



THE JOHN MARSHALL LAW SCHOOL

Pilot Policy on Class Recordings

(Pilot Extended Through August 16, 2019)

1. Reasons for and Applicability of Pilot Policy:

- a. **Applicability:** This pilot policy covers only class recordings for student use. It does not govern recordings of events other than classes, nor does it govern recordings made for a faculty member's own pedagogical or scholarly use, or recordings made on the law school's behalf for institutional purposes.
- b. **Reasons for Pilot:** The law school understands that (a) some students have legitimate reasons to miss a class and recording the class may help the student understand the material covered in class that day; (b) listening to classes multiple times may assist some students gain a better understanding of the material; (c) technology has advanced to allow individual students make high-quality recordings, including secret recordings; (d) professors and the law school have legitimate interests in ensuring that their classes are not disrupted and that the content of classes is limited to registered students; (e) that the professors and law school have an interest in promoting class attendance and participation while assisting students in ways that enhances their legal education; and (f) the law school's current staffing, budget, hardware, and software are not sufficient to record and distribute the number of classes that students and faculty may desire. For these and other reasons, the law school has launched this pilot to help determine whether allowing students to record classes without institutional assistance is viable and not disruptive, and to help determine the level of institutional recording support that may be warranted in the future.
- c. **Privilege, Not a Right:** Although the law school is attempting to allow more class recordings available under this pilot, students should understand that recording and accessing class recordings are privileges, not rights. We hope and expect that students will act professionally when requesting to record under this policy. We also encourage faculty members to participate in this pilot program to the greatest extent they may be comfortable.

- d. **Collecting Data to Evaluate the Pilot Policy:** In Spring 2019, the law school will collect data and information from faculty and students about the pilot policy and how it has operated. The law school faculty and administration will then evaluate that information to determine whether to extend the pilot or to prepare a new recording policy.
- e. **Expiration:** If the faculty does not reaffirm this policy by August 16, 2019, it will expire by its own terms.

2. General Practices:

- a. **Student-Made Recordings:** Except as described in Sections 3(b) and 3(c), the law school allows each law professor to determine whether his or her classes may be recorded by individual students. Students may have valid reasons to record a class, and the professor may have valid reasons why a class typically should not be recorded. Students who seek to record a class should follow the instructions in Section 3.
- b. **Law-School Recordings:** The law school also has an interest in whether certain classes should be recorded, and in ensuring that the law school and its employees follow the law, including the Americans with Disabilities Act; law-school recording is outlined in Section 4. Faculty members may not object to recordings approved under Section 4.

3. Instructions for Recordings Made by Students:

- a. **Seeking Advance Written Permission to Record:**
 - i. **Advance Written Permission Required:** Consistent with our mission of training lawyers who act with the highest standards of honesty, integrity, and trustworthiness, and with respect for the legitimate interests of others, students must obtain the express written authorization of the course professor before recording any class session by any means. We also encourage students to request class recordings only when they actually intend to listen to and use the recordings, not simply to collect them for possible future use.
 - ii. **Professor's Decision Controls:** If a student seeks to record one or more class sessions under Section 3—typically because the student will be absent—the student must first ask the professor for permission to record, and must abide by the professor's response. The professor's decision is not appealable.
 - iii. **Situations in Which Professors Are Encouraged to Allow Recordings:** Although professors have authority to approve or

deny requests to record, professors are encouraged to consider favorably requests based on the following reasons:

1. Medical reasons (such as the student's illness or injury, or unavoidable medical appointment) or family emergencies (such as a funeral or the serious illness of a family member for whose care the student is responsible);¹
 2. The student's sanctioned participation in a law-school approved interscholastic advocacy competition or other event in which the student is serving as an official representative of JMLS;
 3. The student's appearance in a court or administrative agency in connection with a clinic in which the student is enrolled;
 4. Rescheduled classes; and
 5. Review sessions held outside the normal class period.
- iv. **No Lying:** Students must not lie about the reasons he or she is requesting to record a class.
- v. **Back-Up Documentation:** Faculty members may request documentation to verify a request, but should keep any medical information received strictly confidential and are authorized to share it only with the Dean, Associate Dean for Faculty Affairs, Registrar, or the Chair of the Student Support and Emergency Team.
- vi. **Only Audio Recordings Allowed:** Only audio recordings are permitted; students may not videotape a class.
- vii. **Specifics of Seeking Permission:** Before recording a class, the student must obtain the professor's permission in writing. The request should be sent as early as possible, because professors may not be able to respond to last-minute requests. Unless the professor provides different instructions, the request should be sent via email and should include:
1. The dates of specific class sessions to be recorded;

