Law & Public Policy (PUBP 607) - Fall Semester 2010
Professors Jim Heller & Chris Byrne
Jim Heller: 221-3252  heller@wm.edu
Chris Byrne: 221-1736  cdbyrn@wm.edu
Teaching Assistant: Darren Rippy: darippy@email.wm.edu / darren.rippy@gmail.com

We meet on Tuesdays and Thursdays from 1:00 pm - 3:00 p.m. in room 135 in the Law School, which is located on South Henry Street. We also meet on a few Fridays and on one Saturday, and we travel to Washington, D.C. in October. You will complete five written assignments during the semester. We will evaluate students on these assignments and class participation. (See "Grading" at the end of this syllabus).

Text: The readings are available for purchase at the Public Policy office.

Class, Topics, Readings, Assignments

[For the meaning of the asterisk (*) in the reading assignments, see "Class Participation" on page 7]

Class 1: Thursday, August 26

Introduction / Course content and structure

1) Burnham, Introduction to the Law and Legal System of the United States p. 9-27 and 30-32
2) The Federal Court System of the United States, p. 7-35 (excerpts)
3) Charles Lane, A Defeat for Users of Medical Marijuana, Washington Post, June 7, 2005

Class 2: Tuesday, August 31

The Judiciary (Part 1): Judicial Review

Readings:

1) *Marbury v. Madison 5 U.S. 137 (1803);
3) Schultz, et. al., Introduction to Legal Writing and Oral Advocacy, p. 20-29
4) Government Organization Charts

Assignment #1 (Due Class 5): Brief the Issues in:

Case 1:  Kasten v. Saint-Gobain Performance Plastics Corp., 570 F.3d 834 (7th Cir. 2009), and 585 F.3d 310 (7th Cir. 2009) (dissent by Rovner in denial of petition for rehearing en banc).
Case 2:  Mayo Foundation for Medical Education and Research v. United States, 503 F.Supp.2d 1164 (D. Minn. 2007), and Mayo Foundation v. United States, 568 F.3d 675 (8th Cir. 2009).
Case 3:  Brusewitz v. Wyeth, Inc., 561 F.3d 233 (3rd Cir. 2009)
Class 3: Thursday, September 2

The Judiciary (Part 2): Courts and Public Policy

Readings:

2) *Rustad and Koenig, The Supreme Court and Junk Social Science: Selective Distortion in Amicus Briefs, 72 N.C.L. Rev. 91, 93-119

Class 4: Tuesday, September 7

The Judiciary (Part 3): Courts and Congress

Readings:

1) *The Encyclopedia of the United States Congress, Judicial Review and Judiciary and Congress, p. 1185-1200

Class 5: Thursday, September 9:

Research: Federal Preemption of State Law / Finding Basic Sources of American Law

Readings:

2) Refresher - Burnham, Introduction to the Law and Legal System of the United States p. 9-31

Assignment #2: Locate sources from Lorillard. Due Class 8

Due Today: Assignment #1

Class 6: Tuesday, September 14

Activity: Case Brief Presentations

Lower Court: U.S. Supreme Court:
case 1: Kasten Kasten v. Stain-Gobain Performance Plastics (09-834)
case 2: Mayo Mayo Foundation v. United States (09-837)
Class 7: Thursday, September 16

Activity: Case Brief Presentations (continued)

case 3: Brusesewitz  Brusesewitz v. Wyeth (09-152)
case 4: Williamson  Williamson v. Mazda Motor of America (08-0314)

Class 8: Friday, September 17: 9:00 am - 11:15 am (Room 124)

"Dungeons and Dragons: Who Will Protect the Constitutional Rights of Unpopular Clients?"

Speaker: David Baugh, Capital Defender, Virginia Indigent Defense Commission (Central Region). In private practice, Mr. Baugh represented such clients as Ku Klux Klan Grand Dragon Barry Elton Black, and U.S. Embassy bomber Mohamed Rashed Daoud Al-Owhali. In 2008 Mr. Baugh was appointed to his current position as Capital Defender, where he represents indigent clients facing the death penalty.

