

Antonin Scalia Law School at George Mason University

FREE SPEECH CLINIC (Law 136)
Fall 2023 Course Syllabus (dated 7.17.23)
Tuesdays from 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: By appointment; Zoom appointments available

JoAnn Koob: jkoob@gmu.edu
Office Hours: Tuesdays 4:30 – 5:30 p.m. and Thursdays 2:30 – 3:30 p.m., Room 433K,
and by appointment; Zoom appointments available

Overview: The Free Speech Clinic provides students with 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 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 Blackboard. Reading assignments are subject to change, as they are based on our guest speaker schedule and requests.

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

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, as shown below. You will be required to submit a short memo summarizing the casework you did and your role therein at the end of the semester. Guidelines for the paper will be provided as the semester progresses.

- Casework: 50%
- Paper: 25%
- Class Participation: 25%

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 freedom of speech 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 Blackboard

August 22, 2023

Topic: Class and Clinic Work Overview / Writing Legal Briefs / Case Projects

Reading:

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

Speaker: Professor Connolly

****August 29, 2023****

****CLASS WILL MEET OVER ZOOM: <https://gmu.zoom.us/j/99067206379>****

(Zoom link also available on Blackboard)

Topic: Overview of First Amendment Law

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)*

Speaker: Professor Koob

September 5, 2023

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

Reading: TBD

Speaker: **Will Creeley.** Will Creeley is the Legal Director at the Foundation for Individual Rights and Expression (FIRE). Since joining FIRE in 2006, Will has successfully defended expressive rights and core civil liberties nationwide. As Legal Director, Will coordinates FIRE's legal advocacy and oversees FIRE's Litigation, Legislative and Policy, Policy Reform, and Targeted Advocacy departments. He has appeared on national television and radio on FIRE's behalf, and has spoken to thousands of students, faculty, administrators, and attorneys about First Amendment rights at events across the country. A co-author of *First Things First: A Modern Coursebook on Free Speech Fundamentals*, Will's writing has been published by The New York Times, the Wall Street

Journal, The Washington Post, the Chronicle of Higher Education, and many other outlets. Will 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 authored amicus curiae briefs submitted to courts nationwide, including the Supreme Court of the United States and multiple United States Courts of Appeals. A proud native of Buffalo, New York, Will now lives in New Jersey with his wife and two children.

September 12, 2023

Topic: *True Threats*

Reading: *TBD*

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 19/September 22, 2023****

IMPORTANT: Rather than a guest speaker during class, the "lecture" this week will be to attend one or more of the **Voices for Liberty Symposium sessions on Friday, September 22nd** (or, if you are unable to attend, a recording will be available for you to watch to receive credit for attendance). We will thus have a shortened class session to discuss casework on Tuesday, September 19th, starting at 6:05 p.m.

Topic: [Voices for Liberty: Free Speech, Civil Rights, and Social Progress](#)

Reading: None

Speaker: There will be a number of guest speakers/panel discussion for you to choose between (though you are encouraged to attend as much of the Symposium as your schedule permits). Note that breakfast, lunch, and snacks are provided. You are also invited to the cocktail reception following the last session.

Other: Please register in advance (link to be provided when available)

September 26, 2023

Topic: **Free Speech and Technology**

Reading: TBD

Speaker: **Bob Corn-Revere.** Bob joined FIRE from the law firm of Davis Wright Tremaine where he was a partner for 20 years specializing in freedom of expression and communications law. Before his time at DWT, he was a partner at Hogan & Hartson and served as legal advisor and later chief counsel to Federal Communications Commission Chairman James H. Quello. Bob is a prominent writer, thinker, and advocate on free expression issues. In 2021, Cambridge University Press published his book, "The Mind of the Censor and the Eye of the Beholder: The First Amendment and the Censor's Dilemma," which explores how free expression became a part of America's identity. He also co-authored the three-volume treatise, "Modern Communication Law," published by West Group. In 2003, he

successfully petitioned Governor George E. Pataki to grant the first posthumous pardon in New York history to the late comedian Lenny Bruce, who was convicted for “obscene” comedy routines. He is regularly listed as a leading First Amendment and media law practitioner by The Best Lawyers in America, SuperLawyers Washington, D.C., and by Chambers USA. Best Lawyers in America named him as Washington, D.C.’s 2017 “Lawyer of the Year” in the areas of First Amendment Law and Litigation – First Amendment. He was again named as Best Lawyers’ “Lawyer of the Year” for First Amendment Law for 2019 and 2021, and in Media Law for 2022.