¹ Students seeking reasonable accommodations under the Americans with Disabilities Act or for longer-term medical issues should proceed under Section 4 of this policy. Students who seek to record under Section 3 may also consult with the Associate Dean for Faculty Affairs if they have medical documentation they are not comfortable providing directly to a faculty member.

2. All reasons the student seeks to record the class;
3. The name of the student for whom the recording will be made;
4. The name of the student who will be making the recording, which could be different from the name of the student for whom the recording is being made; and
5. Details about whether the student also seeks to share or distribute the recording.

If the professor grants approval in writing, the student may record the designated class session(s). The professor and the student should retain copies of the written approval for their records. The law school will not centrally maintain, or otherwise manage, these communications.

- viii. **Silence Does Not Equal Consent:** A professor's silence does not imply permission to record. If the professor does not respond to a student's request to record, the student may not record the class.
- ix. **When a Professor Does Not Allow Recording:** If the professor denies a recording request, that decision is final. The student might ask one or more classmates whether they might share their class notes for the session.
- x. **Physically Recording the Class:** If the professor authorizes a student to record a class, the student must either record the class with his or her own equipment, or, if the student will be absent, must arrange for a classmate to record the class. The law school will not provide recording hardware or services, or otherwise facilitate the recording. The student should not ask a faculty or staff member to make a recording. The law school is not responsible for the quality of any recordings made by a student or student's designee.
- xi. **Including Recording Information in Course Syllabus:** Faculty members are encouraged to address the issue of student recordings in the course syllabus. For example, the professor may decide that individual students may not record classes and that the only recordings will be those allowed under Section 4 may be made; conversely, the professor may give students blanket permission to record all class sessions. Professors may also decide student may record only make-up classes or review sessions. Professors may also use the course syllabus to address

issues such as when an authorized recording must be deleted, how far in advance students should strive to seek permission, whether a student may place a recording device on the podium or must be used from the student's seat in class, and other logistical issues.

- b. **Recording Clinical Classes Prohibited:** Because of the potential to divulge information protected by the attorney-client privilege, an individual student may not record, or seek permission to record, a class session associated with a clinical program.
 - c. **Recording Classes in Courtrooms Outside JMLS Prohibited:** Because recording is prohibited in most courtrooms in state and federal buildings, an individual student may not record, or seek permission to record, a class session held in an off-premises courtroom, or other room or area within a courthouse.
 - d. **Distributing Recordings:** If a faculty member gives a student permission to record a class session, that recording is for the student's own educational use and should not, in whole or part, be shared, copied, transmitted, uploaded to a website, or otherwise distributed without the faculty member's express written permission. If a faculty member gives a student permission to record a class and approves a designated classmate to make the recording, the classmate may share the recording with the designated student.
 - e. **Deleting or Erasing Recordings:** If a faculty member does not indicate how long a student may maintain an authorized recording, the student must erase, delete, or otherwise destroy the recording within a week of the student completing the final examination in the course or a week after the final examination period for that term ends, whichever occurs first.
4. **Recording by the Law School:** The law school will use its equipment and resources to record classes—usually audio only—only under the circumstances listed below. Recordings for individual students will be authorized by the Academic Services Office or the Associate Dean for Faculty Affairs as noted in Section 4(b). When a student is authorized to receive a class recording, the Academic Services Office will contact the student with information about how to access the recording and other matters, such as how long the student will have access to the recording. The faculty member will be informed that a class is or needs to be recorded, but the law school may not be able to share the reason why or for whom the recording is being made.

