Name: Peter Weinberg

Concentration: Public and Professional Communications

Number of Completed Credits as of Spring 2010: 101

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Faculty Advisor: Dr. Audrey Olmsted

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Anti-Semitism and the First Amendment in Cyberspace: An Analysis of Hate Sites' Rhetorical

Content Aimed toward Youth

I. Background and Importance of Problem

Hate speech is not a new concept; however, twenty-first century technology has added a new dimension to an age old issue. According to Black's Law Dictionary hate speech is "speech that carries no meaning other than the expression of hatred for some group, such as a particular race, especially in circumstances where the communication is likely to provoke violence (1407-08)." The creation of the internet and its growing popularity as a means of communication has allowed hate expression to flourish worldwide. As a result, in the last decade, hate speech in cyberspace has become an issue of international importance.

For the first time, in 2001, online hate speech was recognized as a problem by an international forum held in Durban, South Africa. The United Nations sponsored event, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR), discussed hate speech on the internet as a new and contemporary issue that needed to be addressed (McDougall 135). While individual nations such as Germany and France had previously taken initiatives to prohibit online hate speech, the WCAR conference was the first time this issue was recognized internationally (Nemes 202-04). The WCAR, however, was not the only event that concerned hate speech on the internet that year; the hate-fueled attacks of September 11th provoked two additional landmark events.

On November 8th, 2001 the Council of Europe (COE) approved the Convention on Cybercrime, an international convention that sought to make a joint attack against cybercrime. The convention included a protocol, molded under the pretext that the 9/11 attacks exemplified the horrific results of hate speech, that outlawed and prohibited hate speech of racist and xenophobic nature on computer networks. This protocol has since been ratified by 29 members of the COE as well as Canada and Montenegro and officially went into effect in March of 2006

after some 2002 revisions (Archick 3).

Also in 2001, a provision was added to the Canada Human Rights Act which made online hate speech illegal. This act was originally implemented in the 1960's to regulate the proliferation of racist telephone hotlines and other hate speech but was expanded in 2001, partly in response to the 9/11 attacks, to include the internet (Brean). Very recently, however, in September of 2009, the Canadian Human Rights Tribunal found Section 13 (the section which regulates cyberspace) of the Canada Human Rights Act to be unconstitutional, claiming that the restriction set forth by this section is not reasonable within the meaning of the Canadian Charter of Rights and Freedoms which guarantees Canadian citizens the right to free opinion and expression ("Internet hate-speech law unconstitutional: rights commission").

The significance of these events abroad has fueled a debate much closer to home. While many countries now have laws that aim to regulate, restrict, and censor online hate speech, the U.S. has resisted such regulation. The U.S. ratified the entirety of the COE's Convention on Cybercrime, with the exception, of course, of the protocol prohibiting online hate speech (Archick 3). Nor has the U.S. attempted to implement any domestic laws like Germany, France, or Canada. Due to the nature of the United States Constitution and the protection of free speech and expression that it offers, such regulation would currently be seen as unconstitutional. The U.S. Supreme Court, interpreting First Amendment law, has made it clear that racist and xenophobic speech is legal and protected (Nemes 207).

 As a result of the protection that the U.S. Constitution seems to offer, the problem of U.S. based hate sites is a growing one: in recent years the estimated number of U.S. based hate sites climbed from just under five-hundred in 2005 to nearly six-hundred in 2007 (Barnett xix). A second estimate, reported by the Southern Poverty Law Center, placed the total number of

active hate groups in the U.S. at 926 in 2008; taking these statistics together it can be seen that a vast majority (roughly two-thirds) of the active hate groups in the U.S. have some kind of online representation ("Active U.S. Hate Groups"). In addition, the lack of consequences for running such hate sites in the U.S. is reportedly causing groups that operate out of Europe and other regions banning such activity to seek refuge in the U.S. (Nemes 210).

II. Limitation of Problem to Research Question

These developments have sparked a heated debate in the academic world. This study will look at this debate closely, focusing on the internet as a modern day outlet for the proliferation of hate speech, and evaluate the idea of regulating, restricting, and censoring such expression in the virtual world. In particular, this study will focus on anti-Semitic online hate sites that are at the forefront of the neo-Nazi and white supremacist movements in the U.S. and will seek to answer the following research questions: **1)** Does the hate speech on these sites target American youth? **2)** Does an analysis of the messages on these sites demonstrate a particular threat to young people? And, if so, **3)** Does this targeting warrant an infringement upon First Amendment rights so that these sites can be restricted or censored?