October 3, 2023

Topic: Campaign Finance and Disclosure Laws

Reading: TBD

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.

NO CLASS: October 10, 2023 (Monday schedule observed)

October 17, 2023

Topic: *Time, Place, and Manner Regulations – with a Focus on Charlottesville*

Reading: TBD

Speaker: Craig Brown. Craig 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 Unite the Right riots of the Summer of 2017. Craig has more than 38 years of experience as a municipal attorney.

October 24, 2023

Topic: *Content Moderation and Section 230*

Reading: TBD

Speaker: **Trace Mitchell.** Trace Mitchell is a Litigation Fellow at the Institute for Justice. Prior to joining IJ, Trace clerked for the Honorable Judge Biran of the Court of Appeals of Maryland. He previously served as Policy Counsel for NetChoice, a technology-focused trade association dedicated to the principles of free enterprise and free expression on the internet, where he focused on issues surrounding content moderation, antitrust policy, and entrepreneurialism and innovation more generally. Before that, Trace worked as a Research Associate with the Mercatus Center and as a Program Associate with the Liberty & Law Center at George Mason University. Trace was the 2019 winner of Think Freely Media’s “Great Communicators Tournament” and his writing has appeared in the Wall Street Journal, Law360, InsideSources, The Hill, National Review, as well as various other publications nationwide. Trace received his undergraduate degree from Florida Gulf Coast University and his law degree from the George Mason University, Antonin Scalia Law School.

October 31, 2023

Topic: *Occupational Speech*

Reading: *TBD*

Speaker: **Jeffrey Redfern.** Jeffrey is an attorney for the Institute for Justice. Before joining IJ, Jeffrey was a member of the appellate group at Mayer Brown LLP, where he authored briefs on various constitutional issues in the U.S. Supreme Court and in lower federal and state courts. He has argued cases before the First and Seventh Circuits. Jeffrey clerked for Judge Laurence Silberman of the U.S. Court of Appeals for the D.C. Circuit. Jeffrey earned his J.D., cum laude, from Harvard Law School in 2012. Between his first and second years of law school, he clerked at IJ’s Minnesota office. That experience inspired him to file his own pro se constitutional lawsuit against the government while still in school. (After over two years of litigation, the government finally provided the relief he requested.)

November 7, 2023

Topic: ***Facebook’s Oversight Board***

Reading: *TBD*

Speaker: **Rachel Wolbers.** Rachel Wolbers is the Head of Global Engagement at the Oversight Board. There she handles stakeholder engagement on cases and policy issues pending before the Board. Prior to the Oversight Board, she was an internet policy specialist with the Office of International Affairs at the U.S. National Telecommunications and Information Administration (the NTIA). Before the NTIA, Rachel was the policy director at Engine, a non-profit technology policy, research, and advocacy organization. Previously, she worked on Capitol Hill for several years, including as counsel for Congressman Blake Farenthold, a member of the US House Judiciary Committee. There, she advised on the technology and telecom portfolio. Rachel holds a bachelor’s degree in international economics from George Washington University and a JD from Case Western Reserve University, where she served as the managing editor of the Journal of Law, Technology, and the Internet.

November 14, 2023

Topic: **Commercial Speech**

Reading: TBD

Speaker: **Mark Chenoweth.** Professor Chenoweth is the President and General Counsel of the New Civil Liberties Alliance. Professor Chenoweth has observed the administrative state up close and personal from perches in all four branches of the federal government. He served as the first chief of staff to Congressman Mike Pompeo, as legal counsel to Commissioner Anne Northup at the U.S. Consumer Product Safety Commission, as an attorney advisor in the Office of Legal Policy at the U.S. Department of Justice, and as a law clerk to the Hon. Danny J. Boggs on the U.S. Court of Appeals for the Sixth Circuit. Professor Chenoweth has worked in several different roles in the private sector as well. He began his legal career in D.C. as a regulatory associate at Wilmer, Cutler & Pickering. He then returned to his home state of Kansas to serve as in-house counsel for Koch Industries. Most recently he spent over four years as general counsel of the Washington Legal Foundation. He is a graduate of Yale College and the University of Chicago Law School, where he co-founded the Institute for Justice Clinic on Entrepreneurship.

November 21, 2023

Topic: **Overbreadth and Vagueness**

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

- *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)*

Speaker: **Professor Koob**