
SYLLABUS

LAW AND SEX

STRONG & SEXUALLY EXPLICIT LANGUAGE WILL BE USED IN THIS CLASS. IF YOU ARE OR MAY BE OFFENDED BY PROFANITY, NUDITY, SEXUALITY, OR OBSCENITY YOU SHOULD NOT TAKE THIS CLASS

Special Topics in American Politics: LAW AND SEX
POLI 104M
University of California San Diego
Spring 2007
MATTHEUS .E. STEPHENS, ESQ.

March 28, 2007

INTRODUCTION

This four-credit course will explore legal issues surrounding sexuality and the ways in which law regulates sexuality. The objective is to familiarize students with the historical relationships between the law and sex; introduce current controversies in legal theory and doctrine; foster independent thinking about the relationship between the law and sex; and enable students to explore aspects of the interrelationships between sexuality and law through course readings and class discussion. The course will focus on constitutional law in the areas of privacy, free speech, association, sexual conduct, reproductive rights, and the regulation of family status.

The primary text for the course is W. Eskridge & N. Hunter, *Sexuality, Gender and the Law* (Foundation Press) 2nd Edition, 2004.

The class meets twice a week, on Monday and Wednesday from 5:00 p.m. to 6:20 p.m. You will be required to do a lot of reading, re-reading and case summaries. Class attendance is critical. It is also helpful to talk in and after class about the materials.

CONTROVERSIAL TOPICS

Students of all viewpoints, philosophies, religions, and backgrounds are encouraged to express their thoughts in this class. In fact, it is critical to our success. Open communication between classmates, regardless of your social, political or religious views or status is fundamental to achieving a full dialogue on these dangerous topics. There is only one rule that **MUST** unequivocally be followed: all class participants must treat each other with courtesy and respect. There will be **ABSOLUTELY** no personal attacks or name-calling. This class emphasizes reasoning and analysis - not positions.

DISCLAIMER

Strong and sometimes offensive language will be used in the class. There will also be frank and graphic discussions about sexuality, including but not limited to, viewing graphic and sexually explicit photographs (particularly during the film "*Dirty Pictures*."). The candor required for this course, and the use of said language and pictures, is in my view necessary to properly convey the material - particularly the material on the First Amendment. If you believe you will find such language or photographs offensive, you need to drop this class!

OFFICE HOURS AND CONTACT INFORMATION

I am not a full-time professor. I am a practicing lawyer, which makes regular office hours challenging. Office hours will be at [TBD] following class or at the address below by appointment.

Contact Information: Phone: (619) 234-5488; Email: mestephens@stockstephens.com. My office is located at 110 West "C" Street, Suite 1810, San Diego, California (on the corner of First and "C" in the "Chamber Building").

ACADEMIC DISHONESTY

Fair and effective education requires academic honesty, and any violation is a very serious matter. UCSD rules concerning academic dishonesty are spelled out in the General Catalog. Exams are *closed-book*, with no aids allowed. These rules will be strictly enforced. Any academic dishonesty will **without exception** be reported to the student's dean for disciplinary action. Please go to the following website for the entire UCSD Policy on Integrity of Scholarship:

<http://www-senate.ucsd.edu/manual/appendices/app2.htm#AP14>.

READING ASSIGNMENTS

April 2 [Class One]

Overview of the Class/Syllabus
How to read case law & brief cases
Common terms
Kinsey Hand-Out

April 4 [Class Two]

Introductory Materials
Eskridge & Hunter, Preface on Constitutional Rights, pp. xlix-lxiv

April 9 [Class Three]

Sexual Privacy (State v. Individual): Contraception
N.Y. v. Sanger
Poe v. Ullman
Griswold v. CT
Bork, "Neutral Principles"
Eskridge & Hunter, Chapter One, pp. 1-23 (Up to Part B)

April 11 [Class Four]

Expanding Sexual Privacy:
Contraception, Abortion and Pornography
Stanley v. Georgia
Eisenstadt v. Baird
Eskridge & Hunter, Chapter One, pp. 23-30 (Up to Part C)

April 16 [Class Five]

Pregnancy & Privacy

Roe v. Wade

Planned Parenthood v. Casey

South Dakota

California

Eskridge & Hunter, Chapter One, pp. 30-43

April 18 [Class Six]

