

Antonin Scalia Law School at George Mason University

FREE SPEECH CLINIC (Law 136)
Fall 2020 Course Syllabus (dated 8.13.21)
Wednesdays, 6:05– 8:05 p.m.
2 credits*

* Note this is a year-long course, with two credits earned each semester. This syllabus is for fall semester only.

Professors: Mike Connolly: jconnol5@gmu.edu
Office Hours: Wednesdays 4:00-6:00 p.m., Room 309, and by appointment; Zoom appointments available

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Office Hours: Wednesdays 4:00-6:00 p.m., Room 433K, and by appointment; Zoom appointments available

Overview: The Free Speech Clinic allows students to gain legal practice experience through pro bono representation in actual free speech cases. Clinic students work closely with experienced attorneys to identify cases of interest, research legal issues, and draft memos, motions, briefs, and other documents. In addition, clinic students will receive weekly classroom instruction on procedural and substantive issues relevant to their cases, federal and state court decisions, and recent developments in First Amendment law. Guest lecturers with a wide array of backgrounds will often attend the weekly meetings.

Readings: There is no casebook required for this course. We will provide case citations and/or post the weekly readings on TWEN.* Reading assignments are subject to change, as they are based on our guest speaker schedule.

In addition, we may post optional supplemental readings on TWEN from time to time, that we think may be of particular interest based on our casework and other relevant topics.

**i.e., you will need to use TWEN, so please sign up if you have not already done so.*

Attendance: The course follows the Law School's attendance policy. If a student is absent for any reason more than 20% of the course, then the student is not eligible for credit. A student who misses more than 25% of a class session will be counted as absent from that class session. Note that we will follow the law school's then-current policy regarding COVID-related absences and make whatever corresponding accommodations exist under the policy (e.g., providing the opportunity to attend remotely via Zoom).

Assessment and Grades: Grades for fall semester will be based on a combination of case work, class participation, and a short paper. Guidelines for the paper will be provided as the semester progresses.

Learning Outcomes:

- Students will understand basic principles of the speech, press, and assembly clauses of the First Amendment, as well as freedom of association.
- Students will develop litigation-focused research and writing skills.
- Students will understand the process and strategy of litigating First Amendment claims.
- Students will exercise the professional skills expected of members of the legal profession.

Schedule: The course topics and reading list below will be updated during the semester as guest speakers are confirmed and to better reflect the Clinic's case work. We will keep you apprised of updates to the schedule and reading assignments.

*All readings denoted with an asterisk * are available on TWEN

August 25, 2021

Topic: Overview of First Amendment Law / Class and Clinic Work Overview

Reading:

- *Abrams v. United States*, 250 U.S. 616 (1919)
- *Brandenburg v. Ohio*, 395 U.S. 444 (1969)
- *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942)

September 1, 2021

Topic: Writing Legal Briefs / Case Projects

Reading:

- Free Speech Clinic Guide to Legal Writing*
- How to Read a Docket (TWEN)*

September 8, 2021

Topic: *True Threats*

Reading:

- *Watts v. United States*, 394 U.S. 705 (1969)
- *Virginia v. Black*, 538 US 343 (2003)
- *Elonis v. United States*, 135 S. Ct. 2001 (2015)

Guest Speaker: Josh Wheeler. Professor Wheeler is an Associate Professor of Political Science at Sweetbriar College in Virginia, and practices law at the Wheeler Law Group in Charlottesville. Prior to that, Professor Wheeler served for many years as the Executive Director of the Thomas Jefferson Center for the Protection of Freedom of Expression in Charlottesville. He was also formerly the Free Speech Clinic Fellow at Scalia Law.

September 15, 2021

Topic: Offensive Speech

Reading: No assigned readings

Guest Speaker: DR VENKAT IYER, BSc (Hons), LLB, LLM, PhD, FHEA, Barrister. Dr. Iyer is a barrister and academic based in Northern Ireland. He is attached to the School of Law at Ulster University where, in addition to being Director of Educational Partnerships and International Affairs, he teaches media law, constitutional law, and business law. Dr Iyer has been in legal practice since 1981 and is, among other things, a trained mediator. Between 2008-15 Dr. Iyer served as Law Commissioner for Northern Ireland.

