

Free Speech & Civil Discourse in the 21st Century

3rd Annual Law & Society Symposium

February 17–18, 2011
Charleston, South Carolina

Presented by
Charleston Law Review
and
The Riley Institute[®] at Furman



Thursday, February 17, 2011
Charleston Music Hall, 37 John Street

Keynote Address

5 p.m. Introduction
Andrew L. Abrams, *dean*,
Charleston School of Law

Keynote
“Free Speech and Civil Discourse in the 21st Century”
Rodney A. Smolla, *president*,
Furman University

Friday, February 18, 2011
Charleston Museum, 360 Meeting Street

Symposium

8 a.m. Registration

8:45 a.m. **Introduction & Welcome**
E. Piper Reiff, *editor-in-chief*, *Charleston Law Review*
Donald L. Gordon, Ph.D., *executive director*,
The Riley Institute at Furman
Andrew L. Abrams, *dean*, *Charleston School of Law*

8:55 a.m. **Why “Free Speech and Civil Discourse”?**
William J. Cook, *assistant professor*,
Charleston School of Law

9 a.m. **Panel One: The Legal Impact of Social Media**
Moderated by William M. Janssen, *assistant professor*,
Charleston School of Law
Molly Hughes Cherry, *member*,
Nexsen Pruet
John F. Emerson, *general counsel*,
Charleston County School District
Douglas A. Henderson, *executive director*,
Charleston County Public Library
Amy Yager Jenkins, *partner*,
McAngus Goudelock & Couric LLC
Hannah Rogers Metcalfe, *associate*,
Wyche Burgess Freeman & Parham PA

Symposium *(continued)*

Friday, February 18, 2011

Charleston Museum

- 10 a.m. **Panel Two: Wikileaks: Testing the Bounds of National Security**
Moderated by Brian Scott-Smith, *broadcaster, Track180*
Wendy J. Keefer, *partner, Keefer & Keefer*
John C. Knechtle, *professor & director of international programs, Florida Coastal School of Law*
Rodney A. Smolla, *president, Furman University*
- 11 a.m. **Panel Three: Speech and the Role of Torts**
Moderated by Nancy Zisk, *associate professor, Charleston School of Law*
E.P. “Rick” Corrigan III, *principal, Corrigan & Chandler LLC*
Deana Pollard Sacks, *professor, Texas Southern University, Thurgood Marshall School of Law*
Adam F. Scales, *associate professor, Washington and Lee University School of Law*
Russell L. Weaver, *professor & distinguished university scholar, University of Louisville, Louis D. Brandeis School of Law*
- NOON Lunch On Your Own
- 1 p.m. **Panel Four: Political Speech and the Call for Civility**
Moderated by Katie Fowler Monoc, *associate, Pratt-Thomas Walker*
Jerry “Jay” Bender, *of counsel, Baker, Ravenel & Bender, LLP/visiting professor, University of South Carolina*
Brandon M. Inabinet, *assistant professor, Furman University*
The Honorable Vincent A. Sheheen, *senator, South Carolina Senate*
James F. M. Williams, *principal, SNR Denton*
- 2 p.m. **Panel Five: Legal Speech: Civility Oaths and Attorney Advertising**
Moderated by Aurore Y. Victor, *assistant professor, Charleston School of Law*
Desa A. Ballard, *partner, Ballard Watson Weissenstein*
Lesley M. “Lee” Coggiola, *disciplinary counsel, South Carolina Supreme Court*
The Honorable Deadra L. Jefferson, *circuit court judge, Ninth Judicial Circuit, South Carolina*
Robert M. Wilcox, *associate dean of academic affairs & professor, University of South Carolina School of Law*

Keynote Speaker

Rodney A. Smolla, president of Furman University, is nationally recognized as a scholar, teacher, advocate and writer and is one of America's foremost experts on issues relating to freedom of speech, academic freedom and freedom of the press. A native of the Chicago area, he is a 1975 graduate of Yale University and graduated first in his class from Duke University Law School in 1978.

Prior to coming to Furman, Smolla served three years as dean and Roy L. Steinheimer professor of law at Washington and Lee University School of Law. He has also been dean and Allen Professor at the University of Richmond School of Law as well as director of the Institute of Bill of Rights Law at the College of William & Mary.