III. Selective Review of Literature

In recent years extensive literature concerning this subject matter has been published, including newspaper and popular magazine articles, scholarly journal articles, studies, and books which have established the issue of online hate speech and hate sites as a serious problem as well as considering possible methods of dealing with this issue. While a plethora of information exists, a few pieces of literature seemed to have a particular significance for this project: One of

the most extensive studies on this subject is Bret Barnett's 2007 book, <u>Untangling the Web of</u> <u>Hate</u>. This study examines ten prominent U.S. based hate sites and concludes that although these sites seem to be deserving of First Amendment protection, the implementation of certain non-governmental speech regulations might be necessary to the curb the problem (Barnett 187-88).

Another particularly relevant source was the journal of *Information & Communications Technology Law* in which several articles and papers concerning this topic have been published. The 2002 article "Regulating Hate Speech in Cyberspace: Issues of Desirability and Efficacy" by Irene Nemes supports the assertion that the internet is the best means of communicating hate speech, pointing out that it provides an inexpensive way to reach an audience of millions, and that it offers an unprecedented level of anonymity that protects and reassures offenders (199). Furthermore this article examines and discusses the measures taken by the COE and such nations as Germany, France, and Canada to regulate, restrict, and censor online hate speech and the impact these efforts have had on the American debate over whether or not to do the same (202-08). She concludes that, while similar measures may be warranted in the U.S., the First Amendment poses an obstacle that will likely prevent the enactment of any such legislation in the near future (210-11).

Another paper, titled "Truth, Law and Hate in the Virtual Marketplace of Ideas: perspectives on the regulation of internet content" written by Candida Harris, Judith Rowbotham, and Kim Stevenson, which appeared in the same journal in 2009, provides a historical context for hate speech and discusses contemporary efforts to regulate the online variety of such speech by nations like Germany and France and also discusses efforts on an international level made by the COE. This paper takes the general stance that while restrictions of online hate speech may seem desirable, democratic nations need be wary of the restrictions they implement for the sake

of preserving democratic ideals (176). The authors concede however, that in order to make any firm conclusions more research is needed in order to better weigh the risks of online hate speech against the need for legislation (178).

A third article from this journal titled "Beyond free speech: novel approaches to hate on the Internet in the United States" written by Jessica S. Henry in 2009 focuses primarily on initiatives and attempts to prosecute those who disseminate hate speech over the internet. Henry examines how this issue is evolving in the U.S. and what it might mean for future legislation. She also discusses the role of non-governmental organizations such as the Anti-Defamation League and the Southern Poverty Law Center in regulating online hate speech through working with internet service providers to enforce "terms of service contracts" against hate sites (235).

A 2002 article from the *Journal of Transnational Law and Policy* "Hate Speech Online: Restricted or Protected? Comparison of Regulations in the United States and Germany" written by Yulia Timofeeva provides an in depth discussion of online hate speech and the regulations surrounding such speech in the two nations; Germany taking a very conservative approach and the U.S. taking a very liberal one (285). The article discusses the fact that despite Germany's efforts and the efforts of other nations it is inevitable that hate speech will be accessible on the internet and that while an international solution may be desirable, it is unlikely for now due to widely differing views on hate speech and censorship. The article suggests that education and prevention may be the best current option (286).

Other relevant sources to be consulted are: "Hate crime in cyberspace: the challenges of substantive criminal law" by Audrey Guichard, a 2009 article from *Information & Communication Technology Law;* "Responses to Internet Hate Sites: Is Speech Too Free in Cyberspace?" a 2001 article by Laura Leets which appeared in the journal of *Communication*

Law & Policy; "Hate in Cyberspace: Regulating Hate Speech on the Internet," a 2009 article by Alexander Tsesis from the *San Diego Law Review;* and "The Contentious American Debate: The First Amendment and Internet-based Hate Speech" a 2001 article by Paul J. Becker, Bryan Byers, and Arthur Jipson from the *International Review of Law, Computers & Technology.*

IV. Methodology

Since the above review of relevant literature found no studies or papers focusing on the targeting of youth by anti-Semitic hate sites, this investigation will gather information in order to critically analyze the rhetoric of message artifacts. This inquiry will offer some fresh perspective on the issues discussed in the above sections and will focus on several white supremacist and neo-Nazi hate groups and the way that they are framing online messages aimed toward American youth. This analysis will look at such aspects as the way these hate sites use various symbols and youth-geared discussion forums to capture specific audiences. The primary concern, however, will be the rhetorical messages found on these sites, such as speeches, blog essays, and position statements, and how they are aimed at younger generations. To reiterate, the purpose of this analysis will be to determine: **1)** whether or not these sites are in fact targeting and framing messages towards American youth, and if so, **2)** how and to what effect? And, **3)**, whether this targeting offers grounds for imposing First Amendment restrictions upon such sites?