- a. **Recording for Individual Students—Seeking Authorization:** All students are expected to attend class regularly and to miss class only in exceptional circumstances. If a student’s situation falls into one of the categories listed below, the student should complete the “Request for Recording” form and submit it to the Academic Services Office; a student with a documented disability should work directly with the disability coordinator in the Academic Services Office. A student should submit completed Request for Recording at least 5 business days before the first class to be recorded. It will be difficult for the law school to record classes on shorter notice; students who seek recordings on shorter notice, even in case of an emergency, should follow the instructions in Section 3.
- b. **Bases for Law-School Recordings:** The law school will record classes for individual students only in the following circumstances:
- i. The student has a documented, ongoing (more than one week) serious medical situation as determined by the Associate Dean for Faculty Affairs or the Associate Dean’s designee;
 - ii. Birth of a child (either parent);
 - iii. Religious observance;
 - iv. To provide reasonable accommodation for a student with a disability;
 - v. Jury duty expected to last more than one day;
 - vi. Military commitment expected to last more than one day; and
 - vii. Other comparable reasons, as determined by the Associate Dean for Faculty Affairs, or the Associate Dean’s designee. Job interviews will not be accepted as a reason to make a law-school recording.
- c. **Recordings for the Entire Class:** On rare occasion, the law school will record a class session and make the recording available to all students enrolled in that class. For example, the law school may opt to record a class and make it available to all students enrolled in the class when severe weather makes it difficult for large numbers of students to come to campus safely. Recording under this provision will be approved by the Dean, or the Dean’s designee, after consulting with the Associate Dean for Faculty Affairs and the Director of Information Technology Services, and when possible, the faculty member.
- d. **Caveats:**

- i. Recording may be limited by available technology or demand, by equipment or technology failure, or by human error; this policy is not a guarantee of successful recording. Recordings will be provided or made available under the circumstances, in the manner, and for the time period specified by the law school.
 - ii. Recordings typically will be deleted within one week after the end of the semester in which they were made. Although some recordings may be retained for longer periods of time, recordings will be periodically deleted, without notice, and indefinite archiving of particular recordings cannot be accommodated, even upon request.
5. **Recordings by Faculty Members:** Nothing in this policy bars a faculty member from using non-school equipment to record, stream, download, or distribute to registered students the faculty member's own classes. If a faculty member records or distributes a recording, the faculty member may impose restrictions on the extent that students may retain or share the recordings. In the absence of written permission from the Dean, the faculty member may not use the recordings for commercial purposes or distribute them to individuals who are not registered students.
6. **Recording Not a Substitute for Class Attendance:** Recording classes is not a substitute for attending class, and reviewing a recorded class will not, absent extraordinary circumstances approved by the Dean or Associate Dean for Faculty Affairs, be permitted to substitute for actual class attendance.
7. **Consequences for Students Who Violate This Policy:** A student who records or distributes a class without the faculty member's permission, who lies about the reason the student is requesting the recording, or who otherwise violates this policy, is subject to discipline under the Code of Conduct. In addition, students should understand that making secret recordings can violate state and federal laws, including wiretapping statutes, and that distributing recordings without permission may also violate state and federal laws, such as privacy and copyright laws.
8. **No Expectation of Privacy in Classrooms or Other Public Spaces:** Students, faculty, staff, and visitors to The John Marshall Law School should not have an expectation of privacy in classrooms or any other public space within the law school. All classrooms, other rooms used for classes, commons areas, and other public spaces may be programmed to be audio- or video-recorded at any time when classes or events are or may have been scheduled to occur. Accordingly, private conversations may be inadvertently recorded (and accessed) pursuant to this policy, even when such conversations occur in an empty classroom or space. Please be aware that recordings may begin before the actual class start time and may continue past the normal class ending

time. In addition, class sessions are not considered to be private conversations.

Faculty policy approved May 8, 2017; supersedes language in faculty and staff handbooks concerning the ability of individuals to opt out of being recorded. Effective May 18, 2017; extended by faculty vote on May 4, 2018.