Civil Liberties Litigation Seminar – Fall 2010
Professor Emily Calhoun
Course description

This seminar applies a litigation perspective to civil liberties cases. What is a litigation perspective? It is the critical perspective a litigator – rather than a pure academic – would apply if s/he wanted to understand exactly why a civil liberties dispute ended up in court and progressed as it did through the judicial system, resulting in a given decision.

There is a pragmatic bent to the litigation perspective. Litigation strategies and procedural moves of the parties are as important as substantive constitutional principle. A litigator is interested in extra-judicial factors that influence the course and outcome of litigation. For example, s/he is sensitive to and works to take advantage of cultural, social, and political contexts, as well as historical events and traditions. S/he understands the dynamic forces and relationships – e.g., within groups seeking to gain protection for their rights, or between cause-oriented attorney and client – that influence the course of litigation. S/he may have an unconventional notion of what is at stake in and what counts as a successful outcome of litigation.

This seminar is structured to give you an opportunity to learn as much as you can about the unique features of civil liberties litigation and the reasons for decisions made by attorneys representing plaintiffs and defendants, and to give you a virtual experience of being part of a litigation team in a civil liberties case. Readings will introduce you to the traditions and unique features of civil liberties lawyering. Class discussions will be structured as collaborative, professional debates about specific litigation strategies.

Your individual research project will focus on a single civil liberties controversy. You will have broad discretion, subject to my approval, to select the controversy that you wish to study during the semester. The only non-negotiable requirement is your controversy must have resulted in an appeal to the Supreme Court of the United States.

Your seminar paper will critique a strategy or tactic relevant to your selected case. In order to write a satisfactory critique, you must acquire the understandings of an expert litigator. Using those understandings and with the benefit of hindsight, you will make judgments about a litigation success or failure in your selected case and about whether a chosen strategy or tactic should be employed in future civil liberties litigation. In other words, you will do much more than evaluate the merits of a substantive constitutional question or decide whether a court reached a correct substantive decision.