

Seminar: The Warren Court
Professor Michael J. Klarman
Spring 2016

This seminar will examine most of the leading constitutional rulings of the Warren Court. The readings will be considerable, as I am trying to give you a wide range of angles from which to approach each of the subject matter areas we will be discussing. Readings will include: cert. memos from law clerks, briefs, conference notes, excerpted opinions, newspaper reaction, letters to the Justices, and law review commentary. The readings for each week's session will both be posted on the course webpage and available in hard copy from the copy center. We will also be using Lucas Powe's *The Warren Court and American Politics* to provide background and an overview; it should be available for purchase in the law school bookstore.

A quick note: The readings really are, as I have said, considerable. Unless you are a very fast reader, I would estimate they will take you a good 8–10 hours per week to get through. I have tried to make them as interesting as I can, but there is no denying that that is a lot of reading. If you are not committed to doing it, you should probably not take this seminar. The point of the seminar is to have a good conversation about the readings; that will be hard to do if people are not well prepared. There are others who are wait-listed for the seminar; if you're not fully committed to doing the readings, it would be a favor to them to drop the course.

There is no exam or long-paper requirement. Students are expected to attend class, do the readings, and participate in class discussion. In addition, you will be asked to write 2 short papers over the course of the semester responding to the readings. These should be in the range of 5–6 double-spaced pages. Please do not exceed this page limit. Final grades will be based half on these short papers and half on class participation. Students should be prepared to briefly discuss their papers in class. I will start the class each week by asking each paper writer to summarize his/her paper very briefly—1 minute or, at most, 2 minutes should suffice. People will have read the papers in advance; the purpose of this summary is just to provide a brief reminder.

Instructions regarding the papers: These are *not* research papers. You should not do reading beyond that contained in the course materials. If you have outside knowledge to bring to bear on the readings, that's fine, but there is no requirement or expectation that you do so. Similarly, it is permissible to make references, or engage in comparisons, with readings from other assignments during the semester, but it is neither required nor anticipated that you will do so. It is not necessary to provide copious documentation for your arguments; a few references to particular pages in the readings should suffice.

The purpose of these papers is to criticize, analyze, and/or interpret the readings for a particular week's assignment. Please do *not* summarize the readings. Everyone in the seminar is expected to have done the readings before class, so summarizing the readings is unnecessary. What we want is a critique, analysis, or interpretation that will provide a jumping-off point for class discussion. Just to take a few examples: You could argue against the interpretation offered by an author of a secondary work. You could focus on particular Justices and what seemed to interest/trouble them about a case. You could focus on newspaper and other reaction to a

decision and offer an interpretation of that. You could reflect on how the decisions did or did not correspond to the way the case was argued. You could compare the conference notes to the actual decision to see what changed. You could compare the Court's approach on one topic to its approach on another from a different assignment. There are a myriad of other possibilities. The main point to stress is that you avoid summary, think hard, and offer your own interpretations and analyses. Feel free to talk to me if any of this is unclear.

I will offer comments (not grades) on the papers, by email, hopefully within a few days of the class for which they were submitted.

Students are responsible for posting their own papers on the course website by **noon** of the **Monday** immediately preceding the Tuesday session for which their paper was written. My assistant, Melinda Eakin, will post instructions on the course website on how to post your papers. If you have any difficulty, please contact her. She's at eakin@law.harvard.edu. Her office is Areeda 334. It is important that you get your papers posted on time; these papers constitute part of the reading assignment for each week's class. There should be only 3 or 4 of them per week, and they will be short, so they should not add greatly to your reading burden.

My office is Areeda 332. My email is mklarman@law.harvard.edu. My office hours this semester are Wednesdays and Fridays from 3:30 to 5:30. It probably makes sense to make an appointment in advance—**through me, not my assistant**—which enables me to better distribute the traffic, which means you're less likely to have to wait.

Here is a list of what we will cover each week:

Session 1: *Brown I*

Session 2: *Brown II* and *Cooper v. Aaron*

Session 3: Communists and the First Amendment: Red Monday and Retreat?

Session 4: Establishment Clause: School Prayer and Bible Reading

Session 5: Reapportionment: *Baker v. Carr* and *Reynolds v. Sims*

Session 6: Civil Rights Again: The Sit-in Cases and the Court Revisits School Desegregation

Session 7: Congressional Power and Civil Rights: The Court Confronts the 1964 Civil Rights Act and the 1965 Voting Rights Act

Session 8: Criminal Procedure: *Mapp*, *Gideon*, *Miranda*, and *Terry v. Ohio*

Session 9: Freedom of Speech and the Civil Rights Movement

Session 10: Poverty: The Warren Court's Tentative Forays and the Burger Court's Retreat

Session 11: The Death Penalty: *Witherspoon*, *McGautha*, and *Furman*

Session 12: Abortion: *Roe v. Wade*