

MEJO 840
Seminar in Media Law: Lies, Truths, and Harmful Speech
Tuesday, 2 p.m. – 4:45 p.m.
Curtis Media Center 303
Spring 2023
Tori Ekstrand

WELCOME TO MEJO 840. In this seminar, students will explore free expression law, theory, and interdisciplinary research perspectives to reflect on and explore current debates regarding the regulation of online speech. Specifically, we will explore the law connected to contemporary free expression debates and will consider the effects of false or harmful speech in the age of online mis- and disinformation.

Students are not required to have a background in First Amendment law. At the outset, the course will familiarize students with basic First Amendment doctrine/theory so that as a class, we can explore the current debates with a basic understanding of the legal principles. The course will also expose students to an array of interdisciplinary research focusing on communication law and disinformation studies; teach students to critically read and evaluate such research; and provide students with experience in interdisciplinary legal research and writing.

Each student will identify a topic to investigate, write a paper or project proposal, produce a research paper or project, and present findings or project deliverables to the class. It is expected that all papers or projects will be of high enough quality to be presented at a scholarly convention, published in a scholarly journal, or published by a traditional media outlet.

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 research project, and, ideally, to your overall research agenda (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 – or you will develop a project with public impact. Through this process, you will have the opportunity to develop your expertise – and hone your skills – in legal research/law and society methods. 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 their 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 and, ultimately, your professional goals upon graduating– while ensuring that we cover the overarching goals and objectives set out above for MEJO 840.

HOW TO WORK WITH ME: I think most students find me approachable and reasonable to work with, and I hope you will feel comfortable coming to me about any question or concern you have, too. It’s best to email me with concerns, questions, and/or to set up a meeting. I’m very responsive on email and work hard to respond to students within 24 hours of an email. I’ve been teaching for a while now, and

what I enjoy most is knowing and supporting my students. *ALL* my students!! I'm generally curious about you and your plans. Don't miss out on getting to know me! I'll do my best to know you, but I always appreciate students who try to reach out to me. This is challenging material. I really want to set everyone up to succeed in the class.

SPECIAL HEALTH POLICY: Because of the ongoing COVID pandemic, please be considerate of everyone in the class and DO NOT attend class in person if you feel sick for any reason. If you're not able to attend class because of health concerns, please let me know in advance of the class session. I will be wearing a mask because I help to take care of my elderly parents who both have heart failure. They've made it this far without getting COVID, and I don't want to be the one who gives it to them. You will have the option to attend virtually if you don't feel well. Please reach out to me if you need that option.

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. 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.

ACCOMMODATIONS: **If you are a student with a documented disability OR a student with a unique personal situation (e.g. – a terminally ill family member or you are struggling with depression, etc.),** please talk to me or email me during the first two weeks of class so that we can work together to make your experience in this class a success. I am very happy to work with you to make the necessary and reasonable accommodations. **While I prefer to have documentation from Accessibility Resource Services (ARS) to help you, there are times when students do not report a disability and/or struggle with mental health or a family situation. I am happy to have these conversations with you and provide reasonable accommodations as required by law.** I cannot, however, accommodate you to the point that it would be unfair to other students in the class – or to the point in which you will miss important material in the course. In some cases, I will encourage you (but cannot require you) to visit with ARS. I urge you to come speak to me earlier rather than later in the semester. I cannot help you in this regard if you come to me at the last minute.

Students who may need academic accommodations and associated resources, like extended time, must contact the Department of Accessibility Resources and Service (ARS) in a timely manner to determine whether and to what extent such accommodations or resources are necessary for this course. However, only ARS can make this determination for you. It is the goal of UNC to "ensure that all programs and facilities of the University are accessible to all members of the University community." If you think this might apply to you, please contact ARS confidentially as soon as possible either by telephone at 962-8300 or visit the ARS website at <http://accessibility.unc.edu/about-us> for additional information. Please know that I am fully committed to this policy and will abide by any recommendations ARS may make for you for this course.

COUNSELING: CAPS is strongly committed to addressing the mental health needs of a diverse student body through timely access to consultation and connection to clinically appropriate services, whether for short or long-term needs. Go to their website: <https://caps.unc.edu/> or visit their facilities on the third floor of the Campus Health Services building for a walk-in evaluation to learn more.

