

Antonin Scalia Law School at George Mason University

**FREE SPEECH CLINIC (Law 136)**  
**Spring 2021 Course Syllabus (dated 12.28.21)**  
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 spring semester only.

**Professors:** Mike Connolly: [jconnol5@gmu.edu](mailto:jconnol5@gmu.edu)  
Office Hours: By appointment; Zoom appointments available

JoAnn Koob: [jkoob@gmu.edu](mailto:jkoob@gmu.edu)  
Office Hours: Tuesdays 4:30-5:30 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.

**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 spring semester will be based on a combination of case work, class participation, and an optional 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 (they will be the same as the fall semester paper guidelines).

- Casework: 75% (or 50% if you opt to do a paper)
- Paper (optional): 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 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

### **January 19, 2022**

**Topic:** **Compelled Subsidy**

**Reading:** *Janus v. Am. Fed. of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448 (2018): Alito Intro and Parts IA, III, IVB, V, and VII; Kagan Intro and Parts I, II, and IV\*

**Discussion:** We will discuss compelled subsidy (the history and theory). Note that you will be put into groups to argue for or against the decision.

### **January 26, 2022**

**Topic:** **Section 230, Data Privacy, and Free Speech on the Internet**

**Reading:** *Section 230 and the First Amendment (the readings are also available as PDFs on TWEN)*

- [No Big Tech Did Not Violate the First Amendment\\*](#)
- [Content Moderation, Section 230, and the First Amendment\\*](#)
- [Section 230's Challenge to Civil Rights and Civil Liberties\\*](#)

*Data Privacy and Speech*

- [The Creeping Right to be Forgotten\\*](#)

**Guest Speaker: Jennifer Huddleston.** Ms. Huddleston is the Director of Technology and Innovation Policy at the American Action Forum. Her research focuses on the intersection of emerging technology and law. Her work has appeared in a wide range of outlets including USA Today, the Chicago Tribune, Business Insider, Slate, the New York Daily News, and The Hill. Ms. Huddleston has appeared on media outlets including CNBC and Fox Business to discuss technology-related issues. She has also testified before Congress and state legislatures, and has been a regular panelist on issues such as transportation innovation, data privacy, and liability for content on online platforms including Section 230. Ms. Huddleston has a JD from the University of Alabama School of Law and a BA in political science from Wellesley College.

### **February 2, 2022**

**Topic:** **Facebook Oversight Board**

**Reading:** TBD

**Guest Speaker: Michael McConnell and Rachel Wolbers.**

*Professor McConnell is a Professor and Director of the Constitutional Law Center at Stanford Law School, and a Senior Fellow at the Hoover Institution. From 2002 to 2009, he served as a Circuit Judge on the United States Court of Appeals for the Tenth Circuit. He has published widely in the fields of constitutional law and theory, especially church and state, equal protection, and separation of powers. Professor McConnell has argued sixteen cases in the United States Supreme Court, most recently defending Delaware's state constitutional requirement of political balance on its court against a First Amendment challenge. He served as law clerk to Supreme Court Justice William J. Brennan, Jr. and D.C. Circuit Chief Judge J. Skelly Wright. He has been Assistant General Counsel of the Office of Management & Budget, Assistant to the Solicitor General of the Department of Justice, and a member of the President's Intelligence Oversight Board. He is Senior Of Counsel to the law firm Wilson, Sonsini, Goodrich & Rosati. He is also a member of Facebook's Oversight Board.*

**February 9, 2022**

**Topic:** **FOIA and Government Accountability**

**Reading:** FOIA Wiki, [available here](#).

**Guest Speaker: David Sobel.** *David Sobel is Senior Counsel at the Electronic Frontier Foundation, where he directs the FOIA Litigation for Accountable Government (FLAG) Project. Mr. Sobel has handled numerous cases seeking the disclosure of government documents on privacy policy, including electronic surveillance, encryption controls and airline passenger screening initiatives. He served as co-counsel in the challenge to government secrecy concerning post-September 11 detentions and participated in the submission of a civil liberties amicus brief in the first-ever proceeding of the Foreign Intelligence Surveillance Court of Review. Mr. Sobel is co-editor of the 2002 and 2004 editions of Litigation Under the Federal Open Government Laws. He is a recipient of EFF's Pioneer Award (2003) and the American Library Association's James Madison Award (2004), and has been inducted into the First Amendment Center's National FOIA Hall of Fame (2006). Mr. Sobel is a graduate of the University of Michigan and the University of Florida College of Law.*

**February 16, 2022**

**Topic:** **Diversity in Journalism**

**Reading:**

- *First 5 Podcast on [Diversity in the Newsroom](#) (3.23.18)*
- *"[The First Amendment Right to Protest Has Limits](#)" First Five blog post (1.14.21)*
- *"[Happy New and Old Year: 2020 Just Won't Go Away When It Comes to First Amendment Issues in 2021](#)" First Five blog post (12.29.20)*
- *"[Attention Police: Stop Attacking Journalists for Doing Their Jobs](#)" First Five blog post (9.16.20)*

**Guest Speaker: Gene Policinski.** *Mr. Policinski is the president and COO of the Freedom Forum Institute, which includes the Religious Freedom Center, the First Amendment Center, and NewseumED. One of the founding editors of USA Today, he oversees all programs of the*

*Freedom Forum Institute and also is a longtime proponent of diversity in journalism as an essential element of a free press. A veteran multimedia journalist, he also writes, lectures and is interviewed regularly on First Amendment issues. In 1996, he joined the Freedom Forum, the foundation that is the principal funder of the Newseum and Freedom Forum Institute. He hosts or co-hosts a variety of online audio and video programs produced by the Freedom Forum Institute, including “The First Five” podcast, and is co-author of the nationally distributed commentary “Inside the First Amendment.”*

