

Legal Studies 397N  
Law and Public Policy  
Fall, 2008  
Professor Arons

Course Materials:  
--Legal Research Manual, 2nd ed., Wren  
(at Jeffrey/Amherst bookstore annex)  
--Optional reading: Deployed: How Reservists Bear  
the Burden of Iraq. By Musheno and Ross  
--\* materials on electronic reserve—password  
protected. You'll need access to a computer & an  
<@student> OIT account.  
--\*\*Class handouts

Class web page: <http://www.umass.edu/legal/Arons/Fall2008/397N/index.htm>

### **Tentative Syllabus**

We will be examining a number of conflicts in which significant issues of public policy and social ethics are ruled upon by the courts. The Constitution figures prominently in many of these conflicts; so they involve fundamental legal principles and become public issues of great cultural importance. A significant underlying theme of our work will be the exploration of ways in which the rulings of constitutional courts shape, limit and drive the making of public policy.

Another theme will concern the importance of judicial independence in a constitutional democracy. This is becoming a pivotal part of sustaining democracy at home and abroad. We will also spend a small amount of time reflecting on the decision-making process of the Supreme Court during an abortion case, the way in which electoral politics affected the shift from the draft to an all-volunteer force in the 1970's, and the effect of political pressure groups on the carrying out of a court decision in an end-of-life case.

Powerful political and ideological forces are arrayed on all sides of the issues that we will be examining. But at the same time, most of these issues arise from real conflicts in the lives of individual human beings struggling to live, and in some cases to die, as best they can. One aim of the course will be to develop an understanding of the personal dimensions of these conflicts along with their cultural and constitutional significance. Understanding the role of constitutional law in the making of public policy will also require examining the perspectives of other disciplines, such as those of the social sciences, medicine and humanities.

Although this is not primarily a research course, it does view the development and use of basic library research skills as contributing to informed and constructive discussion of public policy issues. These skills are especially important at a time in which electronic media and the quest for political power increasingly seem to degrade the quality of public discourse. Instruction in the rudiments of legal research and in library research in social sciences and humanities will, therefore, be part of the course. You will be required to attend a research instruction hour in the DuBois Library. Each of you will have research assignments that allow you to practice these skills and to contribute varying perspectives to class discussions, to your memo writing assignment and to the longer, research paper required in the course.

The class will be run as a series of discussions. Lectures will be rare. Participation in all aspects of the course, which absolutely requires careful preparation in advance of class, will be very important. But because these conflicts are often very heated, it will be more important to participate constructively and thoughtfully than simply to participate frequently or insistently. I will try to create an atmosphere conducive to open and frank discussion; but this is a two-way street. It will be necessary for you to help create a tone of open inquiry and honest debate, and to speak to me privately in office hours, by email or after class if you have suggestions about or problems with the discussions.

I will be trying to help you to develop a clear understanding of all sides of the issues to be

studied, a respect for facts and for scholarship, a reasoned defense of your own conclusions, an appreciation for the logic and power of constitutional law as well as its limitations in these areas, and a heightened sensitivity to the ethical dimensions of public policy issues. As you will see, there is considerable reading and other work required for this course. I believe that this is necessary for the course to succeed; but you will find that I have sufficient flexibility about our schedule so that a reasonable effort on your part will gain you the opportunity to turn in your best work without undue stress or unreasonable demands from me.

The semester will be divided as follows:

I: An introduction to the basic tools and methods of legal research and of gaining access to the literature of other disciplines, with instruction in class and at the library.

II, III, IV: Three substantive topics in which constitutional law is central to defining the reach of individual liberty: II. Reproductive Freedoms. III. Conscientious Objection, sharing the burdens of the Iraq war, and the Establishment of a Military and National Service Draft. IV. The Right of terminally-ill persons to Refuse Medical Treatment and to Receive Palliative Care. Each of these topics will end with a discussion of a current issue of public policy.

There are various technical arrangements (signing up for library instruction, assignment of policy memos, review of your research exercise, nature of the quizzes) that will be explained and worked through in the first two classes of the semester.