TITLE IX: Any student who is impacted by discrimination, harassment, interpersonal (relationship) violence, sexual violence, sexual exploitation, or stalking is encouraged to seek resources on campus or in the community. Reports can be made online to the EOC at <https://eoc.unc.edu/report-an-incident/>. Please contact the University's Title IX Coordinator (Elizabeth Hall, interim – titleixcoordinator@unc.edu), Report and Response Coordinators in the Equal Opportunity and Compliance Office (reportandresponse@unc.edu), Counseling and Psychological Services (confidential), or the Gender Violence Services Coordinators (gvsc@unc.edu; confidential) to discuss your specific needs. Additional resources are available at safe.unc.edu.

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:	25%	
Active Reading/Participation:	5%	

The research paper or project 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. You will receive more information about my expectations and the assessment for each one of these areas.

ATTENDANCE/PARTICIPATION: I reserve the right to lower your grade based on poor attendance. I define poor attendance as missing more than 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.

WORKLOAD: Sustained reading is required for this course. I estimate you'll need about 10-15 hours a week for this course and the work required.

KEY DEADLINES/EVENTS:

Jan. 31: Idea for your research due in class. Please post copies to share in class.

Feb. 14: Wellness Day

Week of Feb. 14: Individual Check-In Meetings with Tori by zoom.

March 7: Research proposal & RQs are due on sakai.

March 14: Spring Break, no class.

April 25: In-class Workshop

April 28: Final paper due on Sakai.

**MEJO 840 Ekstrand
Reading & Other Assignments**

Reading is due on the day listed. Links and pdfs will also be available on Sakai.

Jan. 10 Introductions and Connections

Culture Box
Your Research Agenda

Jan. 17 Lies, Truths, and the Traditional Marketplace of Ideas

Silvergate, H. et al. Free Speech: A Brief History, in the FIRE Guide to Free Speech on Campus (2012): <https://www.thefire.org/sites/default/files/2014/02/FIRE-Guide-to-Free-Speech-on-Campus-2nd-ed.pdf>. Read pages 9-27 only. (16 pages).
(About FIRE: <https://www.thefire.org/about-us>.)

Emerson, T. *Toward a General Theory of the First Amendment*, (1963):
http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3769&context=fss_papers (80 pages).
(About Emerson: <https://www.mtsu.edu/first-amendment/article/1295/thomas-emerson>)

Mill J.S., *Of the Liberty of Thought and Discussion*, in ON LIBERTY, (1869):
<http://www.utilitarianism.com/ol/two.html>. (Chapter Two only)
(About Mill: <https://plato.stanford.edu/entries/mill/>)

Jan. 24 Lies, Truths, and the Traditional Marketplace of Ideas

U.S. v. Alvarez, <https://supreme.justia.com/cases/federal/us/567/709/#tab-opinion-1970527> (49 narrow pages)

Congressional Research Service, *False Speech and the First Amendment: Constitutional Limits on Regulating Misinformation*,
<https://crsreports.congress.gov/product/pdf/IF/IF12180> (3 pages)

Calvert, C. *Fake News and the First Amendment: Reconciling a Disconnect Between Theory and Doctrine*
<https://scholarship.law.uc.edu/cgi/viewcontent.cgi?article=1241&context=uclr> (41 pages)
(About Calvert: <https://www.law.ufl.edu/faculty/clay-calvert-2>)

Durham Peters, J. Conclusion (only), *Responsibility to Things That are Not*, from *Courting the Abyss: Free Speech and the Liberal Tradition* (2005). Available at Davis Library:
https://vb3lk7eb4t.search.serialssolutions.com/ejp/?libHash=VB3LK7EB4T#/search/?searchControl=title&searchType=title_code&criteria=TC0000336280&language=en-US&titleType=JOURNALS. (10 pages)

(About Peters: <https://english.yale.edu/people/tenured-and-tenure-track-faculty-professors/john-durham-peters>).

Optional: Please join me on Jan. 27 to hear Danielle Citron speak at Flyleaf Books about her new book on privacy law, *The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age*: <https://www.flyleafbooks.com/event/citron-2023>.

