the process can take time. ARS is particularly busy in the run-up to Finals and during Finals. Students submitting Self-ID forms at that time are unlikely to have accommodations set until the following semester. Please contact ARS as early in the semester as possible. (*Source: ARS*)

Diversity and Inclusivity: The University is committed to fostering a diverse and inclusive academic community. Please review the University policy statement titled “UNC’s Commitment to Diversity and Inclusivity,” “Policy on Prohibited Discrimination, Harassment and Related Conduct,” and “Policy Statement on Nondiscrimination,” all available in the most current version of *The Graduate School Record* available online at <http://www.unc.edu/gradrecord/>. I am fully committed to making sure that we honor and respect these important policies in this course and our academic community.

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

Research Paper:	70 %
	Idea = 5%
	Proposal + RQs = 20%
	Final Draft = 45%
Class Leader Day:	20%
Theory Summaries:	10%

The research paper is the final paper that you will produce for this class, which includes these component parts: the idea you propose (worth 5%), the proposal & RQs (worth 20%) and the final draft submitted (worth 45%). Class Leader Day will require you to choose a day on the schedule and lead the group in discussion about the readings that day. Theory summaries are one-page worksheets on each theory we read about. You will be required to submit those on sakai before we meet and discuss the readings/theories. I need you in class and ready to talk about what was assigned. You will receive more information about my expectations and the assessment for each one of these areas.

Attendance: I reserve the right to lower your grade based on poor attendance. I define poor attendance as missing two classes during the semester.

Grading: Grades of H (clear excellence and superiority, top 2% of the class), P (entirely satisfactory, top 5-10% of the class), L (low passing), and F (failure), will be utilized for all graded components of the course and for the final course grades.

Please note the following important key DEADLINES and EVENTS:

Jan. 28: Idea for your research due in class. Please bring five hard copies to share.

March 6: Research proposal & RQs are due on sakai.

March 10: Spring Break, no class.

March 31/April 1: Hargrove Colloquium, Richard Gringas, Google News, Keynote speaker.

April 28: Final paper DUE on sakai.

May 1: Present your research, 12 p.m.

**MEJO 840 Ekstrand
Reading & Other Assignments**

Reading is due on the day listed. Links and pdfs will also be available on sakai. * Indicates written work due.

Jan. 14 On Theory, Research, and the First Amendment (Tori leads)

Read Lindsie's and Chanda's proposals for first class and come prepared to discuss. (See Sakai.)

Thomas I. Emerson, *Toward a General Theory of the First Amendment*, (1963):
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3769&context=fss_papers

Jan. 21 Marketplace Theory and The Traditional First Amendment (Tori leads)

MATTHEW BUNKER, *CRITIQUING FREE SPEECH* (2001) – Chapter One only (see sakai).

John Stuart Mill, *Of the Liberty of Thought and Discussion*, in *ON LIBERTY*, (1869):
<http://www.utilitarianism.com/ol/two.html>.

John Milton, *Areopagetica: A speech for the Liberty of Unlicensed Printing to the Parliament of England* (1644): <http://www.fordham.edu/halsall/mod/1643milton-areo.html> (also contains a copy of the order of Parliament that prompted the speech).

Jan. 28 Challenging Marketplace Theory (Tori leads)

Rodney Smolla, *The Meaning of the Marketplace of Ideas in First Amendment Law* (2019),
<https://www.tandfonline.com/doi/abs/10.1080/10811680.2019.1660552>

Stanley Ingber, *The Marketplace of Ideas: A Legitimizing Myth*, (1984):
<https://pdfs.semanticscholar.org/fa1b/c9ef33f67d03637b24dad1b305a6a7b937b9.pdf>

Vincent Blasi, *Milton's Areopagitica and the Modern First Amendment* (1995):
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1007&context=ylsop_papers.

*Research Idea due in class. Please bring four hard copies.

Feb. 4 Challenging Marketplace Theory: Counterspeech Doctrine (Tori leads)

Nadine Strossen, [Hate: Why we Should Resist It with Free Speech Not Censorship](#) (2018)

Mary Anne Franks, [The Cult of the Constitution: Our Deadly Devotion to Guns and Free Speech](#) (2019)

Phil Napoli, *What If More Speech is No Longer the Solution? First Amendment Theory Meets Fake News and the Filter Bubble* (2018) <http://www.fclj.org/wp-content/uploads/2018/04/70.1-Napoli.pdf>

*Post first theory card on marketplace theory

Feb. 11 Self-Government Theory

Alexander Meiklejohn, *Free Speech and Its Relation to Self-Government* (1948), <http://digicoll.library.wisc.edu/cgi-bin/UW/UW-idx?id=UW.MeikFreeSp>.

[Cass Sunstein, Republic.com](#) (2007).