During his legal career, Smolla has presented arguments in state and federal courts, including the U.S. Supreme Court. He has also testified before committees of the U.S. Senate and U.S. House of Representatives.

His book, *Free Speech in an Open Society* (1992) won the William O. Douglas Award as the year's best monograph on freedom of expression. He is also the author of *Jerry Falwell v. Larry Flynt: The First Amendment on Trial* (1988) and *Deliberate Intent* (1999). The latter, which was made into a television movie by the FX cable network, describes Smolla's involvement in a notorious case in which he successfully represented the families of three murder victims in a suit against the publisher of a murder instruction manual.

His latest book, *The Constitution Goes to College*, describes the constitutional principles and ideas that have shaped American higher education. It is scheduled for publication in 2011 by New York University Press.

Moderators & Panelists

Desa A. Ballard is a partner in Ballard Watson Weissenstein in Columbia, South Carolina. The firm focuses its practice in attorney ethics and complex litigation. Ballard's interest in attorney ethics began while clerking with circuit judge Ralph King Anderson Jr. and continued with her clerkship for Chief Justice J.B. Ness at the South Carolina Supreme Court. Since completing her clerkships, she has continued to lecture frequently on attorney ethics and has served on committees for the South Carolina Bar and South Carolina Trial Lawyers Association. For the past 15 years, Ballard has been an adjunct professor on advanced legal profession at the University of South Carolina School of Law. She has published extensively on ethics and professionalism.

Jerry "Jay" Bender, an attorney with Baker, Ravenel & Bender, holds the Reid H. Montgomery Freedom of Information Chair at the University of South Carolina where he has a joint appointment to the faculties of the School of Law and the School of Journalism and Mass Communications. As an attorney, Bender has been involved in most of the significant media law, First Amendment, and Freedom of Information Act cases in South Carolina in the past 30 years. During that period, as attorney and lobbyist for the South Carolina Press Association, he was instrumental in the adoption of the South Carolina Reporter's Shield Law and improvements to the Freedom of Information Act. Bender also represents the South Carolina Broadcasters Association, has written two books and hundreds of columns and articles on South Carolina media law, and lectures frequently on free speech and open government topics. Bender is pleased to be involved in a program sponsored by institutions that owe their existence to the efforts of his friends of many years, Alex Sanders and Dick Riley.

Molly Hughes Cherry, a member at Nexsen Pruet, is a certified specialist in employment and labor law and was an adjunct professor at the Charleston School of Law. Prior to joining Nexsen Pruet, Cherry clerked for the Honorable David C. Norton of the United States District Court for the District of South Carolina, Charleston Division. She received her undergraduate degree, *magna cum laude*, in government and Spanish from Wofford College where she was a member of Phi Beta Kappa. Cherry graduated *cum laude* from the University of South Carolina School of Law where she was a member of the *South Carolina Law Review*, the Order of the Wig and Robe, the Order of the Barristers, the ABA Moot Court Team, and the John Belton O'Neill Inn of Court.

Moderators & Panelists

Lesley M. “Lee” Coggiola is disciplinary counsel for the South Carolina Supreme Court. Prior to this appointment in 2007, she served as chief staff attorney for the South Carolina Court of Appeals. Since admission to the Bar, Coggiola served as law clerk to the Honorable Carol Connor, assistant public defender, assistant appellate defender, of counsel at Nelson Mullins Riley & Scarborough, and chief public defender of Richland County. As chair of the Criminal Law Section, she served on the House of Delegates for the South Carolina Bar. Coggiola is co-editor of *The Criminal Law of South Carolina, Fifth Edition*. She is a member of the John Belton O’Neill Inn of Court and has been appointed to the Chief Justice’s Commission on the Profession. In addition, she is an adjunct professor at University of South Carolina School of Law. Coggiola is a graduate of the University of Miami and received a J.D. from the University of South Carolina School of Law in 1988. In 2008, Coggiola received University of South Carolina School of Law’s Compleat Lawyer Award.