He has also acted as a consultant to a number of governments, private corporations, and nongovernmental organizations. In 2003-2004 – and again in 2012 – he was invited by the Royal Government of Bhutan to advise on, and draft, media laws for that kingdom. In 2007, he was appointed a consultant by the World Bank to design a program on Continuing Legal Education for the Kenyan Bar. In 2011, he was asked to review the Broadcasting Act in Vanuatu and to recommend changes to the media law regime in that country. Since 2012 he was consulted by the Burmese government on a wide range of media law related matters. Dr Iyer runs training courses on media law and media ethics for newspapers and media organizations around the world. He has also been engaged in designing and delivering capacity building programs for judges and magistrates in various jurisdictions, and frequently runs judicial training programs.

September 22, 2021

Topic: Time, Place and Manner Regulations—with a focus on Charlottesville

Reading:

- *Ward v. Rock Against Racism*, 491 U.S. 781 (1989)
- *Kessler*: Brief of Defendant re: Preliminary Injunction*
- *Kessler v. City of Charlottesville, VA*, 2017 U.S. Dist. LEXIS 128330 (Aug 11, 2017)

Guest Speaker: Craig Brown. Mr. Brown is the City Attorney for the City of Manassas and the former City Attorney for the City of Charlottesville, Virginia, a position in which he served during the riots of the Summer of 2017. Mr. Brown has more than 38 years of experience as a municipal attorney.

September 29, 2021

Topic: Free Speech on College Campuses and Time-Place-Manner Restrictions

Reading:

- Review: *Ward v. Rock Against Racism*, 481 U.S. 781 (1989)
- *Bowman v. White*, 444 F.3d 967 (2006)

Guest Speaker: Will Creeley. Will Creeley is the Director of Legal Policy at the Foundation for Individual Rights in Education (FIRE). He began defending student and faculty rights for FIRE in 2006 after graduating from New York University School of Law. Mr. Creeley's writing has been published by The New York Times, the Wall Street Journal, The Washington Post, the Chronicle of Higher Education, Jurist, Inside Higher Ed, Daily Journal, the Charleston Law Review, and many other outlets. He edited the second edition of FIRE's Guide to Due Process and Campus Justice, co-edited the second edition of FIRE's Guide to Free

Speech on Campus, and has coauthored amicus curiae briefs submitted to a number of courts, including the Supreme Court of the United States and multiple United States Courts of Appeals.

October 6, 2021

Topic: *Content and Viewpoint Discrimination*

Reading:

- *R.A.V. v. City of St. Paul, 505 U. S. 377 (1992)*
- *Review: Virginia v. Black, 538 US 343 (2003)*

Guest Speaker: **Chris Newman.** *Professor Newman is an Associate Professor of Law at Scalia Law. His areas of teaching include Civil Procedure, Copyright, Trademark, Entertainment Law, and Free Speech. In addition, Professor Newman co-runs the Liberty & Law reading group, which provides a forum for informal discussion among students and faculty based on texts that seek to illuminate difficult questions regarding the relationship between law and liberty. Professor Newman clerked for Judge Alex Kozinski on the U.S. Court of Appeals for the Ninth Circuit. From 2000-2007, he was a litigation associate with Irell & Manella LLP in Los Angeles.*

October 13, 2021

Topic: *Free Speech in K-12 Public Schools*

Reading: *TBD*

Guest Speaker: **David Hudson, Jr.** *Mr. Hudson is a Visiting Associate Professor of Legal Practice, and teaches Legal Information and Communication at Belmont. He is the author, co-author, or co-editor of more than 40 books. For much of his career, he has worked on First Amendment issues. He serves as a Justice Robert H. Jackson Legal Fellow for the Foundation for Individual Rights in Education and a First Amendment Fellow for the Freedom Forum Institute. For 17 years, he was an attorney and scholar at the First Amendment Center in Nashville, Tennessee. Hudson has taught classes at Vanderbilt Law School and the Nashville School of Law. In June 2018, the Nashville School of Law awarded him its Distinguished Faculty Award. He earned his undergraduate degree from Duke University and his law degree from Vanderbilt Law School.*

October 20, 2021

Topic: *Speech over the Airwaves, Internet, and in Space.*

Reading:

- *FCC v. Pacific Foundation, 438 U.S. 726 (1978): Read Stevens' opinion and skim the other opinions*
- *Turner Broadcasting System Inc. v. FCC, 512 U.S. 622 (1994): Read Kennedy's opinion (skim Part I and read Parts II and III) and the other opinions*
- *Mainstream Loudoun v. Bd. of Trustees of Loudoun County Library, 24 F. Supp. 2d 552 (1998): Read parts III - VII*

- *United States v. Playboy Entertainment Group*, 529 U.S. 803 (2000): Read Kennedy's opinion and skim the other opinions

