Legal Studies 397N
Law and Public Policy
Fall 2006
Professor Arons

Course Materials:
--Legal Research Manual, 2nd ed., Wren
(at Jeffrey/Amherst bookstore annex)
--* materials on electronic reserve—password protected. You’ll need access to a computer & an <@student> account.

Class web page:
http://www.umass.edu/legal/Arons/Fall2006/397N/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 cases; so they involve fundamental legal principles and become public issues of great cultural depth. 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. 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 real 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 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, final 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. A special challenge to the importance of class discussion will be the large size of the class. This is an unfortunate fact of the economics of academic life, but one
that we will work hard to deal with as best we can.

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: Reproductive Freedom, Conscientious Objection and the Establishment of a Military and National Service Draft, and the Right 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.

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 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 20% each toward your grade.
3) One longer paper (8-10p.), requiring research—30%.
4) Participation, in class, by email, in office hours, after class—worth 5%.
5) One un-graded research exercise 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 #4, 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. The _syllabus_ on that page will be updated when necessary.

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 legal and in social science and humanities materials that will be provided in the library by Barbara Morgan, the law librarian. This is required for the course. Sign-up sheets will be made available September 12th during class.

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

**I. Introduction to Fundamentals of Research**

A. 9/12-Legal Research--(W-chapters 1, 2, 4, appendix D; be aware of appendices L, M)  
   _Library instruction sign-up_—each student is required to attend 1 afternoon library session of one hour on electronic social science, humanities & legal research tools from among the following: 9/14 (Th.) at 4 pm or 5 pm, 9/18 (M) at 4 pm or 5 pm, or 9/19 (Tues) at 4 pm or 5 pm in room 1620 of the Du Bois Library. There will be one additional session for students who cannot make any of the above.

B. 9/14-research instruction cont’d (W-chapters 6, 7, 8, appendices B, E; & aware of K)  
   Research exercises distributed.

C. 9/19-discussion of legal aspect of research exercises.

D. 9/21-discussion of all other aspects of research exercises.

**II. Reproductive Freedom**

A. 9/26 An Introduction to the history of discrimination against women in the U.S.  
   ** “Two Centuries of Abortion in America,” Tribe, p. 27-51.

B. 9/28 Abortion policy and the “fundamental” liberties of the Constitution.  
   ** “Dr. Jane Hodgson v. Minnesota,” Irons—for class discussion  
   ** Notes on fundamental rights (excerpts from Pierce, Skinner, Loving and Lawrence)—for brief lecture.

C. 10/3 ** Roe v. Wade  
   **Irons, “The Raw Edges of Human Existence” (People’s History of the Supreme Court).

D. 10/5 Contraception.  
---Bring materials that you have gathered and a one-page summary of your research on recent conflicts over availability of contraception (if that was your research topic), and be prepared to discuss with the rest of the class what you have found in your research.


F. 10/12 Read one of the two late-term abortion cases now on appeal to the US Supreme Court:
   *Gonzales v. Carhart, 413 F3 791 (8th Circ., 2005), or *Gonzales v. Planned Parenthood, 435 F3 1163 (9th Circ.,2006).

G. 10/17 QUIZ (20 computer-graded questions in 40 minutes), followed by thirty-minute in-class Discussion dealing with what law Massachusetts should adopt about reproductive freedom if Roe v. Wade is overruled by the Supreme Court.

FIVE-PAGE POLICY MEMO ON REPRODUCTIVE FREEDOM (1/2 CLASS) DUE. Monday, October 23rd in Legal Studies office by 4 p.m.

III. Reinstatement of Military and/or National Service Draft
   A. 10/19 The Nature of the Problem
      --“Conscription in America,” in President’s Commission on an All-Volunteer Armed Force (1970)

   B. 10/24 History of the Draft to WW II
      --Zinn, People’s History of the United States, pages 355-362.

   C. 10/26 The Draft and the War in Southeast Asia

   D. 10/31 Conscientious Objection to Military Service
--Irons, “The Seeger Case,” from *Courage of their Convictions*.
--Welsh v. United States, 1970

**E. 11/2 The All-Volunteer Force and the New Draft**
--President’s Commission Report, chapters 2, 3, 10, 12, 15.
--Current recruiting problems and the overextended military

**F. 11/7 Political objection, Just War Theory and Conscientious Objection**
--First Lt. Ehren Watada—war in Iraq (2006)
---Bring materials that you have gathered and a one-page summary of your research on recent conflicts about conscientious objection to military service (if that was your research topic), and be prepared to discuss with the rest of the class what you have found in your research.

**G. 11/9 QUIZ** (twenty computer-graded questions in 40 minutes) followed by 30-minute Discussion: Should a National Service Requirement and/or a Military Draft be Established?

**FIVE-PAGE POLICY MEMO ON RESUMPTION OF THE DRAFT (1/2 CLASS) DUE Monday, November 20th in Legal Studies office by 4 p.m.**

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

**A. 11/14 An Introduction to Advance Directives: Individual Autonomy and State Interests**
*The Bouvia case.
* “Current Legal Issues in End-of-Life Care,” Arons (excerpts)

**B. 11/16* Cruzan v. Director, Missouri Department of Health**
*Dworkin, excerpts from *Life’s Dominion*.

**C. 11/21 Palliative Care or Criminal Act?**
The case of Dr. Naramore (video)
* “Accusations of Murder and Euthanasia in End-of-Life Care,” Cohen, et. al.
* Oregon v. Gonzales

**No Class 11/23—Thanksgiving**

**D. 11/28 * Selzer, “A Question of Mercy.”**
*Oregon’s *Death with Dignity Act*
E. 11/30  The Attack on Patient Autonomy
*Excerpts from the President’s Commission on Bioethics.
* “Legal and Policy Lessons from the Schiavo Case,” Lazzarini et. al.
--- **Bring** materials that you have gathered and a one-page summary of your research on recent conflicts about the right to refuse medical treatment (if that was your research topic), and be prepared to discuss with the rest of the class what you have found in your research.

F. 12/5  Physician-Assisted Suicide in the Courts

* Brief of medical associations and palliative care doctors—excerpts.
* Bazelon Center excerpt on right to palliative care.

H. 12/12 (No Quiz, No Policy Memo)
Discussion: Should Oregon’s “Death with Dignity Act” be adopted in Massachusetts?

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