

**Penn State Dickinson School of Law**  
**Federal Court Practice – Skills 977D (Sections 101 and 201)**  
**Spring 2009**

**The Honorable Kim R. Gibson**  
United States District Court Judge,  
Western District of Pennsylvania  
DSL '75

**Josh Blackman**  
Law Clerk for Judge Gibson  
IST '05

**Course Summary:**

This course aims to provide you with an understanding of federal court practice. This is not a class in federal court jurisdiction. Nor is this a class in trial advocacy. Rather, this class will expose you to the basics of federal jurisdiction, federal criminal practice, federal civil litigation, as well as federal habeas corpus law and federal employment law. We will invite several guest speakers, including Magistrate Judges, Assistant United States Attorneys, Criminal Defense Attorneys, and Civil Litigators, to share their real-world experiences with you.

**Class Meeting Time**

This class will meet on Thursday from 4:15-6:45 p.m. On the University Park Campus, the class will meet in Room 241 and during moot sessions in the Moot Court Room. On the Carlisle Campus, the class will meet in Room 258 and during moot sessions in the Moot Court Room. Judge Gibson and Mr. Blackman will attend classes at both locations during the course of the Semester.

**Books**

You will be required to purchase three books.

1. **Course Packet.** You can purchase this book at <http://www.universityreaders.com/>. The Course Packet should be available for order by the first week in January. The textbook consists of readings from:
  - Hart & Wechsler's *The Federal Courts and the Federal System*, Fifth Edition (2003) (**H&W**)
  - Friedenthal & Miller, *Civil Procedure Cases and Materials*, Ninth Edition (2006) (**F&M**)
  - Saltzburg & Capra, *American Criminal Procedure Cases and Commentaries*, Seventh Edition (2004) (**S&C**)
  - Third Circuit Model Jury Instructions, available at <http://www.ca3.uscourts.gov/modeljuryinstructions.htm>
  - Benchbook for U.S. District Court Judges, available at [www.fjc.gov/public/pdf.nsf/lookup/Benchbk.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Benchbk.pdf)
  - Law review articles, statutes, and other documents.
2. *United States v. William Lloyd*, NITA Case File. You can purchase this book at <http://www.nita.org/page.asp?id=7&catid=97&prodid=82>. If you use your @psu.edu e-mail address, you should receive a 30% discount.
3. *Polisi v. Clark and Parker & Gould*, NITA Case File. You can purchase this book at <http://www.nita.org/page.asp?id=7&catid=99&prodid=118>. If you use your @psu.edu e-mail address, you should receive a 30% discount.

## Readings

While your class participation includes assigned readings and cases in the areas of federal jurisdiction, criminal procedure, civil procedure, and others, you are not expected to prepare for this class like a typical law school lecture class. Rather you should use these readings to develop a firm grasp of what litigating in federal court means, as opposed to memorizing the minutiae and details of the cases. That being said, students are expected to be prepared to participate in class and if they are not, their final grades will be adjusted accordingly. Traditional cases have been supplemented with law review articles, continuing legal education periodicals, and selections from the Federal Judicial Center as well as Model Documents from the Court of Appeals for the Third Circuit.

## Teams

The class will be divided into four teams who will participate in a criminal case and a civil case based on two case files from NITA (National Institute for Trial Advocacy).

The first is a criminal case, *United States v. William Lloyd*:

- Team 1 (Prosecution) v. Team 2 (Defendant)
- Team 3 (Prosecution) v. Team 4 (Defendant).

The second is a civil case, *Polisi v. Clark and Parker & Gould*:

- Team 1 (Plaintiff) v. Team 2 (Defendant)
- Team 3 (Plaintiff) v. Team 4 (Defendant)

Each team will be responsible for submitting five written assignments, and participating in four mooted sessions. Each member of the Team will receive the same grades. How you choose to structure your teams is entirely up to you.

Each team will be required to participate in four mooted sessions. Every member of the team will be required to participate in at least two of the mooted sessions.

## Grading

1. **Fifty-two percent** of your grade will consist of a 20-page paper, with proper Bluebook citations, on the topic of your choice. This paper will be due on Wednesday, May 12, 2010. While more details will be provided about the paper, please start thinking about paper topics. Though you are commended to select a topic dealing with something covered in class, you can write about anything affecting Federal Courts. If you want to discuss your topic with Judge Gibson or Mr. Blackman, please e-mail your topic with a brief proposal (a few paragraphs) by March 18, 2009. This is optional, but it is highly recommended that you take advantage of this opportunity. During the last two classes, there will be time offered to individually discuss paper topics for those who avail themselves of the initial topic approval deadline.
2. **Thirty-two percent** of your grade will consist of five written assignments. All teams will submit Assignment #1 (Motion to Suppress) and Assignment #6 (Motion to Dismiss/Motion

for Summary Judgment). Teams 1 and 2 will submit Assignments #2, 4, and 7. Teams 3 and 4 will submit Assignments #3, 5, and 8.