### **Structure/Grading:**

Near the beginning of the course we will divide the class into two equal groups. One group will write its five-page policy memo on topic II, Reproductive Freedom. The other group will write its five-page policy memo on topic III, Conscientious Objection the burden of Iraq, and Re-instatement of the Military Draft and National Service. Every student will write an 8-10 page research paper on the final topic. The final paper will be due during finals week. Every student will take the two “quizzes” of twenty questions each given at the end of section II and III. There will be no final quiz or exam.

The breakdown of grading will be as follows:

- 1)—One policy memo (5 p.) on Reproductive Freedom or on the Draft—25%.
- 2)—Two quizzes of twenty questions—each worth 15% each toward your grade.
- 3)—One longer paper (8-10p.), requiring research— 30%.
- 4)—Participation, in class, by email, in response to class questions, in office hours, after class—worth 15%.
- 5)—Two un-graded research *exercises* due during the discussion of the relevant topic—not graded for substance, but failure to turn in work on time will cost as much as 5 points off final grade for course.
- 6)—Attendance at the research instruction session in the library—treated same as #5, above.

Please note: I will be happy to discuss any substantive issues or research problems you have, and I try to make accommodations for illness, legitimate personal difficulties and other stresses. But I am absolutely committed to the principle that your work must be your own if your diploma is to have any meaning at all for you or the University. You will find me a flexible and understanding person on all matters but this: Anything that even appears to be academic dishonesty in production of the research paper, memos, quizzes or other assignments in this course will be dealt with mercilessly.

## **Tentative Syllabus**

The following schedule of issues and materials is subject to change in response to class discussions, research, or legal or political developments. It will be *your responsibility* to be sure that you keep up with any changes in the syllabus and to prepare all materials carefully and in detail before the relevant class discussion. The first set of materials (indicated by two asterisks\*\*) will be distributed in class. The materials for the second and third topics will be available within three weeks and will be found on library electronic reserve (\*). Password and instructions for electronic reserve will be distributed in a couple of weeks. Some assignments will require the use of electronic library databases or of the internet, and some may be posted on the class web page.

Reading assignments:

“W” indicates Wren&Wren

\*\* indicates xeroxed materials distributed in class.

\* indicates materials on electronic reserve, posted on course web page, or requiring use of internet or library electronic databases.

Please note that there will be research training in electronic legal, social science and humanities materials will be provided in the library by Barbara Morgan, the law librarian. This is required for the course. **Sign-up sheets for library training sessions will be made available September 2<sup>nd</sup> and 4<sup>th</sup> during class.**

Each capital letter in the syllabus outline is one class meeting.

## **I. Introduction to Fundamentals of Research**

- A. 9/4 In-class legal research instruction--(W-chapters 1, 2, 4, app. D; check appendices L, M).  
Research exercises 1 and 2 distributed.

Library instruction--Each student is required to attend an afternoon library session of *one hour* on electronic social science, humanities, medical & legal research tools. Sign up for one of the following: 9/8 (M) 4:30-5:30 pm; 9/9 (Tu) 4:30-5:30 pm; 9/10 (W) 3:30-4:30; or 9/11 (Th.) 4:30-5-30, all in room 1620 of the Du Bois Library. There may be one additional session for students who *cannot* make **any** of the above.

- B. 9/9 In-class research instruction continued. (W-chapters 6, 7, 8, appendices A, B, E; & K)

- C. 9/11 In-class discussion of student research exercises 1, 2 and possibly 3. **Bring** your research notes from your early work.

## **II. Reproductive Freedom**

- A. 9/16 An Introduction to the history of discrimination against women in the U.S.

\*\* “Women’s Nature, Women’s Lives, Women’s Rights,” Norgren & Nanda, p.197-209.

\*\* “Two Centuries of Abortion in America,” Tribe, p. 27-51.

- B. 9/18 Abortion policy and the “fundamental liberties” of the Constitution.

