

## **Law, Politics, and the Media**

LAW 839/PSC 700

Wednesday 2:30 p.m.-5:15 p.m.  
Sonkin Seminar, Room 342  
Dineen Hall  
Syracuse University College of Law  
Spring 2015

### **Faculty**

Keith J. Bybee  
412 Dineen Hall  
Law & Maxwell  
[kjbybee@maxwell.syr.edu](mailto:kjbybee@maxwell.syr.edu)

### **Graduate Assistant**

Kat De Maria  
Law  
[kedemari@syr.edu](mailto:kedemari@syr.edu)

### **Office Hours:**

Tuesday, 11:00am-1:00pm

### **Course Web Page**

<http://jpm.syr.edu/law-politics-media-course/>  
[this page will list course announcements and  
any changes to course assignments]

### **Course Description**

The American legal system today operates in a complex environment of formal doctrine, political pressure, and media coverage. The goal of this course is to introduce students to the court system and its environment as a single, integrated subject of study. Academic discussions are complemented by guest lectures given by practitioners from the bench, the bar, the media, and the world of policymaking.

Topics to be covered in the course include: fundamentals of media practice; essential principles of American politics; conventional understandings of judicial decisionmaking; judicial views of politics and media; public perceptions of judicial process; the right to publicity; judicial politics and judicial elections; confidential sources and government surveillance; prosecutorial power; the practice and regulation of advertising; and the influence of religion on American public life.

### **Course Requirements and Grading:**

**Class participation (20%)**. Attendance will be taken at each class. If a student records more than two unexcused absences, then that student will be dropped the course. Please note that attendance is the minimum requirement for the participation grade. To receive a good participation grade, students must attend and actively participate in class discussions.

Two six-page papers critically assessing the presentations of two guest speakers (20% for each paper). Papers are due in class on the Wednesday following the lecture about which students choose to write. Students may choose the guest speaker they would like to assess in each of their response papers subject to the following requirement: students must write their first response paper on one of the first four guest speakers and write their second response papers on one of the last four speakers. The term “guest speaker” does not include course faculty.

Response paper guidelines: A response paper is a critical appraisal of a speaker’s presentation. A paper should not simply summarize a presentation nor should it be a mere record of a student’s impressions. Instead, a response paper makes an argument (with a clear thesis, logically related assertions, and appropriate evidence) that shows how and why the student agrees or disagrees with a speaker’s claims. It is not necessary for a student to address every detail of the speaker’s lecture. The best response papers zero-in on several points that are essential to the speaker’s presentation and builds an analysis around those points. Please note that independent research is not required for the response papers. Depending on the argument that is being made in a given response paper, a student may sometimes find that he or she has to perform independent research in order to gather appropriate evidence. If so, the amount of independent research should be modest (students will have an opportunity to perform significant independent research in their research papers – see below). Since appropriate evidence can often be found in the required reading for the course, in the discussions led by course faculty, or in the arguments made by other guest speakers, independent research is not a mandatory element of the response papers. Finally, please note that the evidence used in response papers (whether or not the evidence results from independent research) must be properly cited.

Twenty-page research paper (40%). Requirements for the paper will be discussed in detail as the course progresses. Papers are due by 5:00pm on Monday, April 27. Students will be required to attend individual meetings with course faculty to discuss their research papers (all individual meetings will be held during Week 8 and many of the meetings will be arranged during regularly scheduled class time on March 4).

Law students: Please note that this course does not satisfy the COL writing requirement. Please also note that this course is exempt from the upper-class grading curve.

### **Readings:**

- Handouts (to be distributed in class as the semester progresses).
- Online material (links on syllabus and PDFs available on BlackBoard). **THE ONLINE MATERIAL IS SUBJECT TO CHANGE.** Please visit the syllabus posted on the course website regularly to ensure you are current with the class material.

### **Guest Lectures:**

Over the course of the semester there will be eight guest lectures. The lecture dates are indicated on the course schedule. Lectures will be held in our usual classroom, will run from 4:00pm-5:15pm, and will be open to the public. There will be a small reception with refreshments after

every lecture. Our class will meet before each lecture in our usual classroom for discussion, 2:30pm-3:45pm. The pre-lecture discussions will not be open to the public. Speaker bios are listed at the end of the syllabus.

### **Course Lunches:**

Each guest lecture will be preceded by an informal lunch for students in the course and the guest speaker. The lunches will be held 11:45am-12:45pm in the College of Law and food will be provided. Attendance at the lunches is optional, but students who do attend will have an invaluable opportunity to interact with the guest lecturers.