E. P. “Rick” Corrigan III, principal at Corrigan & Corrigan LLC, has practiced law in the private sector for 27 years and has tried to a conclusion well over 150 cases. Among those cases are a number of defamation cases and cases involving disputes encompassing political issues where individuals were sued after speaking out on issues of public concern. He is one of the few lawyers in the state who has argued before the circuit and appellate courts in South Carolina for the need to apply the *Noer-Pennington Doctrine* as a federal common law protection of the rights of South Carolinians to speak out on issues of public concern. Corrigan received a J.D. from Cumberland School of Law at Samford University and a B.A. from Washington and Lee University

John F. Emerson is the general counsel for the Charleston County School District. He received a B.A. from Emory University and a J.D. from the University South Carolina School of Law. Following law school, Emerson clerked for the Honorable Robert F. Chapman of the United States Court of Appeals for the Fourth Circuit. He is a certified specialist in employment and labor law. Emerson has been a shareholder with Haynesworth Sinkler Boyd and special counsel with Nexsen Pruet. In 2001, Governor Jim Hodges appointed Emerson chair of the South Carolina Educational Television Commission, and in 2005 the University of South Carolina School of Law presented him with the Compleat Lawyer Award.

Douglas A. Henderson became the executive director of the Charleston County Public Library in August, 2010. Prior to that he was the assistant director of the Las Vegas–Clark County Library District from 1976–1997, and from 1997–2010 he served as director of the Loudoun County Public Library, consistently placed in the top ten ranking by Hennen American Public Library Index. Henderson has received the American Library Association’s Paul Howard Award for Courage for supporting open access to the internet. He has also received the Virginia Library Association’s Intellectual Freedom Award for his defense of intellectual freedom. He received his B.A. degree from the University of South Florida in 1974 and his M.A. in library science from Florida State University in 1976.

Brandon M. Inabinet is assistant professor of communication studies at Furman University in Greenville, South Carolina. Inabinet received his Ph.D. from Northwestern University, studying rhetoric and public culture. He teaches argumentation, advocacy, rhetoric, and communication ethics, focusing especially on the importance of civility and communication norms as contingent historical phenomena. His work on Senate decorum, proslavery public letters, and Ciceronian speech ethics has appeared in academic journals and has won awards from national organizations such as the National Communication Association and the American Society for the History of Rhetoric. Inabinet is currently working on a book that follows the unstable transition from republican deference to democratic campaign speech in the early United States, especially around the idea of a central bank. His research includes the analysis of speech texts, public letters, and visual media such as Jackson-era cartoons.

William M. Janssen joined the Charleston School of Law Faculty in 2006 after a lengthy practice with the mid-Atlantic law firm of Saul Ewing where he was then a litigation partner, chair of the firm’s interdisciplinary Life Sciences Practice Group and a member of the firm’s seven-member governing executive committee. Janssen concentrated his practice in pharmaceutical, medical device, and mass torts defense, risk management, and counseling. He is a graduate of the American University’s Washington College of Law where he was the executive editor of the *American University Law Review*, and a Moot Court board member and competitor. In addition to his scholarship in the area of pharmaceutical and medical device law, he is also a co-author of three texts and several articles on federal civil procedure.

Moderators & Panelists

Deadra L. Jefferson was elected circuit court judge, Ninth Judicial Circuit for the Circuit Courts of South Carolina in 2001. Prior to that, she served as family court judge of the Ninth Judicial Circuit for the Family Courts of South Carolina since 1996. A lifelong resident of Charleston, Jefferson is a graduate of Converse College where she received a B.A. in English and politics in 1985. She received a J.D. from the University of South Carolina School of Law in 1989 and was admitted to practice law in South Carolina in that same year. She is also admitted to practice before the Federal Bar and the U.S. Supreme Court. She is a member of many professional associations and commissions and is active in her community. Jefferson serves as a member of the Board of Trustees of Converse College, is on the Advisory Board of the Charleston School of Law, and is a member of the Liberty Fellowship Class of 2009. She has received numerous community and professional honors.