Jan. 31

Lies, Truths, and the Modern Marketplace of Ideas

Bollinger, L. & Stone, G. Opening Statement in Social Media, in *Freedom of Speech and the future of the Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (7 pages)
(Bios in the book)

Strauss, D. Social Media and First Amendment Fault Lines, in *Freedom of Speech and the future of the Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (14 pages)
(Bios in the book)

Greene, J. Free-Speech on Public Platforms, in *Freedom of Speech and the future of the Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (20 pages)
(Bios in the book)

Frankfurt, H. *On Bullshit*. (2005)
http://www2.csudh.edu/ccauthen/576f12/frankfurt_harry_-_on_bullshit.pdf
(About Frankfurt: <https://www.americanacademy.de/person/harry-frankfurt/>) (20 pages)

Freelon, D. & Wells, C. *Disinformation as Political Communication* (2020):
<https://www.tandfonline.com/doi/full/10.1080/10584609.2020.1723755> (12 pages)
(About Freelon: <https://dfreelon.org/>.
About Wells: <https://www.bu.edu/com/profile/chris-wells/>.)

DUE: Idea for your research due in class. Please post copies on sakai to share in class.

Feb. 7

Harmful Speech (Definitions and Regulations)

Carlson, C.R. *Hate Speech* (2021). (168 pages)
Special attention to pages:

About Carlson: (<https://www.seattleu.edu/artsci/about/directory/profile/caitlin-carlson.html>). She will join us by zoom.

Zurth, P. (2021) The German NetzDG as Role Model or Cautionary Tale? Implications for the Debate on Social Media Liability (72 pages)

About Zurth: https://www.jura.uni-muenchen.de/personen/z/zurth_patrick/vita/cv_english/index.html.
<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1782&context=iplj>

Feb. 14 Wellness Day – No class this day.
(Individual meetings with Tori during the week to check in.)

Feb. 21 Harmful Speech (Arguments For and Against Regulation)

Strossen, N., [Hate: Why we Should Resist It with Free Speech Not Censorship](#) (2018) (182 pages) (Really the whole book is helpful.)
(About Strossen: <https://www.nyls.edu/faculty/nadine-strossen/>.)

Delgado, R. & Stefancic, J. [Must We Defend Nazis?](#) (2018) (162 pages)
(About Delgado: <https://www.seattleu.edu/research/law/richard-delgado/>
About Stefancic: <https://law.seattleu.edu/faculty/directory/profiles/stefancic-jean.html>
Special attention to: Parts 4-6)

Gonzalez v. Google oral arguments today at the U.S. Supreme Court! (Let's listen perhaps? Some clips? We'll see what's possible.) For details and background: <https://www.scotusblog.com/case-files/cases/gonzalez-v-google-llc/>

Feb. 28 Privacy and Harmful Expression (Modern Marketplace)

Citron, D. [The Fight for Privacy: Protecting Dignity, Identity and Love in the Digital Age](#) (2022). (211 pages)
About Citron: <https://www.law.virginia.edu/faculty/profile/uqg7tt/2964150>.
Special attention to: Parts 6-10

People v. Counterman (Colorado Court of Appeals, 2021) Cert. just granted by SCOTUS: <https://law.justia.com/cases/colorado/court-of-appeals/2021/17ca1465.html>.
Cert petition: https://www.supremecourt.gov/DocketPDF/22/22-138/233120/20220809155927708_Petition%20--%20ready%20to%20file%20-%20TO%20PRINT.pdf.

Review of Carrie Goldberg's book, *Nobody's Victim, Fighting Harassers and Stalkers on the Web* (2019). <https://www.nytimes.com/2019/08/13/books/review/nobodys-victim-carrie-goldberg-consent-donna-freitas.html>

About Goldberg and her firm: <https://www.cagoldberglaw.com/>.

Cyber Civil Rights Initiative: <https://cybercivilrights.org/>.

March 7 In-Class Research Workshop + GDPR/DSA

EU GDPR Basics: <https://gdpr.eu/>

EU GDPR summaries/news:

- <https://www.wired.co.uk/article/what-is-gdpr-uk-eu-legislation-compliance-summary-fines-2018>
- <https://www.cnet.com/tech/gdpr-fines-the-biggest-privacy-penalties-handed-out-so-far/>
- <https://www.nytimes.com/2023/01/04/technology/meta-facebook-eu-gdpr.html>
- <https://www.aclu.org/cases/aclu-v-clearview-ai>
- China GDPR:
<https://www.dlapiper.com/en/insights/publications/2022/07/chinas-emerging-data-protection-laws-bring-challenges-for-conducting-investigations-in-china>
- Digital Services Act article

Research proposal & RQs are due on sakai.