3. **Sixteen percent** of your grade will consist of four mooted sessions. All teams will participate in Moot Session #1. Teams 1 and 2 will participate in mooted sessions #3, 4, and 5. Teams 3 and 4 will participate in mooted sessions #2, 6, and 7. The mooted sessions will consist of arguments only, and no witness testimony.
4. **Class Participation.** Due to the small size of the class, class participation is vital to provide each student with the broadest range of ideas, comments, and insights. Judge Gibson reserves the right to increase a student's final grade by 1/3 (e.g., B to B+) for excellent participation or decrease a student's final grade by 1/3 (e.g., A to A-) based on poor participation.

**Breakdown of Assignments and Scoring**

<b>Team 1</b>	<b>Team 2</b>	<b>Team 3</b>	<b>Team 4</b>
Assignment #1 – 10%	Assignment #1 – 10%	Assignment #1 – 10%	Assignment #1 – 10%
Assignment #2 – 4%	Assignment #2 – 4%	Assignment #3 – 4%	Assignment #3 – 4%
Assignment #4- 4%	Assignment #4- 4%	Assignment #5- 4%	Assignment #5- 4%
Assignment #6- 4%	Assignment #6- 4%	Assignment #7- 10%	Assignment #7- 10%
Assignment #7- 10%	Assignment #7- 10%	Assignment #8- 4%	Assignment #8- 4%
Moot #1- 4%	Moot #1- 4%	Moot #1- 4%	Moot #1- 4%
Moot #3- 4%	Moot #3- 4%	Moot #2- 4%	Moot #2- 4%
Moot #4- 4%	Moot #4- 4%	Moot #6- 4%	Moot #6- 4%
Moot #5- 4%	Moot #5- 4%	Moot #7- 4%	Moot #7- 4%

Each assignment and moot session will be graded on a scale equivalent equal to the weight of the assignment. For example, Assignment #1, worth 10%, will be graded on a score of 1-10. Moot session #1, worth 4%, will be graded on a scale of 1-4.