Amy Yager Jenkins is a partner at McAngus Goudelock & Courie LLC, where she chairs the firm's employment law practice group. Jenkins is certified by the South Carolina Supreme Court as a specialist in labor and employment law, and she is also a certified mediator. She handles all aspects of employment law including litigation pending in federal and state courts and claims pending with state and federal agencies including the EEOC. Jenkins has extensive experience in drafting and evaluating policies, handbooks, and contracts, and she regularly conducts training for clients, which includes anti-harassment training. Jenkins graduated *magna cum laude* from the University of New Hampshire Honors Program in 1989 and received a J.D. from the University of Virginia School of Law in 1993. Jenkins was selected for inclusion in the 2007–2011 editions of *The Best Lawyers in America* for employment law and was recognized in the 2008, 2009 and 2010 listings of *South Carolina Super Lawyers*. She served as president of the Rotary Club of Charleston from 2006–2007 and was selected as one of the “Forty Under 40” by the *Charleston Regional Business Journal* in 2005. Additionally, Jenkins co-authored the chapter on the Fair Labor Standards Act in *Labor and Employment Law for South Carolina Lawyers*, a publication of the South Carolina Bar.

Wendy J. Keefer, a partner at Keefer & Keefer, is an adjunct professor at the Charleston School of Law teaching courses in national security, separation of powers, and legal writing. Keefer began her legal practice as a law clerk to the Honorable J.L. Edmondson of the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia. In 1998, she began private practice in Charleston, South Carolina, where she spent most of her years focusing on employment law and appellate practice. She relocated temporarily to Washington, D.C., to serve in the U.S. Department of Justice as chief of staff and senior counsel in the Office of Legal Policy, where she worked on issues relating to counterterrorism, tort reform, and judicial nomination. She again spent time in Washington, D.C., with a small boutique firm, Bancroft Associates, working on a number of complex litigation and policy matters. Keefer continues to handle select litigation matters and focuses her practice on employment law, appellate matters, and other issues confronting South Carolina's small businesses, including U.S. Customs law compliance.

John C. Knechtle, professor and director of international programs at Florida Coastal School of Law, teaches constitutional law, international law, comparative law, Caribbean law clinic, legal history, and comparative constitutional law. In 2004, Knechtle was a Fulbright Scholar and served as visiting professor of international and comparative law at the University of World Economy and Diplomacy in Tashkent, Uzbekistan. He is the co-founder and past president of the American and Caribbean Law Initiative (ACLI), and he served as a member of the International Advisory Group to the Iraqi Constitutional Committee. Knechtle has been a contributing author to ten books and has written or edited over 250 American Bar Association reports analyzing draft laws from Eastern Europe and the former Soviet Union. In addition, he has authored or co-authored ten law journal articles, two of which are of particular interest to this symposium: “Holocaust Denial in the European Union and the Concept of Dignity,” 36 *Fla. St. U. L. Rev* 41 (2008), and “When to Regulate Hate Speech,” 110 *Penn St. L. Review* 539 (2006). He also serves as a commentator on Jacksonville's ABC, NBC, and FOX TV affiliates on issues of international and constitutional law. Knechtle received a B.A. from Wheaton College and a J.D. from Emory University School of Law where he was the editor-in-chief of the *International Law Journal*.

Moderators & Panelists

Hannah Rogers Metcalfe, attorney at Wyche Burgess Freeman & Parham, practices in the area of litigation, representing businesses and individuals as plaintiffs and defendants. Metcalfe has presented cases in state and federal courts and has represented clients before the South Carolina Court of Appeals, the South Carolina Supreme Court, and the United States Court of Appeals for the Fourth Circuit. She has handled a variety of cases, including commercial disputes, intellectual property, contracts, defamation and invasion of privacy, personal injury, mortgage and financial services, employment disputes, medical malpractice, product liability, healthcare, family law and appellate advocacy. Metcalfe is a former law clerk to both the Honorable William B. Traxler, Jr., United States Court of Appeals for the Fourth Circuit, and the Honorable Anita B. Brody, United States District Court for the Eastern District of Pennsylvania. A Columbia University School of Law graduate, she served on the *Columbia Law Review* and was Student Senate president.

