



FAKE NEWS AND WEAPONIZED DEFAMATION

GLOBAL PERSPECTIVES

The notion of “fake news” has gained great currency in global popular culture in the wake of contentious, social media-imbued elections in the United States and Europe. Although often associated with the rise of extremist voices in political discourse and, specifically, an agenda to “deconstruct” the power of government, institutional media, and the scientific establishment, fake news is “new wine in old bottles,” a phenomenon that has long historical roots in government propaganda, jingoistic newspapers, and business-controlled public relations. In some countries, dissemination of “false news” is a crime used by governments to stifle dissent. This broad conception of fake news not only acts to repress evidence-based inquiry of government, scientists, and the press; but it also diminishes the power of populations to seek informed consensus on policies such as climate change, healthcare, race and gender equality, religious tolerance, national security, drug abuse, poverty, homophobia, and government corruption, among others.

“Weaponized defamation” refers to the invocation, and increasing use, of defamation and privacy torts by people in power to threaten press investigations, despite laws protecting responsible or non-reckless reporting. In the United States, for example, some politicians, including the current president, invoke defamation as both a sword and shield. Armed with litigation power that individuals—and most news organizations—cannot match, politicians and celebrities, wealthy or backed by the wealth of others, can threaten press watchdogs with resource-sapping litigation; at the same time, some leaders appear to leverage their “lawyered-up” legal teams to make knowingly false attacks—or recklessly repeat the false attacks of others—with impunity.



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January 26, 2018 ♦ SCHEDULE

8:00 – 8:30 am Registration and Breakfast

8:30 – 8:40 am

Welcome Remarks:

Susan Westerberg Prager, Dean of Southwestern Law School

Michael M. Epstein, Professor of Law, Southwestern Law School, and Supervising Editor, *Journal of International Media and Entertainment Law*

8:40 - 9:00 am

Morning Keynote

Erwin Chemerinsky, Dean, University of California at Berkeley School of Law

9:00 - 10:30 am

Fake News Panel I

Paper Presentations:

Tommaso Tani, University of Leiden Law School. *Legal Responsibility for False News.*

Andrei Richter, Senior Adviser of the OSCE Representative on Freedom of the Media. *Fake News and Freedom of Media.*

Amy Kristin Sanders, Associate Professor in Residence, Northwestern University in Qatar, **Rachael Jones**, Research Fellow for the Center for Media Law and Policy at the University of North Carolina-Chapel Hill, and **Xiran Liu**, Northwestern University. *Stemming the Tide of Fake News: A Global Case Study of Decisions to Regulate.*

David Goldberg, Visiting Professor of Law, Southwestern Law School; Lecturer, University of London. *Responding to 'fake news': Is there an alternative to law and regulation?*

Peer Review and Discussion

10:30 – 10:40 am Break

10:40 - 12:20 pm Weaponized Defamation Panel I

Paper Presentations:

Jane Kirtley, Director, Silha Center for the Study of Media Ethics and Law. *Criminal Defamation: Still "An Instrument of Destruction" in the Age of Fake News.*

Alexander Heinze, Department for Foreign and International Criminal Law, University of Göttingen. *The Defamation of Foreign State Leaders in Times of Globalized Media and Growing Nationalism.*

David Acheson, Lecturer in Media Law, University of Kent, and **Ansgar Wohlschlegel**, Professor, University of Portsmouth. *The Economics of Weaponized Defamation Lawsuits: Analysing Potential Law Reforms in the U.S. and England.*

Elena Sherstoboeva, Associate Professor, Moscow Higher School of Economics, Russia. *Defamation Law in Russia in the context of the Council of Europe (CoE) Standards on Media Freedom.*

Peer Review and Discussion



January 26, 2018 ♦ SCHEDULE (continued)

12:30 - 1:30 pm Gala Luncheon, Louis Room, Second Floor, Bullocks Wilshire

Luncheon Keynote:

Russell L. Weaver, Professor of Law and Distinguished University Scholar, University of Louisville. *The First Amendment, "Fake News" And "Weaponized Defamation."*

1:40 - 3:10 pm Fake News Panel II

Paper Presentations:

Monroe Price, Full Adjunct Professor, University of Pennsylvania and Professor, Cardozo Law School, and **Adam Barry**, Munger, Tolles & Olson. *Combating Russian Disinformation in Ukraine: Case Studies in a Market for Loyalties.*

Kyu Ho Youm, Jonathan Marshall First Amendment Chair, University of Oregon, and **Dr. Ahran Park**, Korea Press Foundation, Republic of Korea. *Fake News from a Legal Perspective: the United States and South Korea Compared.*

Jelena Surculija Milojevic, Assistant Professor & Faculty of Political Sciences, University of Belgrade. *Defamation as a "Weapon" in Europe and Serbia: Legal and Self-Regulatory Frameworks.*

Teresa Rodriguez de las Heras Ballell, Associate Professor of Commercial Law, Universidad Carlos III de Madrid, Chair of Excellence, Oxford University. *Credibility-Enhancing Regulatory Models To Counter Fake News: Risks of a Non-Harmonized Intermediary Liability Paradigm Shift.*

Roberto Mastroianni, Dipartimento di giurisprudenza, Università di Napoli "Federico II." *Fake News, Free Speech and Democracy: A (bad) Lesson from Italy.*

Peer Review and Discussion

3:10- 3:20pm Break

3:20 - 4:40 pm Weaponized Defamation Panel II

Paper Presentations:

Anthony Fargo, Associate Professor, Indiana University. *A Federal Shield Law That Works: Protecting Sources, Fighting Fake News and Confronting Modern Challenges to Effective Journalism.*

Charlie Holt, Campaigns Lawyer, Greenpeace International, and **Daniel Simons**, Legal Counsel Communications, Greenpeace International. *RICO as a Case-Study in Weaponizing Defamation and the International Response to Corporate Censorship.*

Hilary A.N. Young, Associate Professor, University of New Brunswick. *Responsible Communication and Protection of Public Participation: Assessing Canada's newest Public Interest Speech Protections.*

Roy S. Gutterman, Associate Professor/Director, Tully Center for Free Speech, Newhouse School at Syracuse University. *Actually ... A renewed stand for the First Amendment actual malice defense.*

Wesley Pippert, Professor of Journalism Emeritus, University of Missouri and **Nadine Epstein**, Editor and Publisher, *Moment Magazine.*

Peer Review and Discussion



January 26, 2018 ♦ SCHEDULE (continued)

4:40 – 5:00 pm **Panel Discussion**
Fake News and Weaponized Defamation: Reactions and Further Thoughts

Neville Johnson, Johnson & Johnson, LLC. *Defamation and Privacy in the Internet Age.*

Wannes Vanderbussche, Associate Research Scholar, Yale Law School. *Is there a place for court-ordered apologies in defamation law?*

Gabriel Latner, Attorney-at-Law, Toronto. *I Voted For This?*

Jeremy Geltzer, Attorney-at-Law, Los Angeles. *Fake News and Film: How Alternative Facts Influence the National Discourse.*

5:00 pm **Reception and Closing Remarks**