Guest Speaker: Robert Corn-Revere. Mr. Corn-Revere was lead counsel for plaintiffs in *Mainstream Loudoun v. Loudoun County Library* in which the court declared public library internet filtering to be unconstitutional. In 2000, Mr. Corn-Revere argued *United States v. Playboy Entertainment Group* before the Supreme Court, where the court struck down portions of the Communications Decency Act that required that cable television operators who offered channels "primarily dedicated to sexually-oriented programming" must scramble completely or fully block such material. Beginning in 2004, Mr. Corn-Revere successfully defended CBS Television and Viacom in an FCC proceeding resulting from the Super Bowl XXXVIII halftime show controversy. In 2009, Corn-Revere served as co-counsel for respondent in *United States v. Stevens* in which the Supreme Court ruled that a federal statute criminalizing the commercial production, sale, or possession of depictions of cruelty to animals was unconstitutional.

October 27, 2021

Topic: Amicus Briefs

Reading: TBD

Guest Speaker: Ilya Shapiro. Ilya Shapiro is a vice president of the Cato Institute, director of the Robert A. Levy Center for Constitutional Studies, and publisher of the *Cato Supreme Court Review*. Before joining Cato, he was a special assistant/adviser to the Multi-National Force in Iraq on rule-of-law issues and practiced at Patton Boggs and Cleary Gottlieb. Mr. Shapiro is the author of *Supreme Disorder: Judicial Nominations and the Politics of America's Highest Court* (2020), coauthor of *Religious Liberties for Corporations? Hobby Lobby, the Affordable Care Act, and the Constitution* (2014), and editor of 11 volumes of the *Cato Supreme Court Review* (2008–18). Mr. Shapiro has testified before Congress and state legislatures and has filed more than 400 amicus curiae "friend of the court" briefs in the Supreme Court, including one that *The Green Bag* selected for its "Exemplary Legal Writing" collection. Before entering private practice, Mr. Shapiro clerked for Judge E. Grady Jolly of the U.S. Court of Appeals for the Fifth Circuit. He holds an AB from Princeton University, an MSc from the London School of Economics, and a JD from the University of Chicago Law School.

November 3, 2021

Topic: Hate Speech

Reading: Read the following excerpts from *HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP*:

- Key Terms and Concepts*
- pp. xix-xxv*
- Chapter 1 Overview, pp. 11-36*

Guest Speaker: Nadine Strossen. Professor Strossen served as President of the American Civil Liberties Union from 1991-2008, the first woman to do so. She is the John Marshall Harlan II Professor of Law at New York Law School. Professor Strossen has written, taught, and

advocated extensively in the areas of constitutional law and civil liberties, including through frequent media interviews. When she stepped down as ACLU President in 2008, three Supreme Court Justices (Ruth Bader Ginsburg, Antonin Scalia, and David Souter) participated in her farewell and tribute luncheon. A prolific author, Professor Strossen's latest work is HATE: WHY WE SHOULD RESIST IT WITH FREE SPEECH, NOT CENSORSHIP.

November 10, 2021

Topic: Campaign Finance

Reading:

- *Buckley v. Valeo*, 424 U.S. 1 (1976): Read shortened version on TWEN*
- *Citizens United v. FEC*, 558 U.S. 310 (2010): Read shortened version on TWEN*
- *SpeechNow.org v. FEC*, 599 F.3d 686 (2010): Read full opinion except skim part II.B

Optional Reading:

- *Lieu v. FEC*: Petition for Cert*
- *Lieu v. FEC*: Opposition Brief*
- *McCutcheon v. FEC*, 572 U.S. 185 (2014)*
- Statement of Federal Election Commission Chair Trey Trainor on the Dangers of Procedural Disfunction (8/28/20; redacted)*

Guest Speaker: Ashley Stow. Ashley Stow currently works as Counselor to Federal Election Commission Chairman Trey Trainor. Prior to joining the FEC, Ashley was a partner at a law firm specializing in campaign finance and election law. Ashley's work experience also includes stints as General Counsel to a political data & analytics company, Senior Counsel at the Republican National Committee, Counselor to FEC Chairman Don McGahn, and Elections Counsel at the U.S. House of Representatives Committee on House Administration. Ashley is a graduate of American University's Washington College of Law and Georgetown University.

November 17, 2021

Topic: *Overbreadth and Vagueness*

Reading: ****Shorted versions of each of the readings are available on TWEN***

- *Grayned v. Rockford*, 408 US 104 (1972)*
- *Coates v. Cincinnati*, 402 U.S. 611 (1971)*
- *Gooding v. Wilson*, 405 U.S. 518 (1972)*
- *New York v. Ferber*, 458 U.S. 747 (1982)*