Katie Fowler Monoc is an attorney with Pratt-Thomas Walker. Monoc graduated from Charleston School of Law in 2009, where she served as editor-in-chief of the *Charleston Law Review*. She received the American Law Institute/American Bar Association's Scholarship and Leadership Award and has been published numerous times, including co-authoring an article with the Honorable Alexander M. Sanders, Jr. Prior to law school, Monoc worked on various campaigns, in the South Carolina General Assembly, and at a consulting firm, as well as a non-profit, in Washington, D.C. Monoc is also a *cum laude* graduate of Presbyterian College in Clinton, South Carolina, where she received the Witherspoon Award for Outstanding Achievement in Political Science.

Deana Pollard Sacks, professor at Texas Southern University Thurgood Marshall School of Law, teaches torts and constitutional law. Her research is focused on the intersection of torts and constitutional law, the effects of media on cognitive development, and children's liberty rights. Her work has appeared in numerous academic journals, including the *Vanderbilt Law Review*, the *Minnesota Law Review*, the *U.C. Davis Law Review*, the *Washington Law Review*, and the *Yale Law Journal Online*. Sacks is currently working on a chapter for the book, *Implicit Racial Bias Across the Law* (Cambridge University Press, forthcoming, 2011), which discusses ideas for engaging the law of torts to redress the problem of harmful unconscious bias-motivated behavior. Sacks received a J.D. from the University of Southern California and a LL.M. from the University of California, Berkeley.

Adam F. Scales, professor at Washington and Lee University School of Law, has published numerous articles on insurance law and torts. Scales received a J.D. from the University of Michigan School of Law after receiving a B.A. from the University of Massachusetts Amherst where he was a member of Phi Beta Kappa. Scales was an associate for Faegre & Benson in Minneapolis, Minnesota before clerking for both Judge Michael J. Davis and Judge David S. Doty in the U.S. District Court for the District of Minnesota. He was also a law clerk to senior U.S. District Judge for the District of Minnesota, Judge Robert G. Renner. In addition to teaching, Scales also speaks on the subjects of insurance law, products liability, property law, tort reform, and torts.

Brian Scott-Smith has worked for BBC TV and Radio in the United Kingdom and was one of the newsreader voices for both BBC Radio Solent and UK commercial radio station WAVE105. He is now one of the main anchors and producers for a ground breaking and revolutionary online news service called Track180, based in Connecticut. Scott-Smith also lends his voice and presenting skills to a number of broadcast and corporate projects, both traditional and online, as well as producing video and audio podcasts for corporate use. He writes, hosts and directs a television series for Connecticut Public Television called *Treasure Hunt*, which is due to return to television in early 2011. Scott-Smith's background is in financial services, having been the press and public relations officer for Zurich Insurance in the UK. He is also a respected media trainer for the commercial and corporate world with clients including the British Armed Forces, the U.S. military, and University of Connecticut social workers.

Vincent A. Sheheen, South Carolina senator for the 27th District, serves on the committees for Agriculture and Natural Resources; Fish, Game and Forestry; the Judiciary; and Transportation. After graduating law school, he clerked for United States District Judge Joseph F. Anderson, Jr., taught as an adjunct professor at University of South Carolina School of Law, and served as the prosecutor for the City of Camden. Prior to serving in the South Carolina Senate, he served in the South Carolina House of Representatives and was named Legislator of the Year by the South Carolina Solicitor's Association. While in the House, Sheheen helped create a conservation land bank that has preserved thousands of acres of South Carolina. He is a graduate of Clemson University and University of South Carolina School of Law.

Moderators & Panelists

Aurore Y. Victor joined the Charleston School of Law faculty in Fall 2009 as an assistant professor of law teaching contracts, domestic relations and professional responsibility. Prior to joining the School of Law, Victor taught contracts and family law as a visiting professor at DePaul College of Law and served as a visiting clinical professor at the University of Miami School of Law. She has also taught legal advocacy and writing. Victor received her J.D. from Harvard Law School and her B.A. *cum laude* from Yale University, where she also was awarded Distinction in Political Science and the Roosevelt L. Thompson Prize. Prior to entering academia, Victor served as a law clerk to the Honorable Alan S. Gold, United States District Judge for the Southern District of Florida. For a number of years, she also represented corporate clients in complex cases as a litigation attorney with nationally regarded law firms, including Akin, Gump, Strauss, Hauer and Feld in Washington, D.C., and Hunton and Williams in Miami, Florida. Victor is a member of the Florida and District of Columbia bars.

