Finally, I'd be remiss if I didn't take this opportunity to acknowledge the fact that earlier this month, the Senate confirmed the nomination of Judge Kentanji Brown Jackson to the U.S. Supreme Court. Speaking at an event following her confirmation, Judge Jackson acknowledged that it has taken 232 years and 115 prior appointments for a Black woman to be selected to serve on the Supreme Court of the United States.

Members of our Division know just how powerful the Supreme Court is. I, for one, am beyond grateful and excited to see a SCOTUS that is more representative of the people it serves.

Good luck to those of you wrapping up your semester in the coming weeks. I'll be sure to email you details about the August conference (including the date of the business meeting, the link to register and book your hotel room, and the panel/presentation schedule) as they emerge.

Russia's Invasion of Ukraine: "It-Which-Must-Not-Be-Named"

Criminalization of the language surrounding war in Russian law

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I'm writing this column in early April, almost seven weeks into Russia's invasion of Ukraine, with every day bringing new evidence of the unimaginable violence, pain and destruction inflicted on Ukrainian people by Russian troops. In a column of this length, it would be impossible to do justice not only to the magnitude of human suffering, but even to the multitude of the legal implications of the war, ranging from violations of sovereignty and territorial integrity of Ukraine under international law going back to the 2014 annexation of Crimea, to prosecuting war crimes, to developing legal mechanisms for awarding reparations to victims and enforcing non-military countermeasures against Russian aggression.

Instead, I'd like to focus on a dimension that might be of particular relevance to scholars of media law: the war on truth that the Russian government waged within its own territory by criminalizing the language surrounding the invasion. I'll also outline how Russian media outlets and citizens have been navigating this increasingly hostile legal terrain.

In the days that have passed since the invasion, much has been said about Russian President Vladimir Putin's selective treatment of the past and the way he weaponized the distorted interpretations of Ukrainian and Russian history to justify his imperialistic claims. Communication law scholars have much to contribute to this conversation because they are uniquely positioned to capture and analyze

one of the most tangible artifacts of how, in a truly Orwellian fashion, the Russian state engaged into historical negationism by distorting not only the historical record, but events as they unfolded in real time.

The core element of the Russian government's narrative revolved around the term it used to describe its actions in Ukraine: "special military operation." The term was coined by Putin in his televised address to the nation that was broadcast at 5:30 a.m. Moscow time on Feb. 24, around the time the first news reports of the attacks started trickling in.

On the very same day, Roskomnadzor, the Russian federal agency responsible for regulating mass media, warned media outlets that in covering the "special operation" (which Roskomnadzor itself refrained from calling "military"), media outlets must rely exclusively on official Russian sources, as "the ones [that] possess and distribute accurate and up-to-date information." It also reminded of administrative penalties for "distributing knowingly false information." If found guilty—an almost guaranteed outcome in Russian courts, which have been routinely, and overwhelmingly, siding with prosecution in politically sensitive cases—a media outlet may be facing a fine of up to 5 million rubles, an equivalent of about $62,000 or over seven annual average Russian salaries.

The Russian Parliament soon followed suit. On March 4, eight days after the invasion, it adopted new laws that shrank the space of legally permissible criticism even further. Amendments to the Code of Administrative Offences introduced a new fineable offence: public actions aimed at "discrediting the use of the Armed Forces of the Russian Federation for the purposes of defending the interests of the Russian Federation and its citizens, maintaining international peace and security." The same penalty was established for the "discreditation" of Russian government bodies—a term strategically left underspecified and thereby particularly well-suited as a punitive tool.

Amendments were introduced also to the Criminal Code. The federal law, which was adopted by both chambers of the Parliament and signed by Putin the same day, ramped up the sanctions for distributing "knowingly false information" about Russian troops to up to 15 years in prison. On March 23, another set of amendments extended the clause to the activities of government bodies "performing their duties outside the territory of the Russian Federation," effectively criminalizing independent reporting on the war and Russia's foreign affairs.