\*\* “Dr. Jane Hodgson v. Minnesota,” Irons—for class discussion

\*\* Notes on fundamental rights (including excerpts from Pierce, Skinner, Loving and Lawrence)—for brief lecture.

- C. 9/23 \* Roe v. Wade read all opinions (and print to bring to class) beginning at:

[http://supct.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0410\\_0113\\_ZS.html](http://supct.law.cornell.edu/supct/html/historics/USSC_CR_0410_0113_ZS.html)

\*\*Irons, “The Raw Edges of Human Existence” (*People’s History of the Sp. Ct.*)

[Draft of research summaries for Exercise #1 due today]

- D. 9/25 Continue discussion of Roe v. Wade.

[Draft research summaries returned with comments]

9/30—No Class, religious observance

- E. 10/2 Contraception, abortion, and ‘self-defense’ against the fetus.

**Read** \*Griswold v. Connecticut, 381 U.S. 479 (1965). **Find** on Lexis/Nexis or on <http://supct.law.cornell.edu/supct/cases/name.htm>--**read** the majority opinion by Douglas. [Concurring and dissenting opinions are *optional*].  
**Read** \*\*"Family Planning Groups Object to Abortion Plan" & *Globe* editorial about defining contraception as abortion.  
**Read** \*\* "Proposed Colorado Measure on Rights for Human Eggs."  
**Read** \*\* excerpt from Sunstein ('92) and/or McDonagh ('07) LR on self-defense, fetus, and gender discrimination.  
**Bring** final version of written *summaries* of your research if you are working on #1, reproductive freedom. **Be prepared to discuss** with the rest of the class what you have found in your research.

- F. 10/7 \*\* Planned Parenthood v. Casey (majority and dissenting opinions)  
 \*\* "Legislators and Not Judges Should Decide," Tribe, *Abortion, Clash of Absolutes*, p. 80-95 and 111-112.  
 [Abortion memo assignments distributed in class]

10/9—No Class, religious observance

10/14—No Class, Monday schedule

- G. 10/16 \*Gonzales v. Carhart (Sp. Ct. 2007). *Optional reading*: \*Gonzales v. Carhart (8<sup>th</sup> Cir., 2005)  
 \*\* "South Dakota Vote Draws Attention" WSJ article on new anti-abortion law.

- H. 10/21 **QUIZ** (20 computer-graded questions in 30 minutes), followed by forty-minute, in-class *Discussion* dealing with what law Massachusetts should adopt about reproductive freedom if Roe v. Wade were to be overruled by the Supreme Court.

**FIVE-PAGE POLICY MEMO ON REPRODUCTIVE FREEDOM (1/2 CLASS) DUE.  
 Monday, October 27<sup>th</sup> in Legal Studies office by 2 p.m.**

**III. Adoption of Military and National Service Draft**

- A. 10/23 The Nature of the Problem  
 \*News articles concerning Representative Charles Rangel's introduction in 2003 of a bill in US House entitled "Universal National Service Act."  
 \*\*"Military Conscription," Letter of Marvin Karpatkin to NY Times, 3/31/71.  
 \*January, 2007, article on Reintroduction of Rangel's bill.  
 \* Articles on burdens of Iraq war
- B. 10/28 Conscientious Objection to Military Service  
 \*Irons, "The Seeger Case," from *Courage of their Convictions*.  
 \*United States v. Seeger (Sp. Ct., 1965).  
 [Draft of research summaries for Exercise #2 due today ]
- C. 10/30 History of the Draft to WW II  
 \*Zinn, *People's History of the United States*, pages 355-362.

\*“Introduction,” “Creating Conscription, 1940-41,” Flynn, *The Draft, 1940-73*.  
[Draft research summaries returned with comments]

D. 11/4 The Draft, the War in Southeast Asia, and the ‘back door draft’ in the Iraq War

\* “Nixon and the Draft,” in Flynn, *The Draft, 1940-1973*.

\* “New Conscripts of the 21<sup>st</sup> Century U.S. Army” from Musheno, Deployed: How the Reservists Bear the Burden of Iraq.