Russell L. Weaver is professor of law & distinguished university scholar at University of Louisville, Louis D. Brandeis School of Law. He has written extensively on First Amendment issues, has a First Amendment casebook (Aspen, 3d ed., 2011), and has undertaken extensive empirical research regarding the impact of defamation rules in Australia, the United Kingdom, and the United States. Weaver graduated *cum laude* from the University of Missouri School of Law in 1978.

Robert M. Wilcox is associate dean for academic affairs & professor, University of South Carolina School of Law, where he teaches professional responsibility, mass communications, real property, and trust and estates. He co-authored the *Annotated South Carolina Rules of Professional Conduct* with Nathan Crystal and is the past director of the Nelson Mullins Riley & Scarborough Center on Professionalism. Wilcox serves on the Commission on the Profession, created by the South Carolina Chief Justice and on the South Carolina Commission on Judicial Conduct. He has drafted numerous articles on legal ethics and professional responsibility and additionally teaches legal education seminars on the topic around the state.

James F. M. “Jimmy” Williams serves as a principal in SNR Denton’s Public Law and Policy Strategies practice, specializing in federal banking, tax, and trade. He is widely considered to be an expert on Senate procedure. Williams works closely with U.S. Senate and U.S. House leadership staff, including advising the Senate Committee on Banking, Housing, and Urban Affairs, the House Financial Services Committee, the House Ways and Means Committee, and the Senate Finance Committee. Before joining SNR Denton, Williams served as senior political advisor to Carl Icahn, senior policy advisor the then-senator Joe Biden, majority staff director of the Senate Banking Subcommittee on Economic Policy, senior advisor to Senator Charles Schumer, and senior economic policy advisor to Senate Majority Whip Richard Durbin. Notably, Williams assisted in drafting and passing the Sarbanes-Oxley Act, the China-PNTR (Permanent Normal Trade Relations) legislation, and the Budget Acts of 1998 to 2003. Prior to his work in legislative policy, he graduated from the Citadel. Williams is a senior political commentator on MSNBC.

Nancy L. Zisk joined the Charleston School of Law in 2004 to teach torts, employment discrimination, and equity. In 2006, she was named Professor of the Year by students and associate dean for academic affairs by the school. In 2007, she was made an associate professor and received tenure in Spring 2009. Prior to coming to Charleston, Zisk was an adjunct professor of law at the Washington College of Law at American University in Washington, D.C., where she taught remedies. Zisk has published articles on employment discrimination and medical malpractice in journals such as *William and Mary’s Journal of Women and the Law* and the *Duke Journal of Gender & Law Policy*. She is a *cum laude* graduate of Duke University School of Law.

Charleston Law Review is a general interest publication committed to the finest scholarship and research across a broad range of topics in the law. Its primary objective is to foster the knowledge and insight of students, practitioners, scholars and the judiciary through a traditional forum dedicated to augmenting the pursuit of innovative legal expression, composition and scholarship. Members of the Law Review contribute to this objective by editing articles, writing notes and actively participating in all aspects of the publication process.

The Charleston Law Review is an independent organization composed entirely of second and third year students at the Charleston School of Law. In order to gain membership on the Charleston Law Review, students must compete in a writing competition that begins after spring semester finals have concluded. After completion of the writing competition, offers for membership are made to students based on a combination of grades and the scored writing piece. By participating in the publication process, members of the Charleston Law Review receive invaluable analytical skills and extensive legal writing and editing experience.

The Riley Institute at Furman is a non-partisan organization affiliated with the Department of Political Science at Furman University. Named for former Governor of South Carolina and United States Secretary of Education Richard Riley, the institute engages students in politics, public policy and public leadership through collaborative research, study abroad opportunities and internships.

Since its inauguration in 1999, the Riley Institute also has developed community leadership programs, symposia and conferences designed to promote discussion and analysis of public policy issues. Through its promotion of engaged learning, leadership development and conferences featuring internationally recognized speakers, the Riley Institute has established itself as an innovator in policy and public leadership education.

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