It didn't take the Russian government long to put the amendments to use. By March 7, just three days after the new laws came into force, administrative charges had been brought against at least 60 people in 16 Russian cities. On March 16, two weeks after the introduction of the "false information" clause into the Criminal Code, authorities announced they had opened criminal cases against three people. In all three, according to prosecutors, "knowingly false information" about Russian troops was distributed via Internet postings. In bringing these first criminal charges, authorities signaled they were willing to cast a wide net, by targeting people ranging from opinion leaders (like a socialite and food blogger with almost 1 million Instagram followers, who lives abroad and whom Russian

authorities intended to place on the international wanted list) to casual social media users (like a retiree from a small industrial city who shared her criticism of Russian troops with some 170 subscribers of her private channel in the Telegram messaging app).

What could qualify as "false information" in the eyes of the Russian lawmaker? The words "war" and "invasion" would be enough.

The differences between these terms and the term "special military operation" are not trivial because they connote radically different interpretations of the purposes and scale of Russia's actions. "Special military operation" signals the supposedly limited, targeted character of the Russian actions, much in line with the pretext for invasion voiced by Putin in his address—namely, acting upon a "request for help" from the self-proclaimed Donetsk People's Republic and Luhansk People's Republic. Occupied by pro-Russian separatists 2014, these areas in the Donbas region of eastern Ukraine were recognized by Russia as independent states, and were signed "treaties of friendship and mutual assistance" with, three days before the 2022 invasion.

Challenging this interpretation, the term "invasion" renders Russian forces as intruders, people who came against the other party's will, and thus directly undermines the framing of Russian forces as liberators. It also invalidates the key premise of Putin's vision of the "Russian world," which denies Ukraine's right to sovereignty. To quote Putin's essay that was published in July 2021 and has been reportedly included in the list of required readings for Russian military, Russians and Ukrainians are "one people—a single whole." This, according to Putin, makes Ukrainian statehood an illogicality that needs to be fixed. Instead, to say that Russia invaded Ukraine implies that the territory it intruded belongs to Ukraine after all.

The term "war" problematizes Russian propaganda even further, by challenging another of its central tenets: that the operation will be narrow and swift. By drawing attention to Russian forces attacking Ukrainian cities and villages located far away from the regions Russia purports to defend, the term "war" exposes the hypocrisy of Putin's declared aims. It also suggests that the loss of life by Russian troops may be higher than what could be expected from a small-scale operation and therefore may bring the war back home to a potentially large(r) number of Russian families having to bury soldiers killed in what turned out to be far from Putin's idea of a "short victorious war"—or, rather, a "short victorious 'special military operation.'"

Finally, Putin's avoidance of the "war" terminology may be explained not only by symbolical or political considerations but as an attempt to avoid legal jeopardy. After all, Russian law establishes "aggressive war" as a criminal offense. The planning, preparation and launching of a war is punishable by seven to 15 years in prison, whereas the waging of a war comes with a potential jail time of up to 20 years. Similarly punishable are public incitements to launching a war, which, if made in mass media or by government officials, may land a defendant in prison for up to five years. In this sense, by criminalizing

the usage of the word “war” by others, Russian law serves to decriminalize the Russian authorities’ own war-waging actions.

News media reacted to these legislative changes in various ways. Some international news organizations, including BBC, CNN, CBS News, ABC News, Bloomberg News (some of which were blocked by Roskomnadzor on the Russian territory on the heels of the invasion), have temporarily suspended reporting in Russia or removed the bylines of their Russian-based journalists to protect them from potential prosecution. Their Russian counterparts—if not shut down like independent online-based television channel TV Rain or radio station Echo Moskvy—have been forced to resort to self-censorship, by exacerbating an already established practice in Russian media.

Even in these circumstances, though, news organizations differed in how clear they made it to their readers and viewers that self-censorship was a forced choice.

