
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 Sci 104M
University of California at San Diego
Fall 2008
Mattheus E. STEPHENS, ESQ.

August 21, 2009

INTRODUCTION

This four-credit course will explore the legal issues surrounding sexuality and the ways law regulates sexuality. The objective of the course is to familiarize students with the historical relationships between the law and sex; to introduce students to current controversies in legal theory and doctrine relating to sexuality; to foster independent thinking about the relationship between the law and sex; and to enable students to explore aspects of the interrelationships between sexuality, sexual orientation and law through course readings and class discussion.

The course will focus on constitutional law in the areas of privacy, free speech, association, regulation of sexual conduct under criminal law, pornography, procreation, 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) 2d Edition, 2004 and the most current Supplement to *Sexuality, Gender and the Law*.

The class meets once a week, on Tuesday from 6:30 p.m. to 9:20 p.m. There is so much material to cover that it's important to start class on time. We will be hard-pressed to finish all the material by the end of the semester. To get the most out of this class, you will be required to do a lot of reading, re-reading and case summaries. It is also helpful if you talk in class. I find that students who articulate concepts in class generally do quite well on the exams.

You are not permitted to record the lectures. These lectures are a dialogue between you, your classmates and me. They are not intended for posting or use in other forums. Please respect this request.

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. Note especially the strict prohibition against plagiarism, i.e., submitting as your own or without proper attribution work done wholly or in part by another person. Plagiarism includes unauthorized collaboration on course assignments. 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>.

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 will emphasize your reasoning and analysis skills - not the positions you take.

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 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. Unless otherwise indicated, on-campus office hours will be at the LGBTQ Center each Tuesday before class from 5:15 until 6:10, and by appointment. My office address, phone number and e-mail address are listed below. The TA's Paula Jacobson and Ellen Moule will post office on the first night of class and will list them on the court website.

Office: (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." The most convenient parking is in the building, but we do not validate. The Horton Plaza parking structure is one block south east of the office.

READING ASSIGNMENTS

September 30 [Class One & Two]

- *Overview of the Class/Syllabus

 - How to read case law & brief cases

 - Common terms

- *Kinsey Hand-Out; Film: *The History of Sex Part IV*

October 7 [Class Three & Four]

- * Introductory Materials

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

- * The Right to Sexual Privacy (State v. Individual): Contraception and Abortion

 - N.Y. v. Sanger; Poe v. Ullman; Griswold v. CT*

 - Eskridge & Hunter, Chapter One, pp. 1-23 (Up to "Part B")*

October 14 [Class Five & Six]

- * Expanding Sexual Privacy: Contraception, Abortion and Pornography

Stanley v. Georgia; Eisenstadt v. Baird; Roe v. Wade; Planned Parenthood v. Casey
Eskridge & Hunter, Chapter One, pp. 23-43

* 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)

* The Watershed
Lawrence & Garner v. Texas
Eskridge & Hunter, Chapter One, pp. 74-98 (Up to "Part C")

October 21 [Class Seven & Eight]
MIDTERM

October 28 [Class Nine & Ten]

The "M" Word: Legal Arguments About Marriage and What it Means
Loving v. Virginia; Zablocki & Turner; Baehr v. Lewin (pp. 304-307)
Baehr v. Miike; Baker v. State (VT) (@ pp. 283-297);
Goodridge v. Dept. of Health (MA) (@ pp. 1553-1563)
Eskridge & Hunter, Chapter Eight, pp. 1064-1083 (To "In re Estate")

Creation and Recognition of Domestic Partners; California Statutes
Langen v. St. Vincent's Hospital; DOMA; Cali Mini Doma
AB 205 & The Marriage Decision; Proposition 8
Marriage Decision "outtakes" H.O.
Eskridge & Hunter, Chapter Eight, pp. 1086-1097

November 4 [Class Eleven & Twelve]
A Film: *Dirty Pictures*

November 11 – HOLIDAY/ VETERANS' DAY

November 18 [Class Fifteen & Sixteen]

Sex and the First Amendment: Obscenity or Political Speech?
One, Inc.; GSO v. Bonner; Cole & Eskridge, "Hand-Holding to Sodomy"
Eskridge & Hunter, Chapter Three, pp. 323-339 (Up to "Part B")

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

November 25 [Class Seventeen & Eighteen]

More First Amendment: Identity & Viewpoint

"The Right of Association"

Roberts v. Jaycees; Hurley v. Irish American; BSA v. Dale

Eskridge & Hunter, Chapter Three, pp. 383-418

Sexual Speech & Censorship

Luke Records; Crenshaw, "Mapping the Margins";

Barnes v. Glen Theatre ("Kitty Kat Lounge"); Cole, "Playing by Porn's Rules"

Kandyland

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

December 2 [Class Nine & Ten]

* Theories of Sexuality:

Kinsey Studies (Review hand out);

Finnis, "Law, Morality, and Sexual Orientation" (pp. 506-511);

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

Eskridge & Hunter, Chapter Four, pp. 506-511; 551-560

* Law and Social Construction: Sexuality as a Social Construction

Foucault; Butler; *Hopkins v. Price Waterhouse; Vegas Dress Code Case*

Eskridge & Hunter, Chapter Four, pp. 584-589 (To Problem 4-2); pp. 598-613 (Up to Section 3)

Review Session

MIDTERM & FINAL EXAMS

The midterm will be October 21 and will count for 40% of your grade and is entirely multiple choice. The final exam is also entirely multiple choice and is scheduled for December 9 from 7:00 p.m. to 10:00 p.m.

I hope you enjoy this class. It is designed to have both substantive content and to expand your reading and analysis skills. All that is required is that you do the reading and participate in the lively discussions.

Mattheus E. Stephens