### **Affiliated Institutes and Faculty:**

Law, Politics, and the Media is sponsored by the Institute for the Study of Judiciary, Politics, and the Media (<http://jpm.syr.edu/>) with assistance from the Tully Center for Free Speech (<http://tully.syr.edu/>). Professor Bybee directs IJPM, and Professor Lisa Dolak (Law) and Professor Roy Gutterman (Newhouse) serve as IJPM associate directors. Professor Gutterman also directs the Tully Center. Professors Dolak and Gutterman often attend LPM lectures, and can be important resources for students in the class.

### **Additional Notes:**

Law students: If you have a disability that may affect your performance in this class, please see College of Law Senior Assistant Dean Tomas Gonzales, Suite 220, as soon as possible, to discuss necessary accommodations.

Maxwell students: If you have a disability that may affect your performance in this class, please contact the university Office of Disability Services (ODS), 304 University Avenue, Room 309, 315-443-4498.

We do not object to the use of tape recorders to record class discussion, but we do expect all cell phones, pagers, and similar devices to be turned off during class time. We also ask that students refrain from emailing, surfing the web, instant messaging, gaming, and other computer diversions during class.

### **Course Schedule:**

#### **Week 1 (1/14)**

Welcome to Law, Politics, and the Media

- Overview of course and requirements. No reading assigned.

## **Week 2 (1/21)**

### Fundamentals of Media Practice

#### **Readings:**

- Kovach and Rosenstiel, *The Elements of Journalism* [BlackBoard]
- Keller and Greenwald, “Is Glenn Greenwald the Future of News?” [BlackBoard]
- Linda Greenhouse, “Law in the Raw” [BlackBoard]
- SCOTUSblog interview with Dahlia Lithwick. Watch video at <http://www.scotusblog.com/media/scotusblog-on-camera-dahlia-lithwick/>.

## **Week 3 (1/28)**

### Squaring the Right of Publicity with the First Amendment

Paul M. Smith

Partner, Jenner & Block

*Luncheon will be held at 11:45 in the College of Law*

#### **Readings:**

- Petition for Writ of Certiorari, *Electronic Arts Inc. v. Keller*, 2013 WL 5324721 (U.S.) [BlackBoard]

## **Week 4 (2/4)**

### Essential Principles of Politics

#### **Readings:**

- Mayhew, *Congress: The Electoral Connection* [BlackBoard]
- Schattschneider, *The Semisovereign People* [BlackBoard]

## **Week 5 (2/11)**

### Judicial Views of Politics, Media, and the Courts

### Public Views of the Judiciary

#### **Readings:**

- Federalist No. 78. Available at [http://thomas.loc.gov/home/histdox/fed\\_78.html](http://thomas.loc.gov/home/histdox/fed_78.html).
- Hon. Alex Kozinski, “What I Ate for Breakfast” [BlackBoard]
- Hon. John Walker, “Bench Press: Politics and the Confirmation Process” [BlackBoard]
- Bybee, “Justice Stewart Meets the Press” [BlackBoard]
- Bybee, *All Judges Are Political—Except When They Are Not* [BlackBoard]

### **Week 6 (2/18)**

How the Media Covers High Profile Criminal Cases: Do the Facts Really Matter?

William J. Fitzpatrick

District Attorney, Onondaga County

*Luncheon will be held at 11:45 in the College of Law*

#### **Readings:**

- ESPN, “Bernie Fine Will Not Face State Charges.” Available at [http://espn.go.com/mens-college-basketball/story/\\_/id/7326350/bernie-fine-face-state-charges-abuse-investigation-former-syracuse-orange-assistant](http://espn.go.com/mens-college-basketball/story/_/id/7326350/bernie-fine-face-state-charges-abuse-investigation-former-syracuse-orange-assistant).
- CNN, “Video: New Witness in Bernie Fine Case.” Watch video at [http://ac360.blogs.cnn.com/2011/12/07/video-new-witness-in-bernie-fine-case/?hpt=ac\\_mid](http://ac360.blogs.cnn.com/2011/12/07/video-new-witness-in-bernie-fine-case/?hpt=ac_mid).
- New York Times Editorial Board, “Gov. Cuomo’s Broken Promises.” Available at [http://www.nytimes.com/2014/07/24/opinion/gov-cuomos-broken-promises.html?\\_r=0](http://www.nytimes.com/2014/07/24/opinion/gov-cuomos-broken-promises.html?_r=0).