Whereas some did toe the line of the official narrative—by referring to Russia’s invasion in their reporting as “special operation”—others made their editing decisions clearer. A case in point, when Marina Ovsyannikova, an employee of Russia’s state-owned Channel One TV network, interrupted its main newscast on March 15 by appearing behind the anchor with a hand-written anti-war poster—which read, in a combination of Russian and English, “No war. Остановите войну. Не верьтепропаганде. Здесь вам врут. [Stop the war. Don’t believe propaganda. You are being lied to here.] Russians against war”—it should have been, under normal circumstances, both a no-brainer and a low-effort solution for any news editor to include into a news report on the event a screen grab from the broadcast showing Ovsyannikova with the poster. Yet, in Russia, with the new laws in effect, showing the words “war” prominently displayed on the poster, meant putting oneself in a clear legal jeopardy. The news websites that decided to both report on the event and include the screenshot (rather than describe the action in vague terms) have either blanked out the words completely, blurred the Russian text (while keeping the English portions intact) or pixelated the text on the poster to the point of incomprehension.

Some news organizations chose to be even more explicit in showing the traces of the state censorship actions. For example, Novaya Gazeta—an independent investigative newspaper led by 2021 Nobel Peace Prize winner Dmitry Muratov—in its reporting on anti-war protests in Russia, quoted one poster, which likely read, “No to war,” as saying, “No to <the continuation of the slogan on the poster is banned by Roskomnadzor.>”

As time progressed and authorities started singling out specific publications and threating journalists with criminal prosecution, Novaya Gazeta removed from its website a report from the Russian-occupied Ukrainian city of Kherson with the following explanation: “The material has been deleted upon request of the Prosecutor General’s Office of the Russian Federation and Roskomnadzor.”

Notably, Novaya Gazeta did keep on its website the digital copy of the issue in which the article appeared, but crudely pixelated the text of the story, which transformed the latter into four pages of messy black and brown mush with splashes of dirty blood-red color, a visually powerful artifact of its own. It also posted the following explanation for its readers: “On March 4, a law came into force that effectively enacted war censorship in Russia. Journalists are facing up to 15 years in jail for distributing “fake news” about the Russian Army, and the label “fake news” can be assigned to anything that differs from the Ministry of Defense press releases. In these circumstances, the Novaya [Gazeta] Editorial Board decided to continue its work, but some of the materials have been removed.” (On March 28, following another Roskomnadzor warning, Novaya Gazeta informed its readers that it was “suspending the publication of the newspaper online, on social media and in print until the end of the ‘special operation on the territory of Ukraine.’”)

Navigating this increasingly punitive legal landscape was equally challenging to citizens who chose to publicly reject the government’s narrative.

Some did so by reappropriating and absurdizing its propagandist toolkit. In a prominent example of this rhetorical strategy, a cartoon revised the title of Leo Tolstoy’s “War and Peace” as “Special Military Operation and Peace.” In another example, writer Leonid Kaganov posted in his blog a message in which he thanked Roskomnadzor for its ban and for finally “making it possible for [him] to say much more than [he] could have had before.” As if to illustrate what he means, he went on to share a page-long address to his readers, in which he replaced the words critical of the Russian government’s actions with their positively connotated antonyms, in all caps:

> “My dear readers! The Third World PEACE—which began on our planet on the night of Feb. 24, when Vladimir Putin, who is mentally SANE, morally RIGHTEOUS and DID NOT lose his mind at all, issued a LEGAL order to the Russian Army to BE FRIENDLY toward a neighboring country—is the kind of HAPPINESS that our peoples haven’t known for the last 80 years.”

Known for hiding tongue-in-cheek intertextual “Easter eggs” in his writings, Kaganov added an extension to this post’s URL that read “NE_MNENIE” [“NON_OPINION”], which he, again, put in all caps, his code for the government-approved way of thinking—not having an opinion—that could supposedly keep Russian citizens out of jail.

Some other strategies used by citizens included protesting with slogans that have long been parts of mainstream pacifist discourse in Russia—such as “Я за мир” [“I’m for peace”] or “Фашизм непройдет” [“Fascism shall not pass!”] —or by resorting to Aesopian language, by protesting with a blank poster or showing up near the Kremlin with a piece of paper that read, “Два слова” [“Two words”], in an apparent reference to “Нет войне” [“No to War”]. In all of these cases, however, neither strategy proved effective at protecting the protesters from prosecution, adding them to the list of more than 15,400 anti-war demonstrators who had been detained in Russia as of April 11 since the beginning of the war.