*Post second theory card on self-government theory

Feb. 25 Press Clause (Tori leads)

Jared Schroeder, *The Press Clause and Digital Technology's Fourth Wave* (2018). Selected chapter(s), see Sakai.

Kate Klonick, *The New Governors: The People, Rules and Processes Governing Online Speech*, (2018) https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf

March 3 Individual Meetings on your research and progress. We will not meet as a class. Your proposal is due on March 6 on sakai.

March 17 **Right to Know, Checking Value, Tolerance**

Vincent Blasi, *The Checking Value in First Amendment Theory*, (1977)
https://www.jstor.org/stable/827945?seq=1#page_scan_tab_contents.

Lee C. Bollinger, *Free Speech and Intellectual Values*, (1983)
<https://digitalcommons.law.yale.edu/ylij/vol92/iss3/3/>.

Thomas I. Emerson, *Legal Foundations and the Right to Know*, (1976)
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3765&context=fss_papers.

*Post your third, fourth, fifth theory cards on right to know, checking value and tolerance theories

March 24 **Dissent, Democratic Competence**

Steven Shiffrin, *Dissent, Democratic Participation, and First Amendment Methodology*, 97 VA. L. REV. 559 (2011), available at:
<http://virginialawreview.org/sites/virginialawreview.org/files/559.pdf>

Robert Post, *Democracy, Expertise, Academic Freedom: A First Amendment Jurisprudence for the Modern State* (2012):
<http://search.lib.unc.edu/search?R=UNCb7396211>

*Post your sixth and seventh theory cards on dissent and democratic competence.

March 31 **Critical Theory and the First Amendment**

Jack Balkin, *Critical Theory Today*, published in *On Philosophy in American Law*, Francis J. Mootz III, ed. (2008):
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=5623&context=fss_papers

Stanley Fish, *There's No Such Thing as Free Speech and It's a Good Thing Too* (1994):
http://www.english.upenn.edu/~cavitch/pdf-library/Fish_FreeSpeech.pdf

Kimberle Crenshaw, *Twenty Years of Critical Race Theory* (2011):
<http://shain003.grads.digitalodu.com/blog/wp-content/uploads/2014/09/Twenty-Years-of-Critical-Race-Theory-Looking-Back-to-Move-Forward.pdf>

Steve Shiffrin, *What's Wrong with The First Amendment* (2016), selected chapter(s). See Sakai.

*Hargrove Colloquium, Richard Gringas, Google News, Keynote speaker.

*Post your eighth theory card on critical theory on Sakai.

April 7 **Feminist Theory and the First Amendment**

Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, (1985):
https://heinonline.org/HOL/Page?handle=hein.journals/hcrcl20&div=6&g_sent=1&casa_token=&collection=journals.

Susan H. Williams, *Feminist Theory and Freedom of Speech*, (2009):
http://ilj.law.indiana.edu/articles/84/84_3_Williams.pdf.

Martha Nussbaum, *Creating Capabilities: The Human Development Approach*, selected pages, (2011) <http://search.lib.unc.edu/search?R=UNCb8071547>

*Post your ninth theory card on feminist theory on Sakai.

April 14 **Self-Fulfillment/Autonomy**

C. Edwin Baker, *The Scope of the First Amendment Freedom of Speech*, (1978):
https://heinonline.org/HOL/Page?handle=hein.journals/uclalr25&div=50&g_sent=1&casa_token=&collection=journals.

April 21 **Anti-Corruption Principle**

Zephyr Teachout, *The Anti-Corruption Principle* (2009)
<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=3123&context=clr>

*Post your tenth and eleventh theory cards on self-fulfillment and corruption.

April 28: Final paper DUE on sakai.

May 1 **Sharing your research, more TBA. 12 p.m.**

Other Theory Resources

LEE C. BOLLINGER & GEOFFREY R. STONE, *ETERNALLY VIGILANT: FREE SPEECH IN THE MODERN ERA* (2002).

OWEN M. FISS, *THE IRONY OF FREE SPEECH* (1993).

Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765 (2004).

FREDERICK SCHAUER, *FREE SPEECH: A PHILOSOPHICAL INQUIRY* (1982).

RODNEY A. SMOLLA, *FREE SPEECH IN AN OPEN SOCIETY* (1992).

Geoffrey R. Stone, *Free Speech in the Modern Age: What We Have Learned in the Twentieth Century*, 36 PEPPERDINE L. REV. 273 (2009).

CASS R. SUNSTEIN, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* (1993).

ZEPHYR TEACHOUT, *CORRUPTION IN AMERICA* (2014).

SUSAN H. WILLIAMS, *TRUTH, AUTONOMY, AND SPEECH: FEMINIST THEORY AND THE FIRST AMENDMENT* (2004).