### **Week 7 (2/25)**

Protecting Confidential Sources from Government Surveillance: Making ‘Em Work for It

Toni Locy

Author, former Justice Department beat reporter for *USA Today*, and Associate Professor of Journalism and Mass Communications at Washington and Lee University

*Luncheon will be held at 11:45 in the College of Law*

#### **Readings:**

- Toni Locy, *Covering America’s Courts: A Clash of Rights*, Chapter 6 (2013) [BlackBoard]
- FBI affidavit in support of search warrant of Fox News reporter Jim Rosen’s email addresses [BlackBoard]

### **Week 8 (3/4)**

**Students meet with course faculty to discuss research papers.**

### **Week 9 (3/11)**

Spring Break. No class.

### **Week 10 (3/18)**

Judicial Elections and Judging

Hon. Rosemary S. Pooler

United States Circuit Judge, United States Court of Appeals for the Second Circuit

*Luncheon will be held at 11:45 in the College of Law*

**Readings:**

- Cass R. Sunstein et al., Are Judges Political: An Empirical Analysis of the Federal Judiciary 1–24, 59–86 (2006) [BlackBoard]
- Hon. Harry T. Edwards & Michael A. Livermore, *Pitfalls of Empirical Studies that Attempt to Understand the Factors Affecting Appellate Decisionmaking*, 58 Duke L.J. 1895, 1907–1930, 1963–66 (2009) [BlackBoard]

**Week 11 (3/25)**

Religion and Politics v. Church and State: The Establishment Clause in the American Media  
Timothy A. Byrnes  
Professor of Political Science, Colgate University

*Luncheon will be held at 11:45 in the College of Law*

**Readings:**

- Lauren Markoe and Adelle M. Banks, “Martin Luther King Jr.’s Faith Background Key to His Drive for Justice.” Available at [http://www.huffingtonpost.com/2013/08/29/martin-luther-king-jr-faith\\_n\\_3836492.html](http://www.huffingtonpost.com/2013/08/29/martin-luther-king-jr-faith_n_3836492.html).
- National Review Online, “Cardinal Dolan on the Civil Rights of the Unborn.” Available at <http://www.nationalreview.com/article/368981/cardinal-dolan-civil-rights-unborn-interview>.
- *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844 (2005) [BlackBoard]

**Week 12 (4/1)**

Advocacy in the Age of Obama and *Citizens United*  
Bert Kaufman

Senior Adviser, Office of the Secretary, Office of Business Liaison, United States Department of Commerce

*Luncheon will be held at 11:45 in the College of Law*

**Readings:**

- Mark Leibovich, This Town: Two Parties and a Funeral—Plus, Plenty of Valet Parking!—in America’s Gilded Capital 39–60 (2013) [BlackBoard]
- President Barack Obama, Address at the Lobbying Reform Summit (Jan. 26, 2006)
- Mississippi Business Journal, “Leaders go to Washington for White House business briefing.” Available at <http://msbusiness.com/blog/2012/03/05/leaders-go-to-washington-for-white-house-business-briefing-2/>.
- Matthew Continetti, “Obama Incorporated.” Available at <http://freebeacon.com/columns/obama-incorporated/>.

- Bob Cusack, “After Obama rips lobbyists, K Street insiders get private policy briefings.” Available at <http://thehill.com/homenews/administration/78509-after-obama-rips-k-street-administration-invites-lobbyists-to-private-briefings>.

### **Week 13 (4/8)**

Two Nations, a Family’s Pain, a Question of Law: The Onondaga Nation and the Birth of Syracuse

Sean Kirst

Columnist, *Syracuse Post-Standard*/Syracuse Media Group

*Luncheon will be held at 11:45 in the College of Law*

#### **Readings:**

- Sean Kirst, “Onondaga Faith Keeper Oren Lyons: ‘You want to see what you can do.’” Available at [http://www.syracuse.com/kirst/index.ssf/2007/08/oren\\_lyons\\_to\\_onondaga\\_faithkeeper\\_history\\_means.html](http://www.syracuse.com/kirst/index.ssf/2007/08/oren_lyons_to_onondaga_faithkeeper_history_means.html).
- Sean Kirst, “More honors for Onondaga Nation stickmaker: Alf Jacques, lacrosse and the values of his father.” Available at [http://www.syracuse.com/kirst/index.ssf/2014/10/more\\_honors\\_for\\_an\\_onondaga\\_stickmaker.html#incart\\_river](http://www.syracuse.com/kirst/index.ssf/2014/10/more_honors_for_an_onondaga_stickmaker.html#incart_river).
- Sean Kirst, “Two communities, distinct and side-by-side: In greater Syracuse, spirit of the Two Row.” Available at [http://www.syracuse.com/kirst/index.ssf/2013/08/two\\_communities\\_distinct\\_and\\_s.html](http://www.syracuse.com/kirst/index.ssf/2013/08/two_communities_distinct_and_s.html).
- Sean Kirst, “Mayor Mike Bloomberg: Hot words galvanize those who helped to build New York.” Available at [http://www.syracuse.com/kirst/index.ssf/2010/08/post\\_77.html](http://www.syracuse.com/kirst/index.ssf/2010/08/post_77.html).
- Sean Kirst, “A forgotten truth: The Six Nations, Jane Goodall and hope for a sacred lake.” Available at [http://www.syracuse.com/kirst/index.ssf/2006/09/a\\_forgotten\\_truth\\_the\\_six\\_nations\\_jane\\_goodall\\_and\\_hope\\_for\\_a\\_sacred\\_lake.html](http://www.syracuse.com/kirst/index.ssf/2006/09/a_forgotten_truth_the_six_nations_jane_goodall_and_hope_for_a_sacred_lake.html).