State Regulation of Unmarried Sexual Practices:

Fornication, Adultery & Sodomy

People v. Onofre

Bowers v. Hardwick

KY v. Wasson

Powell v. State

Eskridge & Hunter, Chapter One, pp. 44-63 (Up to Section 3)

April 23 [Class Seven]

The Watershed

Lawrence & Garner v. Texas

Glucksberg ~ compare right to die

Eskridge & Hunter, Chapter One, pp. 74-98 (Up to "Part C")

April 25 [Class Eight]

Theories of Sexuality: Kinsey hand out

Finnis, "Law, Morality" pp. 506-511 (Up to "Congregation")

Rubin, "Thinking Sex" pp. 551-560 (Up to "Note on the Clash")

Eskridge & Hunter, Chapter Four, pp. 505-511; 551-560

April 30 [Class Nine]

Law and Social Construction

Foucault; Butler

Price Waterhouse

Eskridge & Hunter, Chapter Four, pp. 584-589; pp. 598-613 (Up to Section 3)

May 2 [Class Ten]

A Film: *Dirty Pictures*

May 7 [Class Eleven]

MIDTERM

May 9 [Class Twelve]

Sex and the First Amendment: Obscenity or Political Speech?

One, Inc.

GSO v. Bonner

PT & T

Cole & Eskridge, "Hand-Holding to Sodomy"

Eskridge & Hunter, Chapter Three, pp. 323-339 (Up to "Part B")

May 14 [Class Thirteen]

Sexuality and the First Amendment: Don't Tell

National Gay Task Force

Rust v. Sullivan; Rosenberger

Weaver v. Nebo School Dist.

Rowland v. Mad River (pp. 629-634)

Eskridge & Hunter, Chapter Three, pp. 339-352; 629-634

May 16 [Class Fourteen]

First Amendment: Identity & Viewpoint

Roberts v. Jaycees

Hurley v. Irish American

BSA v. Dale; Barnes-Wallace v. BSA

Eskridge & Hunter, Chapter Three, pp. 383 ("The Right of Assoc.") - pp. 418

May 21 [Class Fifteen]

Sexual Speech & Censorship

Luke Records

Crenshaw, "Mapping the Margins"

Barnes v. Glen Theatre ("Kitty Kat Lounge")

Cole, "Playing by Porno's Rules"

Kandyland

Eskridge & Hunter, Chapter Three, pp. 419-421; 427-445 (Up to "Part B")

May 23 [Class Sixteen]

Sex Education & Sexuality in the Classroom

Tinker; Fricke; Fraser

Yunits; Till; Board of Ed. v. Pico

"Harmful to Minors" H.O.

Eskridge & Hunter, Chapter Seven, pp. 901-927

May 28 [Class Seventeen]

*** No Class ***

May 30 [Class Eighteen]

Equal Protection: Equality Arguments about Sexuality & Race

Loving v. Virginia

Romer v. Evans

Lawrence & Garner (Take 2)

Eskridge & Hunter, Chapter Two, pp. 165-169; 259-282

June 4 [Class Nineteen]

Arguments About Marriage

Zablocki & Turner

Baehr v. Lewin (also @ pp. 304-307)

Baehr v. Miike

Baker v. State (VT) (@ pp. 283-297)

Goodridge v. Dept. of Health (MA) (@ 1553-1563)

Eskridge & Hunter, Chapter Eight, pp. 1064-1083 (To "In re Estate")

June 6 [Class Twenty]

Marriage Continued

Interstate Recognition of Domestic Partners; California Statutes

Langen v. St. Vincent's Hospital

DOMA; Cali Mini Doma

AB 205 & Woo Marriage Cases

The Federal Marriage Amendment

Eskridge & Hunter, Chapter Eight, pp. 1086-1097

MIDTERM & FINAL EXAMS

The midterm will be May 7, 2007 and will count for 40% of your grade. The final exam is scheduled for June 13, 2007 from 7:00 p.m. to 10:00 p.m. The final will count for 60% of your grade. A class review session can be scheduled.

The class is designed to have substantive content and expand your reading and analysis skills. To get the most out of it, you must attend, do the reading and participate in what no doubt will be lively discussions. I hope you enjoy this class.

Mattheus E. Stephens