Class 9: Tuesday, September 21

Federalism and the Commerce Clause

Readings:

1) *Encyclopedia of the American Constitution, Federalism and Shared Powers, p. 1010-1013
2) *Heller, Federalism, U.S. Style
4) *Gonzalez v. Raich, 545 U.S. 1 (2005)

Due Today: Assignment # 2

Class 10: Thursday, September 23

Legislation and Statutes (Part 1): Drafting Legislation

Reading: The Encyclopedia of the United States Congress, Law Making, p. 1247-1255

Exercise: Honor Code Drafting

Assignment #3: Drafting Legislation. **Due Class 14** (Post to Blackboard)
Classes 11/12: Friday/Saturday, September 24-25  Supreme Court Preview at the Law School

Friday, September 24 -

4:00 pm (Room 124): Covering the Court: Reporters Lyle Denniston (SCOTUS Blog) and David Savage (Los Angeles Times)

6:15 pm: Moot Court Oral Argument

Saturday, September 25 - morning:  Panel Discussions

Class 13: Tuesday, September 28

Legislation and Statutes (Part 2): Statutory Interpretation

*Reading: Mikva and Lane, An Introduction to Statutory Interpretation and the Legislative Process, p. 1-16, 19-40

Review and Discuss Draft Honor Codes (continuation of class 9)

Class 14: Thursday, September 30

Lobbying

Readings:

3) *Editorials: Witold Baran, Kassirer, Reich, and Samuelson

Assignment #4: Review and Comment on Legislation: Due October 15 (Post to Blackboard)

Due Today: Assignment #3 - Post to Blackboard

Class 15: Tuesday, October 5:  Regulations: Sources / Administrative Procedure Act

Readings:

1) *Encyclopedia of the American Constitution, Regulatory Agencies, p.2147-2149
2) *Federal Regulatory Directory, p. 1-29 (excerpts)
Class 16: Thursday, October 7: Regulations / Local Government

Readings:

1) Richardson, Variation on 'Mother, May I?': Dillon's Rule, 10 Horizons (1998)

Speakers - Local Government officials: John McGlennon (James City County Board of Supervisors), Leo Rogers (James City County Attorney), Jack Tuttle (Williamsburg City Manager)

Fall Break: Monday-Tuesday, October 11-13

Class 17: Wednesday, October 13: Washington D.C. Visit to the United States Supreme Court.

Morning: Oral argument: Kasten v. Saint-Gobain (10:00 am); Skinner v. Switzer (11:00 am)

    Speakers on Lobbying: TBA
    Advocates (possibly)

3:30 pm: Senator Mark Warner's staff (U.S. Capital)

Friday, October 15:

Due Today: Assignment #4 - Post to Blackboard

Class 18: Tuesday, October 19: Legislative Review (Part 1)

This week we will have legislative hearings on the legislation proposed in Assignment 3, two hearings on Tuesday, and two on Thursday. In Assignment 4, you were a Congressional staffer who reviewed legislative proposals. At this week's hearings, Congressional Staffers have been promoted to Senators.

Format: Each witness -- those who drafted the legislation in Assignment 3 -- will have up to 2 minutes to summarize his or her proposal. The Senators should already be familiar with your proposal, so do not go thru it line-by-line. Instead, summarize it and emphasize why the Committee should move forward with it as good public policy (and if you are a bit cynical, why it's politically wise to do so). After these opening statements, the Senators will ask questions of the witnesses, just like it's done in Congress. Each hearing will be 50 minutes long.
Tuesday, Oct. 19:

First Hearing: Those who drafted legislation in Williamson (from the third assignment) present to a Senate panel made up of the students who reviewed those proposals in the fourth assignment (the papers you just turned in).

Second Hearing: Those who drafted legislation in Kasten (third assignment) present to a Senate panel composed of those who reviewed those proposals in the fourth assignment.

Assignment #5: Read an Amicus Brief from one of the four cases, and prepare

(1) a 1-page Press Release, and
(2) a 4-5 page OpEd Piece. Both due Class 21 (Post to Blackboard)

Class 19: Thursday, October 21: Legislative Review (Part 2)

First Hearing: Those who drafted legislation in Mayo Foundation (third assignment) present to a Senate panel made up of those who reviewed those proposals in the fourth assignment.

Second Hearing: Those who drafted legislation in Bruesewitz (third assignment) present to a Senate panel made up of those who reviewed those proposals in the fourth assignment.