### **February 23, 2022**

**Topic:** *Freedom of Association I*

**Reading:**

- *Section III of NAACP v. Alabama, 357 U.S. 449 (1958)\**
- *Americans for Prosperity Foundation v. Bonta, 141 S. Ct. 2373 (2021)\**

**Guest Speaker:** *Margaret Howell.*

### **March 2, 2022**

**Topic:** *Freedom of Association II*

**Reading:** *Read the majority opinion only for each of the following (each available on TWEN):*

- *Democratic Party of U. S. v. Wisconsin ex rel. La Follette, 450 U.S. 107 (1981)\**
- *Roberts v. Jaycees, 468 U.S. 609 (1984): **Skip Section III\****
- *Christian Legal Society v. Martinez, 561 U.S. 661 (2010): **Skip Section II\****

**Guest Speaker:** *Casey Mattox. Mr. Mattox Vice President, Legal and Judicial Strategy at Americans for Prosperity and Senior Fellow, Free Speech and Peace, at the Charles Koch Institute. Previously, Mr. Mattox was with the Alliance Defending Freedom (ADF), where he served as senior counsel and director of the Center for Academic Freedom. Casey joined ADF in 2009, litigating cases to protect the First Amendment rights of students and faculty at public colleges and universities across the nation. There he led a team of attorneys that is one of the most active groups of litigators defending First Amendment rights on public university campuses. Mr. Mattox has testified three times before House committees on a variety of First Amendment and constitutional issues.*

### **March 9, 2022**

**Topic:** *Free Speech and Torts I*

**Reading:** *New York Times v. Sullivan, 376 U.S. 254 (1964) (read edited version available on TWEN)*  
*Hustler v. Falwell, 485 U.S. 46 (1988)\**

### **March 23, 2022**

**Topic:** *Student Free Speech*

**Reading:** *Tinker v. Des Moines, 393 U.S. 503 (1969)\**

[Short ACLU video](#) produced by ACLU for the 50<sup>th</sup> anniversary of *Tinker*

**Guest Speaker: Mary Beth Tinker.** Mary Beth Tinker was born in 1952 and grew up in Des Moines, Iowa, where her father was a Methodist minister. As a 13-year-old student in eighth grade, Ms. Tinker was strongly affected by news of the Vietnam War. She and her brothers and sister, decided to wear black armbands to school to mourn the dead on both sides of the Vietnam War. The Des Moines school board threatened to suspend any student that wore an armband to school. Ms. Tinker chose to wear her armband to school and was suspended, along with four other students. This was the basis for the Supreme Court's landmark, freedom of speech ruling in *Tinker v. Des Moines*.

**March 30, 2022**

**Topic:** *Free Speech and Torts II*

**Reading:** *Snyder v. Phelps, 562 U.S. 443 (2011)\**

**Guest Speaker: Margie Phelps & Josh Wheeler.** Ms. Phelps is the attorney who argued *Snyder v. Phelps*, daughter of the founder of Westboro Baptist Church. Josh Wheeler, former Clinic Professor we met with last fall, will be back to lead the discussion with Ms. Phelps.

**April 6, 2022**

**Topic:** *Expressive Conduct*

**Reading:** *United States v. O'Brien, 391 U.S. 367 (1968)\**

*Arcara v. Cloud Books, 478 U.S. 697 (1986)\**

*Texas v. Johnson, 491 U.S. 397 (1989): Read Brennan's and Stevens' opinions\**

*\* An edited version of this case is available on TWEN*

**April 13, 2022**

**Topic:** *Protests and the First Amendment*

**Reading:**

- ["In Defense of Brandenburg: The ACLU and Incitement Doctrine in 1919, 1969, and 2019"](#) by Emerson Sykes, 85 Brook. L. Rev. (2019) (available on TWEN)
- ["Cheerleaders Snapchat Rant Tests Students' Free Speech Rights,"](#) by David Hudson, First Five blog post (2.17.21)
- ["Supreme Court Rules In Favor Of Black Lives Matter Organizer DeRay Mckesson,"](#) by Elana Lyn Gross, Forbes, 11/2/20

**Guest Speaker: Emerson Sykes.** Mr. Sykes is a staff attorney with the ACLU Speech, Privacy, and Technology Project where he focuses on First Amendment free speech protections. Prior to joining the ACLU in 2018, he was a legal advisor for Africa at the International Center for Not-for-Profit Law (ICNL). He provided technical legal assistance and training to African civil society leaders, government officials, law students, and other stakeholders to improve the legal framework protecting the freedom of association, assembly, and expression. Mr. Sykes previously served as assistant general counsel to the New York City Council, where he worked to increase transparency for council members' discretionary spending, and contributed to the council's amicus brief against the NYPD's "Stop and

*Frisk” program. In 2011, he was as senior policy fellow in the office of a member of Parliament in Ghana. Mr. Sykes previously conducted research and wrote about U.S. foreign policy for The Century Foundation, a progressive think tank, and worked for the National Democratic Institute’s Central and West Africa Team. Mr. Sykes holds a J.D. from the New York University School of Law, a Master of Public Affairs degree from the Woodrow Wilson School at Princeton, and an undergraduate degree in political science at Stanford.*

**April 20, 2022**

**Topic:** **Free Speech Rationales**

**Reading:** *The Checking Value of the First Amendment*, Blasi, pp. 523-525; 527-528, and 538 (starting w. the first full paragraph) – 565 (through the first full paragraph)\*