Some of the specific sites that will be analyzed in this study are StormFront.com, one of the oldest hate sites on the web, which hosts one of the most extensive white supremacist forums on the internet ("Internet Hate and the Law"); NSM88.org, the National Socialist Movement's main web site which contains a wealth of anti-Semitic information including multimedia galleries, blogs, and forums; ZogsNightmare.com, which contains an alphabetical index of anti-

Semitic topics, including videos and jokes, and which boasts free anti-Semitic videogame downloads on its homepage; WhiteRevolution.com which has a "Youth Corner" forum among other relevant content; and Aryan-Front.com, a forum based site similar to StormFront.com which lists cartoons, jokes, funny stories, and music among its top rated and most viewed links.

V. Tentative Schedule

This study began in the spring semester of 2010 and will conclude at the close of the upcoming fall semester. This project, done under the advisement of Dr. Audrey Olmsted, was slated to have the following tasks completed by the end of the spring 2010 semester:

- **Week 1:** Research broadly to complete list of viable book length sources. (√)
- **Week 2:** Research scholarly journals and popular magazines to complete relevant sources list. (√)
- **Week 3:** Research legal sources via LexisNexis and conduct interviews with First Amendment lawyers. (√)
- **Week 4:** Begin compilation of evidence file. (√)
- **Week 5:** Examine selected web sites.
- **Week 6:** Determine criteria for hate-speech analysis. (√)
- **Week 7:** Analyze selected web sites according to pre-determined criteria.
- **Week 8:** Submit evidence file and preliminary bibliography. (√)
- **Week 9:** Submit project outline. (√)
- **Week 10:** Complete research and organization for Chapter One. (√)
- **Week 11:** Write draft of Chapter One. (√)
- **Week 12:** Submit draft of Chapter One. (√)
- **Week 13:** Complete research and organization for Chapter Two. (√)
- **Week 14:** Write draft of Chapter Two.

Each item with a check mark to its right has been partially or entirely completed as scheduled. Some checked items will continue to be worked on throughout the upcoming semester; and additionally, those items which have been left un-checked will be completed as well.

The following is a tentative schedule for the fall 2010 semester:

- **Week 1:** Submit final and edited draft of project outline (including a detailed outline of Chapter Two); submit final draft of Chapter 1.
- **Week 2:** Submit draft of Chapter Two; finalize criteria for hate speech analysis.
- **Week 3:** Examine and analyze rhetoric from selected websites according to predetermined criteria; begin Chapter Two revision.
- **Week 4:** Continue research and compilation of evidence file; submit outline of Chapter Three.
- **Week 5:** Conduct second interview with First Amendment Lawyer John Dineen; submit final draft of Chapter Two; begin organization and compilation of preliminary findings from rhetorical analysis.
- **Week 6:** Submit draft of Chapter Three; submit outline for Chapter Four.
- **Week 7:** Begin revision of Chapter Three; review preliminary findings from rhetorical analysis with advisor.
- **Week 8:** Submit complete and fully updated evidence file and bibliography; submit final draft of Chapter Three.
- **Week 9:** Submit draft of Chapter Four; submit outline for Chapter Five.
- **Week 10:** Begin revision of Chapter Four; submit draft of Chapter Five.
- **Week 11:** Submit final draft of Chapter Four; begin revision of Chapter Five; submit outline for Chapter Six.
- **Week 12:** Submit final draft of Chapter Five, submit draft of Chapter Six; begin preparations for finalizing project.
- **Week 13:** Begin revision of Chapter Six and submit draft of completed project; continue proof reading, revising, and editing as needed.

- **Week 14:** Submit final draft of Chapter Six; complete final revisions for all chapters; conduct final proof read (independently and with advisor supervision) of all chapters including the bibliography.
- **Week 15:** Complete final project; print and bind for submission.

VI. Bibliography

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