POS 346 / WSS 346  
*Law, Civil Rights, and Sexual Orientation*  
Scott Barclay

Tuesday and Thursday 10.15am-11.35am Chemistry 151

**Course Description:**  
The course will examine relevant court cases as well as local, state and federal laws that define the boundaries for legal recognition of sexual orientation and personal sexuality in the 20th Century. The course includes examination of the cases on same sex relationships, employment, adoption, and sexuality issues. Using scholarly articles and the judges own words, we will examine the legal assumptions behind current and historical cases defining personal sexuality and sexual orientation.

**This class meets the General Education Requirement for U.S. Diversity and Pluralism**

**Learning Objectives for U.S. Diversity and Pluralism**

U.S. Pluralism and Diversity courses enable students to demonstrate:

1. knowledge and understanding of the diversity and pluralism of U.S. society with respect to race, ethnicity, and gender, as well as class, sexual orientation, and/or religion.
2. knowledge and understanding of the social and cultural influences that shape the perspectives of various social groups as well as students' own points of view.
3. knowledge and understanding of the contributions of various social groups to U.S. society.
4. knowledge and understanding of the sources and manifestations of controversy or conflict arising from U.S. diversity and pluralism.

**Contacting Me:**  
The only way to contact me (except office hours) is by e-mail: s.barclay@albany.edu

**Office Hours:**  
Tuesday and Thursday 11.45am -1.00pm in the Political Science Office (Humanities 016)

**Requirements:**

- Assignment One..................20% Due February 24 by 11.45am
- Assignment Two....................10% Due March 12 by 11.45am
- Assignment Three .................40% Due April 23 by 11.45am
- 6 Class Preps........................30% Due throughout semester as chosen by student

**ATTENDANCE IS NOT REQUIRED.** You are free to miss as many classes as you like for any reason. If you miss class, you do not need to provide a note to me unless it actually hinders your ability to effectively complete a requirement. However, if you choose to attend class, I will take your presence in class as evidence that you completed the assigned readings and that you are prepared to discuss them. Class will be very interactive and you can expect to be called upon to actively engage the assigned cases and the ideas in that material. You may be called to the front of the class to help present the ideas in the class. Based on prior experience, I warn you that it is extremely difficult to complete the three assignments *successfully* without active and consistent engagement with the class discussion.

**Submitting Required Assignments and Class Preps:**
Each assignment is to be attached (as a Word, Wordperfect, RTF, or PDF document) to an email to s.barclay@albany.edu.

Please label your **attached file AND your subject line** in this format: *your last name pos346 assignment1*

For example, if my name was Joe Biden, in the subject line, it would read “biden pub346 assignment1” and the file would be named: biden pos346 assignment1.doc OR biden pub346 assignment1.pdf
Assignment One: (20%) Due February 24 by 11.45am (No late assignments accepted)
Each student will choose ONE of the 50 U.S states to examine. Each student must create a chronological (starting at the earliest and working up to the most recent case) and thematic (such as adoption and custody, relationships, employment etc) listing of ALL state courts cases with published opinions (from all levels of the state court hierarchy but noting at which level) and relevant federal court cases (that were initiated in your chosen state) that directly involve sexual orientation from 1950-2008, except “gay panic” cases. (Gay panic cases involve the attempted defense in criminal cases that an individual appeared about to make a pass at someone of the same sex, so the person charged with murder or assault argues that they “had to kill them” or “they had to hit them with that brick.” You will discover in your search that there are many such cases in each state.)

Give the full citation to the case using the same format as used below in the syllabus. In a paragraph describe how each case defines or re-defines the “application” of sexual orientation and being LGBT in that state. Demonstrate your points using quotes from the judge’s opinions (with citations in the text to the appropriate page numbers in the original opinion). Arrange cases by themes as well as chronologically. Students will be shown how to track this information from Lexis-Nexis, Westlaw, and other Web sources.

Assignment Two: (10%) Due March 12 by 11.45am (No late assignments accepted)
Using the state chosen in Assignment One, each student must create a listing of ALL current laws (not courts cases) involving sexual orientation that are in effect in that state as well as all obvious omissions of laws in expected areas. Give the full citation to each law and in a short paragraph describe the nature of each law, including how it defines the “application” of sexual orientation and being LGBT in that state. Students will be shown in class how to track this information from Lexis, Westlaw and other Web sources.