Class 20: Tuesday, October 26:

"The (Im) Balance of Power in the 21st Century: The Battles Between Congress, the Courts, and the Chief Executive."

Speaker: Professor Sai Prakash, University of Virginia School of Law.

1:00 pm in room 127; 2:00 pm in room 141

Class 21: Wednesday, October 27:

Class Wrap-Up (with lunch)

Due Today: Assignment #5 - Post to Blackboard
Law & Public Policy: Grading and Description of Assignments

Grading: Students are graded individually on your own papers and your class participation, which includes presentations.

Assignments: The 5 assignments comprise 90% of your grade. All papers must have 1" margins, be double-spaced, and use a 12-point font. Keep to the page limits for each assignment; we will not read pages above the limit.

Class participation: Class participation during the semester comprises 10% of your final grade. For readings marked with an asterisk (*), draft two well-thought-out questions about that class’s readings. (Regardless of the number of readings for that day, you need only prepare two questions). For Tuesday classes, email us your questions by 9:00 AM Monday. For Thursday classes, email your questions by 9:00 AM Wednesday. Your class participation grade also includes how you respond to questions during class and your other comments. You should always demonstrate that you prepared for class by completing your assignments and readings.

Assignment 1. Case Briefs: Brief the four cases: case 1, case 2, case 3, and case 4. (20 points)

1) What are the Facts and Issues of the case?
2) Who are the Interested Parties - the parties in the litigation, plus others (e.g., interest groups) who would be affected by the outcome?
3) What do you think are the Strongest and Weakest positions of each side?
4) Discuss the Court’s analysis, and the public policy considerations

Each case brief should be 1-2 pages, double-spaced. (We will not read more than 2 pages for any one brief). During Classes 6 and 7, teams of 2-3 students will present and lead a discussion of the issues argued by the opposing parties in each of the cases. For instance, for Mayo Foundation v. U.S., one team will lead a discussion of the government’s arguments, and the other team will discuss the Mayo Foundation’s position.

Assignment 2. Research: You will locate cases, statutes, etc. cited in the Lorillard case using print and electronic sources. (10 points)

Assignment 3. Drafting Legislation: You represent an interest group – either a real one or a fictitious one that you create – that filed an Amicus Brief in one of the four cases that was accepted for certiorari by the United States Supreme Court. Review a statute at issue in the case, and draft legislation that promotes the goals and values of the interest group you represent. Make sure to justify your proposed legislation in terms of its constitutionality, and also how it supports the public policy goals of your organization. Paper length is five (5) pages maximum, double-spaced. During classes 18 and 19 you will present your proposals to a legislative panel (a group of students) for review and comment. (20 points)
Assignment 4. Legislative Review Papers. You are a Congressional staff member who is reviewing the proposed legislation generated in Assignment 3. You have been asked to summarize the proposals and make a recommendation to the Senator/Representative. (20 points)

A) If you drafted legislation at issue in the Mayo Foundation (case 2), then you will review and comment on proposed legislation at issue in Williamson (case 4).

B) If you drafted legislation involving Bruese witz (case 3) then you will review and comment on proposed legislation concerning Kasten (case 1).

C) If you drafted legislation involving Kasten (case 1) then you will review and comment on proposed legislation in Mayo Foundation (case 2).

D) C) If you drafted legislation involving Williamson (case 4) then you will review and comment on proposed legislation in Bruese witz (case 3).

As a staffer, you should look at the positive and negative policy implications of each proposal, and make a recommendation to the Senator or Representative for whom you work. You may select a real member of Congress, or make believe that your professors are Congressmen. Five (5) pages maximum, double-spaced.

Assignment 5. Press Release and Op-Ed Piece: You will represent an organization of your choice that, for this exercise, filed an amicus brief in one of the four cases before the Supreme Court. The organization may be fictitious or real.


Op-Ed Piece. Draft an “Op-Ed” piece and take a position on the case. Explain clearly why, both as a matter of law and policy, your position is the proper one. Address potential counter arguments. Four (4) pages maximum, double-spaced.

It may help to write the Op-Ed piece first, then the Press Release. The Press Release should get the reader’s attention so that he or she will want to read the longer Op-Ed piece to learn more about your organization and its positions. (20 points)