

EQUAL PROTECTION: A MOOT COURT SEMINAR

POLS 40075-01
MW 5:05-6:20 p.m.
Spring 2018
Nanovic Hall B032

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Office Hours: MW 3:30-5:00

A. Introduction

This course will explore the development of modern equal protection law through a series of moot court exercises. Students will play the role of lawyers and justices and retry famous Supreme Court cases from American history on five topics: school desegregation, sex discrimination, disparate impact, affirmative action, and sexual orientation discrimination.

The course is intended to (1) provide students with a firm understanding of the complicated legal issues involved in modern equal protection controversies, (2) help students develop effective and persuasive communication skills, (3) familiarize students with the challenges of building a fair and respectful society, (4) encourage students to promote social justice in their own communities, and (5) challenge students to think carefully about their own views on civil rights.

B. Course Materials

- Balkin, Jack. 2002. *What Brown v. Board of Education Should Have Said*. NYU Press.
- Koppelman, Andrew. 2002. *The Gay Rights Question in Contemporary American Law*. University of Chicago Press.

C. Student Responsibilities and Grades

Students will be assigned to a role as a lawyer or justice for the entire semester. Lawyers are required to act as lead counsel in two moot court exercises and play a supporting role in the other three. Lead counsels will write a brief and deliver a 30-minute oral argument presenting their side of the case. Lawyers will also be expected to participate in class discussions.

Final grades for lawyers will be determined based on:

- Each written brief (20% x 2 = 40%)
- Each oral argument (20% x 2 = 40%)
- Class participation (20%)

Justices are required to participate in all five moot court exercises. For each exercise, justices are required to participate in oral arguments and a conference discussion debating the merits of the case. Justices are also required to write two opinions during the semester. Justices will also be expected to participate in class discussions.

Final grades for justices will be determined based on:

- Each written opinion: 20% x 2 = 40%
- Oral argument: 4% x 5 = 20%
- Conference participation: 4% x 5 = 20%
- Class participation: 20%

D. Course Structure

Each moot court exercise will span five weeks and overlap with other moot court exercises:

Two Weeks before Oral Arguments

Before Thursday: lead counsels prepare a first draft of their brief

Thursday in class: supporting lawyers critique drafts and advise lead counsels on revising briefs

Week before Oral Arguments

Before Thursday: lead counsels prepare penultimate draft of their brief

Thursday in class: supporting lawyers critique briefs and advise lead counsel on oral arguments

Week of Oral Arguments

Sunday at noon: lead counsels email final briefs to instructor; instructor will email to the class

Before Tuesday: all lawyers and justices read briefs from both sides

Tuesday in class: oral arguments (see below for details)

Thursday in class: conference (see below for details)

Week after Oral Arguments

Before Thursday: opinion authors prepare a first draft of their opinion

Thursday in class: other justices critique drafts and advise opinion authors on revising opinions

Two Weeks after Oral Arguments

Before Thursday: opinion authors write penultimate draft of their opinion

Thursday in class: other justices critique drafts and advise opinion authors on revising opinions

Sunday at noon: justices email opinions to the instructor; instructor will email to the class

Oral Arguments and Conference

The oral arguments will be one hour long, with 30 minutes for each side. Lawyers will present arguments and respond to questions from the justices. On the Thursday after oral arguments, the justices will meet in conference to discuss the merits of the case. Each justice will state his or her initial views in order of seniority, after which the chief justice will moderate a general discussion on the case. After the discussion, justices will cast their votes in order of seniority, the chief justice or senior justice in the majority will assign the opinion of the court to a justice in the majority (with the consent of the author), and all the justices will declare whether they intend to write a separate opinion or join another justice's opinion.

Written Materials and Class Participation

All briefs and opinions must be between 2500 and 3000 words in length. Papers must be double-spaced, 12-point Times New Roman font, with 1-inch margins. Paragraphs must be indented and must not be separated by a blank line. Papers must use a standard citation system of your choice. Written material will be evaluated based on writing quality, organizational structure, logical clarity, and a demonstrated understanding of course material. Class participation will be evaluated based on frequency and quality of in-class discussion. All papers should be emailed to matt.hall@nd.edu; written material should not be submitted in hard copy. Students are required to meet all deadlines for course material. Written material submitted in the first 24 hours after the deadline will be accepted with a 10% grade reduction. WRITTEN MATERIAL WILL NOT BE ACCEPTED MORE THAN 24 HOURS AFTER THE DEADLINE

Academic Honesty Statement: Class members are expected to understand the principles and procedures set forth in the University of Notre Dame Academic Code of Honor (<http://www.nd.edu/~hnr/code/>) and abide by its pledge: “As a member of the Notre Dame community, I will not participate in or tolerate academic dishonesty.”

