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
Spring 2012
MATTHEUS E. STEPHENS, ESQ.

March 28, 2012
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 the historical theory and doctrine relating to sexuality; to foster independent thinking about the relationship between the law and sex; and to enable students to explore interrelationships between sexuality, gender, orientation and law through course readings and class discussion.

The course also provides an introduction to critical constitutional law in the areas of the First Amendment, Substantive Due Process and Equal Protection. Specific topics include privacy, free speech, association, and 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, Jr. & N. Hunter, *Sexuality, Gender and the Law* (Foundation Press) Abridged Edition, 2006.

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 my lectures or class discussion. These lectures are 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 strictly be 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](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 contentious and sometimes divisive 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 ABSOLUTLEY no personal attacks or name-calling. This class will emphasize your reasoning and analysis skills – not the arguments 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 each Tuesday before class from 5:15 to 6:10, and also by appointment. My office address, phone number and e-mail address are listed below. The TA’s will post office hours on the first night of class and will list them on the course website.

Office: (619) 234-5488; Email: Matt@progressivelawgroup.com. My office is located at 600 B Street, Suite 2200, San Diego, CA 92101 (on B Street between Sixth and Seventh Street). Parking in the building is $6.00 per hour. We do not validate. But, there are also generally metered parking spaces available along the streets and Horton Plaza is about eight minutes, walking distance.

READING ASSIGNMENTS

April 3 [Class One]

• Overview of the Class / Syllabus
  o How to read case law and brief cases
  o Common terms
  o Film: The History of Sex part IV
April 10 [Class Two]

• Introductory Materials
  • *Eskridge & Hunter, Chs. 1 & 2, pg.1-12; 17-34*
  • The Right to Sexual Privacy: Contraception and Abortion
    o N.Y. v. Sanger, pg. 17-25
    o Poe v. Ullman, pg. 26-28
    o Griswold v. CT, pg. 28-34

April 17 [Class Three]

• Expanding Sexual Privacy: Contraception, Abortion and Pornography
  • *Eskridge & Hunter, Ch. 2, pg. 34-51; 52-74; Ch. 4, pg. 149-176*
    o Stanley v. Georgia, pg. 339-340
    o Eisenstadt v. Baird, pg. 34-39
    o Roe v. Wade, pg. 40-43
    o Planned Parenthood v. Casey, pg. 43-51
  • State Regulations of Unmarried Sexual Practices: Fornication, Adultery & Sodomy
    o People v. Onofre, pg. 54-57
    o Bowers v. Hardwick, pg. 57-67
    o KY v. Wasson, pg. 67
    o Powell v. State, pg. 68
  • The Watershed:
    o Lawrence & Garner v. Texas, pg. 153-176

April 24 [Class Four]

• The “M” Word: Legal Arguments About Marriage and What it Means
  • *Eskridge & Hunter, Ch. 3, pg. 75-85; 138-148; Ch. 9, pg. 526-546*
    o Loving v. Virginia, pg. 76-85
    o Zablocki & Turner, pg.526-546
    o Baehr v. Lewin, pg.139-142
    o Baehr v. Miike (used as reference pg. 122, 530, 540)
    o Baker v. Sate (VT) (used as reference pg. 144, 146, 530)
May 1 [Class Five]

- **Sex and the First Amendment: Obscenity or Political Speech?**
  - *Eskridge & Hunter, Ch. 6, pg. 292-311*
    - One Inc., pg. 295-298
    - GSO v. Bonner, pg. 298-304
    - GLSA v. PT&T, pg. 304-306
  - **Review: Midterm**

May 8 [Class Six]

- **Midterm**

May 15 [Class Seven]

- **A Film: Dirty Pictures**

May 22 [Class Eight]

- **Identity & Viewpoint:**
  - *Eskridge & Hunter, Ch. 6, pg. 312-337*
    - “The Right of Association”
    - Georgetown Case, pg. 312-318
    - Roberts v. Jaycees, pg. 320-321
    - Hurley v. Irish American, pg. 321-325
    - BSA v. Dale, pg. 325-337
• **Sexual Speech & Censorship:**
  • *Eskridge & Hunter, Ch. 6, pg. 338-362*
    - Miller v. California, pg. 339
    - Barnes v. Glen Theatre (“Kitty Kat Lounge”), pg. 340
    - Kandyland, pg. 340
    - Cole, “Playing by Porn’s Rules”, pg. 341-345
    - McKinnon, “Pornography, Civil Rights, and Speech”, pg. 345-349
    - Hudnut, pg. 355-361

**May 29 [Class Nine]**

• **Theoretical and Scientific Work about Sexuality:**
  - Kinsey Studies (hand out)
  - Finnis, “Law, Morality, and Sexual Orientation”, pg. 211-222
  - Rubin, “Thinking Sex”, pg.242-252

*Eskridge & Hunter, Chapter 5*

• **Law and Social Construction:** Sexuality as a Social Construction
  - Foucault, pg. 259-264
  - Butler, pg. 273-274

**June 5 [Class Ten]**

• **Catch-Up & Review** for Final Exam
Midterm & Final Exam

The midterm will be May 8 and count for 40% of your grade and is almost entirely multiple-choice with a few fill-in-the-blanks. The final exam is also entirely multiple-choice with fill in-the-blanks and is scheduled for June 12 from 7:00pm to 10:00pm.

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