

Antonin Scalia Law School at George Mason University

FREE SPEECH CLINIC (Law 136)
Spring 2023 Course Syllabus (dated 12.27.22)
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 spring semester only.

Professors: Mike Connolly: jconnol5@gmu.edu
Office Hours: By appointment; Zoom appointments available

JoAnn Koob: jkoob@gmu.edu
Office Hours: Tuesdays 3:00 – 4:00 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. They will receive feedback from the instructors to help improve their work product. 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 TWEN.* Reading assignments are subject to change, as they are based on our guest speaker schedule and requests.

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 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 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 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 TWEN

January 17, 2023

Topic: Free Speech Rationales

Reading:

- *The Checking Value of the First Amendment*, Blasi, pp. 523-525; 527-528, and 538-565 (first full paragraph on 538 through first full paragraph on 565)*

January 24, 2023

Topic: Compelled Speech and Public Accommodations Laws

Assignment: TBD

Guest Speaker: Ethan Blevins. Ethan Blevins is an attorney working in PLF’s free speech, property rights, and separation of powers practice groups. In addition to his legal work, Ethan has spoken and written on a variety of legal and policy issues. He has appeared on numerous radio and television programs, and his writings have appeared in *The Wall Street Journal*, *The Seattle Times*, *The Salt Lake Tribune*, *The Hill*, and other major publications. Ethan’s introduction to liberty began as a teenager when he read Arthur Koestler’s chilling account of communism in *Darkness at Noon*. He was living in China at the time, and he saw firsthand the corruption and poverty wrought by dictatorship. He felt inspired to dedicate his legal career to fighting for liberty after clerking for then-Justice Don Willett on the Texas Supreme Court, a judge known for his fierce commitment to constitutional rights (and his Twitter presence). Ethan earned his law degree cum laude from Duke School of Law, as well as a master’s in international and comparative law.

January 31, 2023

Topic: Content Moderation and Section 230

Reading: TBD

Guest 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.

February 7, 2023

Topic: *Commercial Free Speech*

Reading: https://www.cato.org/sites/cato.org/files/pubs/pdf/pa_813.pdf

Guest Speaker: Mark Chenoweth. Mark Chenoweth is the Executive Director and General Counsel of the New Civil Liberties Alliance. He has observed the administrative state up close and personal from perches in all four branches of the federal government. Mark 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. Mark 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. Mark is a graduate of Yale College and the University of Chicago Law School, where he co-founded the Institute for Justice Clinic on Entrepreneurship and became a Tony Patiño Fellow. Mark has been widely quoted and/or published in newspapers and websites including the New York Times, San Francisco Chronicle, New Hampshire Union Leader, and Metropolitan Corporate Counsel. He has also had recurring op-eds in the Los Angeles Daily Journal, and at Forbes.com.

February 14, 2023

Topic: *Free Speech and Torts*

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)*

February 21, 2023

Topic: *Freedom of Association*

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. Casey is the Vice President, Legal and Judicial Strategy, at Americans for Prosperity and Senior Fellow at Stand Together Trust, where he focuses on Free Speech and Peace. Previously, Casey 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. Casey has testified multiple times before House committees on a variety of First Amendment and constitutional issues. Casey has a J.D. from Boston College School of Law and a B.A. in Government and History from the University of Virginia.

February 28, 2023

Topic: TBD

Reading:

Guest Speaker:

March 7, 2023

Topic: TBD

Reading:

Guest Speaker:

March 21, 2023

Topic: TBD

Reading:

Guest Speaker:

March 28, 2023

Topic: TBD

Reading:

Discussion:

April 4, 2023

Topic: Facebook Oversight Board

Reading: Read Facebook [Oversight Board's Charter](#)

Read Case Summaries of the following cases (up to the Full Case Decision):

- [Trump Case](#)
- [Breast Cancer Awareness Case](#)

Guest Speaker: Michael McConnell. 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

April 11, 2023

Topic: TBD

Reading:

Guest Speaker:

April 18, 2023

Topic: Free Speech Careers

Reading: None