Disability Services: Any student who feels that he/she may need accommodations in order to meet the requirements of this course due to presence of a disability should contact the instructor to make appropriate arrangements.

Attendance Policy: Students are expected to attend all classes, and all students are absolutely required to attend all of the moot court exercises. Failure to attend class will negatively affect your participation grade unless the absence is excused. If you cannot attend class due to an important family or medical reason, please notify the instructor in advance. Participation in the moot courts cannot be made up for at a later time, except for extreme circumstances.

Course grading scale:

A: 93-100, A-: 90-92, B+: 87-89, B: 83-86, B-: 80-82, C+: 77-79, C: 73-76, C-: 70-72, D: 60-70, F: below 60

E. Weekly Schedule

Week 1—Aug. 26: Introduction

Plessy v. Ferguson (1896)

United States v. Carolene Products Co. (1938) [Read only the syllabus and Footnote 4]

Korematsu v. United States (1944)

—Aug. 28: School Desegregation 1

Sweatt v. Painter (1950)

Balkin, appendix A, pp. Ch. 2-3

Week 2—Sept. 2, 4: School Desegregation 2

Balkin, opinions of Ackerman, MacKinnon, and Bell.

Bickel, Alexander M. 1955. “The Original Understanding and the Segregation Decision.”

Harvard Law Review 69(1):1-65. (skip pp. 29-56)

McConnell, Michael. 1996. “The Originalist Case for *Brown v. Board of Education*.”

Harvard Journal of Law & Public Policy 19(2):457-464.

Week 3—Sept. 9, 11: Moot Court #1: *Brown v. Board of Education* (1954)

Week 4—Sept. 16, 18: Sex Discrimination 1

Reed v. Reed (1971)

Geduldig v. Aiello (1974)

Craig v. Boren (1976)

Week 5--Sept. 23, 25: Sex Discrimination 2

Personnel Administrator of Massachusetts v. Feeney (1979)

Michael M. v. Superior Court of Sonoma (1981)

Rostker v. Goldberg (1981)

Week 6—Sept. 30, Oct. 2: Moot Court #2: *Rostker v. Goldberg* (1981)

Week 7—Oct. 7, 9: Disparate Impact 1

Yick Wo v. Hopkins (1886)

Gomillion v. Lightfoot (1960)

Palmer v. Thompson (1970)

Washington v. Davis (1976)

Week 8—Oct. 14, 16: Disparate Impact 2

Arlington Heights v. Metropolitan Housing Corp. (1977)

Rogers v. Lodge (1982)

McCleskey v. Kemp (1987)

Oct. 21, 23: NO CLASS, Fall Break

Week 9—Oct. 28, 30: Moot Court #3: *McCleskey v. Kemp* (1982)

Week 10—Nov. 4, 6: Affirmative Action 1

Fiss, Owen M. 1976. "Groups and the Equal Protection Clause." *Philosophy of Public Affairs* 5(2):107-77.

Balkin, Jack M. and Reva B. Segal. 2003. "The American Civil Rights Tradition: Anticlassification or Antisubordination?" *University of Miami Law Review* 58:9-33.

Loving v. Virginia (1967)

Week 11—Nov. 11, 13: Affirmative Action 2

Regents of the University of California v. Bakke (1978)

Adarand Constructors, Inc. v. Peña (1995)

Grutter v. Bollinger (2003)

Parents Involved in Community Schools v. Seattle School Dist. No. 1 (2007)

Week 12—Nov. 18, 20: Moot Court #4: *Parents Involved v. Seattle School Dist. #1* (2007)

Week 13—Nov. 25: Sexual Orientation Discrimination 1

Koppelman, ch. 1-4

Bowers v. Hardwick (1986)

Romer v. Evans (1996)

Nov. 27: NO CLASS, Thanksgiving Break

Week 14—Dec 2, 4: Sexual Orientation Discrimination 2

United States v. Windsor (2013)

Hollingsworth v. Perry (2013)

Obergefell v. Hodges (2015)

Week 15—Dec. 9, 11: Moot Court #5: *Obergefell v. Hodges* (2015)