E. 11/6 Political Objection, Just War Theory and Conscientious Objection

\*Welsh v. United States, (1970)

\*Gillette v. United States (1971).

\* Email to Prof. Arons concerning Thoreau’s ideas about military service.

\* “Lt. Watada’s War Against the War” (2006)

--- **Bring** final version of written *summaries* of your research if you are working on #2, (military/civilian draft). **Be prepared to discuss** with the rest of the class what you have found in your research

11/11—No Class—Veterans Day

F. 11/12 (Wed., a Monday sked) The All-Volunteer Force and the New Draft

\**President’s Commission on an All-Volunteer Armed Force* (1970) Chapters 2, 3, 12.

\*Excerpts from LS Honors thesis, “Military Service as Democratic Participation.”

\*HR 163 (2003), “Universal National Service Act.

G. 11/13 **QUIZ** (twenty computer-graded questions in 30 minutes) followed by 40-minute Discussion: Should a National Service Requirement and Military Draft be Established?

**FIVE-PAGE POLICY MEMO ON RESUMPTION OF THE DRAFT (1/2 CLASS) DUE Tuesday, November 18 in Class.**

**IV. End-of-Life Care and Decision Making**

A. 11/18 An Introduction to Advance Directives: Individual Autonomy and State

Interests –40 minute film (the case of Dr. Naramore)—see course web page for opinion, followed by lecture and discussion of \*The Bouvia case.

Follow-up reading: \*“Current Issues in End-of-Life Care,” Arons (excerpts).

B. 11/20 \*Cruzan v. Director, Missouri Department of Health (Sp. Ct.)

\*Colby, *Long Goodbye: The Deaths of Nancy Cruzan*, p. 367-389.

[Draft of research summaries for Exercise #3 due 11/20-12/4]

C. 11/25 \* Selzer, “A Question of Mercy.”

\*Oregon’s *Death with Dignity Act*

11/27—No Class—Thanksgiving Break

D. 12/2 Physician-Assisted Suicide in the Courts

\*Washington v. Glucksberg and Quill v. Vacco, (opinions of the US Sp.Ct.)  
*Optional reading*: 9<sup>th</sup> circuit Ct. of App. opinion in Compassion in Dying v. Washington, 79 F.3d 790 (1996).

E. 12/4 \* Burt, “The Supreme Court Speaks: Not Assisted Suicide but a Right to Palliative Care,” NEJM, Oct. 23, 1997.

\* “Accusations of Murder and Euthanasia in End-of-Life Care,” Cohen, et. al.

Optional readings for lecture: see course web page for

\* Brief of medical associations and palliative care doctors.

\* Bazelon Center excerpt on right to palliative care.

\* Oregon v. Gonzales

\*Kamisar, “Against PAS in Any Form.”

F. 12/9 The Attack on Patient Autonomy

\* Dworkin, excerpts from *Life’s Dominion*.

\*Excerpts from “The Limited Wisdom of Advance Directives,” *President’s Council on Bioethics*, 2005.

\* Excerpt from “Palliative Care in the U.S. Healthcare System: Constitutional Right or Criminal Act?” (WNEC LR 2007)

---**Bring** materials that you have gathered **and** a written *summary* of your research on recent conflicts about the right to refuse medical treatment (all students), and **be prepared to discuss** with the rest of the class what you have found in your research.

H. 12/11 (No Quiz, No Policy Memo)

Discussion: Should Oregon’s “Death with Dignity Act” Be Adopted in Massachusetts, and/or Should Some Kind of Right to Palliative Care Be Legislated?

**FINAL RESEARCH PAPER (8-10 PAGES) DUE DURING FINALS WEEK**

A note on participation:

Each student will get a chance near the end of the course to *suggest* how many points (of 15) I should give you for participation, and why. There are many ways to participate in the intellectual project of the course, and it is anticipated that you will find at least one with which you are comfortable: in class, by email, in response to mini-research suggestions made in class, in office hours, after class, by reading and commenting optional material..