March 14 Spring Break (No Class)

March 21 Lies, Truths Harmful Speech and Governance (Traditional Marketplace)

Meiklejohn, A. Free Speech and Its Relation to Self-Government (1948), <http://digicoll.library.wisc.edu/cgi-bin/UW/UW-idx?id=UW.MeikFreeSp>. (107 pages)
(About Meiklejohn: <https://www.mtsu.edu/first-amendment/article/1302/alexander-meiklejohn>.)

March 28 Data/AI as Speech & Commercial Speech issues (Modern Marketplace)

Bambauer, J. Is Data Speech? (2014) (64 pages)
https://www.stanfordlawreview.org/wp-content/uploads/sites/3/2014/01/66_Stan._L_Rev_57_Bambauer.pdf
(About Bambauer: <https://law.arizona.edu/jane-bambauer>.)

Massaro, T. & Norton, H. *Siri-ously 2.0? What Artificial Intelligence Reveals About the First Amendment* (2017) (45 pages), <https://www.minnesotalawreview.org/wp-content/uploads/2017/06/MassaroNortonKaminski-1.pdf>.
(About Massaro: <https://law.arizona.edu/toni-m-massaro>.
About Norton: <https://lawweb.colorado.edu/profiles/profile.jsp?id=263>
About Kaminski: <https://lawweb.colorado.edu/profiles/profile.jsp?id=825>.)

Shanor, A. & Light, S. Greenwashing and the First Amendment (2022) (86 pages)
<https://www.columbialawreview.org/wp-content/uploads/2022/11/Shanor-Light-Greenwashing-and-the-First-Amendment.pdf>.

(About Shanor: <https://lgst.wharton.upenn.edu/profile/shanor/>.
About Light: <https://lgst.wharton.upenn.edu/profile/lightsa/>.)

Beckstrand, S. *Does Free Speech Protect COVID-19 Vaccine Misinformation?* (2022)
<https://law.stanford.edu/2022/04/22/does-free-speech-protect-covid-19-vaccine-misinformation/>(1 page)

April 4 **Lies, Truths, Harmful Speech, and Governance (Modern Marketplace)**

Klonick, K. *The New Governors: The People, Rules and Processes Governing Online Speech*, (2018)
https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf
(73 pages)
(About Klonick: <https://www.stjohns.edu/law/faculty/kate-klonick>)

Balkin, J. *The Fiduciary Model of Privacy* (2020)
<https://openyls.law.yale.edu/bitstream/handle/20.500.13051/18077/Balkin%2c%20The%20Fiduciary%20Model%20of%20Privacy.pdf?sequence=1&isAllowed=y>
(About Balkin: <https://jackbalkin.yale.edu/>.)

Napoli, P. *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>. (50 pages)
(About Napoli: <https://sanford.duke.edu/profile/philip-michael-napoli/>)

April 11 **Lies, Truths, Harmful Speech, and Governance (Modern Marketplace)**

Ceresny, C et al. in *Freedom of Speech and the future of Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>.
(18 pages) (See book bios)

Sunstein, C. *A Framework for Regulating Falsehoods*, in *Freedom of Speech and the future of Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (9 pages)
(About Sunstein: <https://hls.harvard.edu/faculty/cass-r-sunstein/>).

Persily, N. *Platform Power, Online Speech, and the Search for New Constitutional Categories*, in *Freedom of Speech and the future of Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>.
(18 pages)
(About Persily: <https://law.stanford.edu/directory/nathaniel-persily/>)

Benkler, Y. *Follow the Money, Back to Front*, in *Freedom of Speech and the future of Our Democracy* (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (15 pages)
(About Benkler: <https://hls.harvard.edu/faculty/yochai-benkler/>)

April 18 **Lies, Truths, Harmful Speech, and Governance (Modern Marketplace)**

Whitehouse, S. Section 230 Reforms, in Freedom of Speech and the future of Our Democracy (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (15 pages)
(About Whitehouse: <https://www.whitehouse.senate.gov/about/biography>)

Franks, M. The Free Speech Industry, in Freedom of Speech and the future of the Our Democracy (2022).: <https://www.amazon.com/Social-Freedom-Speech-Future-Democracy/dp/0197621090>. (20 pages)
(About Franks:
<https://people.miami.edu/profile/0e3de25e8a59845b79ff4663a71ade5a>)

April 25 **Research Workshop**

Bring your nearly final draft to class to discuss and receive feedback.

April 28 **Final paper DUE on sakai.**

OTHER 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).

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>.

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).

CASS R. SUNSTEIN, REPUBLIC.COM (2007).

ZEPHYR TEACHOUT, CORRUPTION IN AMERICA (2014).

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