### **Week 14 (4/15)**

Advertising Self-Regulation: An Industry Perspective

Chryse Spathas

Vice President, Broadcast Standards and Practices, ABC Inc.

*Luncheon will be held at 11:45 in the College of Law*

#### **Readings:**

- Jeffrey A. Greenbaum, “Hot Topics in Advertising” [BlackBoard]
- National Advertising Division Case Reports (background) [BlackBoard]

**Week 15 (4/22)**  
Course wrap-up

**\*\*PAPERS DUE MONDAY, 4/27, BY 5:00 PM\*\***



## **Guest Speaker Biographies**

**Paul M. Smith** is Chair of the Appellate and Supreme Court Practice and Co-Chair of the Media and First Amendment, and Election Law and Redistricting Practices at Jenner & Block. Mr. Smith has had an active Supreme Court practice for three decades, including oral arguments in 15 cases involving matters ranging from free speech and civil rights to civil procedure. Among his important victories have been *Lawrence v. Texas*, the landmark gay rights case, and *Brown v. Entertainment Merchants Ass'n*, establishing the First Amendment rights of those who produce and sell video games. Mr. Smith is a member of Jenner & Block's Content, Media & Entertainment Practice and serves on the Policy Committee. He also serves the firm as a member of the Diversity & Inclusion Committee. He represents the members of the D.C. Bar in the ABA House of Delegates. Mr. Smith was a member of the D.C. Bar Board of Governors from 2002-2008. He is a member and former chair of the National Board of Directors of the American Constitution Society and former board member and co-chair of Lambda Legal. Mr. Smith is also a member of the Board of Directors of the Washington Lawyers Committee for Civil Rights and Urban Affairs.

**William J. Fitzpatrick** has served as Onondaga County District Attorney since 1992, and has been a member of the Onondaga County District Attorney's office for more than 30 years, with involvement in a variety of cases that have covered every facet of the law. Mr. Fitzpatrick's work has gained national notoriety, including the 1992 case of Waneta Hoyt, the mother of five children originally thought to have died of SIDS, whom Mr. Fitzpatrick investigated and prosecuted, resulting in a conviction and sentence of 75 years to life. The case was featured on Eye to Eye with Connie Chung and is the subject of two books, "Goodbye My Little Ones" and "The Death of Innocents," which won the prestigious Edgar Allan Poe award for Best Fact Crime Book. The publicity from the Hoyt case led to increasing national awareness in the medical and legal communities about infant homicide and SIDS prevention. Recently, the case and conviction of "Black Widow" killer Stacey Castor was featured on an unprecedented two-hour episode of 20/20. In addition to his work as District Attorney, Mr. Fitzpatrick has served as Co-Chair of the Moreland Commission to Investigate Public Corruption, President of the New York State District Attorneys Association, and member of the National District Attorneys Association, New York State Permanent Sentencing Commission and New York State Forensic Science Commission. Locally, Mr. Fitzpatrick is active in his community, and has been involved with the Vera House Foundation (a shelter for battered women), the McMahan/Ryan Child Advocacy Center, the Ronald McDonald House, the Make-A-Wish Foundation and several other groups.

**Toni Locy** was a journalist for 25 years who reported and wrote for some of the nation's biggest and best news organizations, specializing in the coverage of federal, state and local law enforcement, the federal trial and appellate courts, and the U.S. Supreme Court. In 2008 a federal judge held Ms. Locy in contempt of court for refusing to reveal the identities of

confidential sources who provided information for stories she wrote for USA Today about the FBI's investigation into the deadly 2001 anthrax attack. Eventually the U.S. Justice Department settled a civil lawsuit filed by scientist Steven Hatfill, and the judge vacated the contempt order against her. As a reporter, Ms. Locy wrote at least 4,000 bylined stories about everything from organized labor in Pittsburgh and the Mafia in Philadelphia to the State House in Boston and the U.S. Supreme Court in Washington. She now serves as Associate Professor of Journalism and Mass Communications at Washington and Lee University, and is the author of "Covering America's Courts: A Clash of Rights," a journalism textbook on covering the courts and the law.