Assignment Three: (40%) Due April 23 by 11.45am (No late assignments accepted)
Using the state chosen in Assignment One and the material from the first two assignments, each student must write a 10-15 page paper that discusses the two or three primary approaches that their chosen state has adopted historically and recently in relation to LGBT legal issues. Use the words of the judges in the cases in your state (which you found in Assignment One) and the laws in your state (which you found in Assignment Two) as evidence to support your argument that the state utilizes each of these approaches (as defined by you) in its understanding of lesbian, gay, bisexual and trans-gendered individuals. Use this evidence to also demonstrate changes in the approach or approaches adopted over time and/or across issues to present a dynamic picture of the assumptions that your chosen state has used in defining LGBT individuals, their sexual activities, or relationships. For example, a state might define all LGBT as psychopaths who are unable to control their criminal impulse – all or most of their laws and opinions in the early court cases flow from this assumption.

It is NOT acceptable to simply merge the cases and laws in your state into a simplified legal history. In this assignment, the state’s laws and the words of the state judges are simply used as evidence to support your argument as to the approach adopted by the state. It requires you to offer your own ANALYSIS of the dominant assumptions that have operated to define the state’s legal decisions over a period of time.

This assignment is NOT an assessment of whether your chosen state is gay-friendly or gay-hostile. Do NOT tell me your chosen state has treated LGBT individuals well or poorly and do NOT tell me in your paper whether you like or dislike the approaches adopted by your state. The assignment is designed to allow you to demonstrate that you can define the primary approaches used by your state and support your argument by offering evidence from the cases and laws of that state.
6 Class Preps: (30%) (No late class preps accepted.)
On six separate occasions, each student must submit via email a one-page class prep of a single case.

It is to be submitted via email by the start of class on the day we first discuss that case or at any time before that date. If I assign more than one case on a day, you can select any one (but only one) of the cases discussed on the chosen day. Students can select any six cases (occurring on different class days) to “prep” throughout the semester, but each class prep will only be accepted on the first day (or before) we discuss that case. I will know that you chose to do a class prep when you send it on that day by the start of class – there is no need to tell me in advance.

The class prep is to be attached (as a Word, Wordperfect, RTF, or PDF document) to an email to s.barclay@albany.edu. (You are NOT required to be in class on that day since it is submitted via email – per the attendance policy -- but it would make logical sense for you to be there since you did the work.)

Each class prep must have:
a) a complete and correct citation to the case at the top of the page;
b) a quote or two from the opinion (not the headnotes or case summary) that effectively captures key assumptions of how the court has defined sexual orientation or lesbian and gay individuals;
c) and, for each quote, a very short description of the arguments or assumption embodied in the quote

You may submit more than six class preps and your grade will be calculated based on your best six grades from all of your submitted preps. Each prep is worth 5 points, but you will receive zero points overall if you do not submit all six class preps.

Warnings about Submitted Work:
The Quality of Submitted Work and the Possibility of Public Shaming:
Based on an assessment of work submitted in prior years, it is clear that some individuals spend very little time and/or effort on their submitted class preps and assignments. Consequently, the submitted work includes absurd statements, inaccurate citations and very poor sentence structure. To encourage students to pay more attention to their submitted work (beyond the grade I issue to the submissions), I will post the WORST examples of sentences and absurd statements on Blackboard as well as occasionally highlight them in class.

Cheating and Plagiarism:
I encourage students to work together in reading and understanding the material. I even encourage study groups. However, another student cannot write or copy all or part of your paper unless so acknowledged (and there are no group work assignments in the class). Such incidents will be defined as cheating. Similarly, any example of copying of material or ideas belonging to another person without correct reference to the original author by citation (and quotation marks, if directly quoting) will be treated as plagiarism. In any case of cheating or plagiarism, you will be failed for the entire course and your case will be forwarded to Judicial Affairs with a request for additional sanction as allowed by the rules of the University.

The Number of Class Preps Submitted:
You will receive zero points if you do not submit all six class preps.

Examples of Correct In-Text Citations:
Legal Citations:
On May 20, 1974, the Court of Appeals of Washington (Division One) in Singer v Hara (11 Wn. App. 247, 264) “concluded that the state's denial of a marriage license to [same sex] appellants is required by our state statutes and permitted by both the state and federal constitutions.” While state courts in Minnesota (in Baker v. Nelson 191 N.W.2d 185), New York (in Anonymous v. Anonymous 67 Misc. 2d 982, and later in Kenney v Kenney 76 Misc 2d 927), and Kentucky (in Jones v. Hallahan 501 S.W.2d 588) had previously issued opinions that denied marriage to lesbian and gay couples, the legal claim in Singer v Hara was the first of the challenges to state policies that prohibited same sex marriage to rely primarily on state constitutional provisions.
The Course:

SEXUAL ACTIVITY

1) Kinsey Institute Data from 1948 and 1953 Studies (and more recent)
   a. http://www.indiana.edu/~kinsey/research/ak-data.html#Findings
   b. http://www.indiana.edu/~kinsey/resources/FAQ.html#homosexuality

2) US. Census, American Community Survey 2007, Table B11009

3) Stoutan v. Munro 219 Cal. App. 2d 302 (1963) -- California

4) Boutilier v. INS 387 U.S. 118 (1967) – United States


“GAY PANIC” CASES


SAME-SEX SEXUAL HARASSMENT


ORGANIZING and POLITICS


18) Sherrill, Kenneth. 1996. “The Political Power of Lesbians, Gays, and Bisexuals.” PS: Political Science and
Politics 29: 469-473

22) www.gallup.com -- http://www.gallup.com/poll/1651/Homosexual-Relations.aspx

CUSTODY & ADOPTION
23) Di Stefano v Di Stefano 60 AD2d 976 (1978) – New York
26) In re Adoption of Caitlin 163 Misc. 2d 999 (1994) – New York

RELATIONSHIP & MARRIAGE-LIKE CONDITIONS
29) Race as the analogy
   a. Perez v. Sharp 198 P.2d 17 (1948) -- California
   b. Loving v. Virginia, 388 U.S. 1 (1967) – United States
30) “Bearding” Cases
31) First Wave of Same Sex Marriage
   c. Jones v. Hallahan 501 S.W.2d 588 (1973) -- Kentucky
32) First Wave Gender Identity Cases

33) *Trying a Different Way to Define Legal Connection*
   

34) *Second Wave of Same Sex Marriage*
   
a. *Hawaii*

b. *Washington, DC*

c. US Government’s Response
   2. Proposed Federal Marriage Amendment to the US Constitution
      1. Congressional Bill in 2004 (HJR 56)
      2. Congressional Bill in 2006 (HJR 88)
   3. Constitutionality of Federal DOMA

d. *Alaska*

e. *New York (1996-1997)*

f. *Vermont*

g. Early and Competing Responses in LGBT Movement

h. *Massachusetts*

i. *Arizona*


k. Connecticut

l. Oregon
   2. Li v. State 338 Or. 376 (2005) -- Oregon

m. Washington
   1. Andersen v King County 2004 WL 1738447 (2004) – Washington ****[Westlaw only]****
   3. Andersen v King County 158 Wash.2d 1 (2006) – Washington

n. New Jersey
   1. Lewis v Harris 188 N.J. 415 (2006) – New Jersey

o. California
   1. Lockyer v. City and County of San Francisco 33 Cal.4th 1055 (2004) -- California
   2. In re Marriage Cases JCCP No. 4365 (2005) -- California
   3. In re Marriage Cases 49 Cal.Rptr.3d 675 (2006) -- California

35) The Bigger Picture on State Legislatures and State Courts

EMPLOYMENT

37) Morrison v. State Board of Education 1 Cal. 3d 214 (1969) -- California
38) Society for Individual Rights, Inc. v. Hampton et al. 63 F.R.D. 399 (1973) – United States
41) Rowland v. Mad River Local School Dist 470 U.S. 1009 (1985) – United States


GENDER / SEXUAL IDENTIFICATION ISSUES