**Rosemary S. Pooler** is a United States Circuit Judge of the U.S. Court of Appeals for the Second Circuit. At the time of her appointment in 1998, she was a United States District Judge for the Northern District of New York. Judge Pooler engaged in the private practice of law in Syracuse from 1966 until 1972. She served as Assistant Corporation Counsel/Director of the Consumer Affairs Unit for the City of Syracuse from 1972 to 1973. From 1974 to 1975, Judge Pooler was a District Representative on the Common Council of the City of Syracuse. From 1975 until 1980 she was Chair and Executive Director of the Consumer Protection Board of the State of New York. She served as a member of the New York State Public Service Commission from 1981 until 1986. In 1987, Judge Pooler was Staff Director of the Committee on Corporations, Authorities and Commissions of the New York State Assembly. She was Visiting Professor of Law at Syracuse University from 1987 until 1988, and was Vice-President for Legal Affairs of the Atlantic States Legal Foundation from 1989 until 1990. In 1990, she became a Justice of the Supreme Court, Fifth Judicial District, State of New York, and served in this position until becoming a United States District Judge for the Northern District of New York in 1994.

**Timothy A. Byrnes** is a Professor of Political Science at Colgate University in Hamilton, New York. His scholarship focuses mostly on the political role of religious institutions in democratic politics, and his books include, among others, "Catholic Bishops in American Politics," "Religion in an Expanding Europe," and most recently, "Reverse Mission: Transnational Religious Communities and the Making of US Foreign Policy."

**Bert Kaufman** is a Senior Advisor in the Office of U.S. Secretary of Commerce Penny Pritzker. Kaufman also serves as co-Director of the Presidential Ambassadors for Global Entrepreneurship (PAGE) initiative, a public-private partnership between the White House, Commerce Department, State Department, U.S. Agency for International Development, U.S. Small Business Administration, and well-known U.S. entrepreneurs, designed to promote and inspire entrepreneurship in the U.S. and around the world. Prior to joining the Obama Administration in 2013, Kaufman served as Executive Director at Business Forward, a non-profit organization he co-founded in 2009, which produces national programming and fosters partnerships between business leaders and policymakers, and as Vice President at Portico Policy Advisors, a

Washington, D.C.-based policy research firm where he advised auto industry clients and venture-backed start-ups in the food and consumer product sectors. Kaufman also helped start and is on the board of Press Pass Mentors, an educational non-profit where journalists from *The Washington Post* mentor inner-city high school students. Kaufman served as a law clerk in United States District Court, and worked for CNN in Washington, D.C., and London. While in law school at Syracuse University College of Law, Kaufman helped start the Institute for the Study of the Judiciary, Politics, and Media (IJPM), a first-of-its-kind interdisciplinary center created to produce scholarship and national programming on the interaction between courts, politics and the press.

**Sean Kirst** is a metropolitan columnist with *The Post-Standard*, a daily newspaper in Syracuse, New York. Kirst was hired in 1988, and began writing a column in 1991. Prior to joining *The Post-Standard*, Kirst worked for daily newspapers in Dunkirk and Niagara Falls, New York. He also spent two years with *City*, an alternative weekly in Rochester, New York. Kirst and his columns have received numerous awards, including the Ernie Pyle Award for human interest writing, the national award of excellence from Sigma Delta Chi, the national award for commentary from Capitolbeat, an organization for journalists who cover state politics, and national Clarion Awards for opinion writing. Kirst has also been recognized by the American Association of Sunday and Features Editors for his interactive involvement with readers through his blog, and the U.S. Justice Department for sensitivity to victims of violent crime. Kirst is the author of *The Ashes of Lou Gehrig*, a collection of baseball essays, and worked with Earl Lloyd on Lloyd's autobiography, *Moonfixer*. The England-based Tolkien Society credits Kirst with proposing the worldwide Tolkien Reading Day that is now held every March, a celebration that always includes a gathering in Central New York.

**Chryse Spathas** is Vice President, Broadcast Standards and Practices (“BS&P”) at ABC, Inc. She oversees the BS&P Department in New York, which is responsible for reviewing and approving all advertising material for the ABC Television Network and ABC Family. Prior to joining ABC, Ms. Spathas was Associate Director at the National Advertising Division (“NAD”), which she joined in 1992. Ms. Spathas is an attorney and a registered pharmacist.