	Readings	Notes
<b>1. 1/14 – Origin of the “Least Dangerous Branch”</b>	United States Constitution, Article III The Federalist Nos. 78-83 The Anti-Federalist, Brutus XI, XII, XV <i>Marbury v. Madison</i> , 5 U.S. (Cranch) 137 (1803).	
<b>2. 1/21 – Jurisdiction of the Federal Courts I</b>	<u>Venue</u> <ul style="list-style-type: none"> <li>F&amp;M 329-333</li> </ul> <u>Diversity Jurisdiction</u> <ul style="list-style-type: none"> <li>28 U.S.C § 1332</li> <li>H&amp;W, pp.1453-1469, 1472-1476, 1481-1484</li> <li>F&amp;M, pp. 176-180</li> <li>Syllabus of <i>Exxon Mobil Corp. v. Allapattah Services</i> (2005)</li> <li>NLJ Article on <i>Hertz Corporation v. Friend</i>, argued before SCOTUS on 11/10/2009</li> </ul>	<ul style="list-style-type: none"> <li>Select Teams</li> </ul>
<b>3. 1/28– Jurisdiction of the Federal Courts II</b>	<u>Federal Question Jurisdiction</u> <ul style="list-style-type: none"> <li>28 U.S.C. § 1331</li> <li>H&amp;W, p. 856-880</li> <li>Syllabus of <i>Grable v. Darue</i> (2005)</li> </ul> <u>Supplemental/Pendent Jurisdiction</u> <ul style="list-style-type: none"> <li>28 U.S.C. § 1367</li> <li>H&amp;W, pp. 918- 930, p. 1484-1493</li> </ul>	
<b>4. 2/4 – Criminal Practice I</b>	<u>4th Amendment, Reasonableness of Searches</u> <ul style="list-style-type: none"> <li>S&amp;C- 33-42</li> </ul> <u>Probable Cause and Warrant Requirement</u> <ul style="list-style-type: none"> <li>S&amp;C 99-108, 110-112</li> </ul> <u>Exclusionary Rule</u> <ul style="list-style-type: none"> <li>S&amp;C 495-497, 504-508</li> </ul>	<ul style="list-style-type: none"> <li>Guest Lecture by Assistant United States Attorney John Valkovci</li> </ul>
<b>5. 2/11 – Criminal Practice II</b>	<u>Reasonable Suspicion &amp; Terry</u> <ul style="list-style-type: none"> <li>S&amp;C 199-209, 251-257</li> </ul> <u>Self Incrimination</u> <ul style="list-style-type: none"> <li>S&amp;C 599-605, 662-671</li> </ul> <u>Interrogations, Confession, &amp; Miranda</u> <ul style="list-style-type: none"> <li>S&amp;C 710-722, 747-752</li> </ul>	<ul style="list-style-type: none"> <li>Guest Lecture by Federal Public Defender, Marketa Sims</li> <li>Submit Assignment #1 - Motion To Suppress (Teams 1 and 3)</li> </ul>
<b>6. 2/18 – Criminal Practice III</b>	<u>Grand Jury</u> <ul style="list-style-type: none"> <li>S&amp;C 892</li> <li>Benchbook – Grand Jury Instructions pp. 201-212</li> <li>Federal Judiciary Center Model Grand Jury Charge</li> </ul> <u>Jury Selection &amp; Voir Dire</u> <ul style="list-style-type: none"> <li>S&amp;C 1189-1198, 1203-1207, 1213-1223 1254-1258</li> <li>Benchbook – Jury Selection, pp. 87-93</li> </ul> <u>Initial Jury Instructions</u> <ul style="list-style-type: none"> <li>3rd Circuit Model Preliminary Jury Instructions</li> </ul>	<ul style="list-style-type: none"> <li>Guest Lecture by Assistant United States Attorney Stephanie Haines</li> <li>Submit Assignment #1- Opposition to Motion to Suppress (Teams 2 and 4)</li> <li>Moot Session #1 - Suppression Hearing (Teams 1 v. Team 2, Team 3 v. Team 4)</li> </ul>
<b>7. 2/25 – Criminal Practice IV</b>	<u>Jury Charge</u> <ul style="list-style-type: none"> <li>3rd Circuit Final Jury Charge</li> </ul>	<ul style="list-style-type: none"> <li>Submit Assignment #2 - Proposed Voir Dire (Teams 1 and 2)</li> </ul>

	<ul style="list-style-type: none"> <li>Benchbook – Instructions to jury at end of criminal case pp. 99-101</li> </ul> <p><u>Verdict</u></p> <ul style="list-style-type: none"> <li>Benchbook - Receiving Verdict pp. 103-105</li> </ul>	<ul style="list-style-type: none"> <li>Submit Assignment #3 - Proposed Initial Jury Instructions (Teams 3 and 4)</li> <li>Moot Session #2 - Jury Selection &amp; Voir Dire (Teams 3 and 4)</li> </ul>
<b>8. 3/4 – Criminal Practice V</b>	<p><u>Guilty Pleas</u></p> <ul style="list-style-type: none"> <li>Benchbook – Taking a Guilty Plea, pp. 67-79</li> </ul> <p><u>Sentencing Guidelines</u></p> <ul style="list-style-type: none"> <li>S&amp;C 1471-1483</li> <li>Stephanos Bibas &amp; Susan Klein, <i>The Sixth Amendment and Criminal Sentencing</i>, 30 CARDOZO LAW REVIEW 775-784, 788-796 (2008), available at <a href="http://ssrn.com/abstract=1105503">http://ssrn.com/abstract=1105503</a></li> <li>Benchbook - Sentencing Procedure pp. 129-136</li> </ul>	<ul style="list-style-type: none"> <li>Guest Lecture by United States Probation Officer</li> <li>Submit Assignment #4 - Proposed Jury Charge (Teams 1 and 2)</li> <li>Moot Session #3 -Charging Conference (Teams 1 and 2)</li> </ul>
<b>9. 3/18 – Civil Litigation I</b>	<p><u>Motion to Dismiss</u></p> <ul style="list-style-type: none"> <li>Syllabus of <i>Iqbal</i> (2009)</li> <li>Skim Douglas G. Smith, THE EVOLUTION OF A NEW PLEADING STANDARD: ASHCROFT V. IQBAL 88 Oregon Law Review ___ (2009), available at <a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1463844">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1463844</a></li> </ul> <p><u>Summary Judgment</u></p> <ul style="list-style-type: none"> <li>Skim Adam Steinman, <i>The Irrepressible Myth of Celotex: Reconsidering Summary Judgment Burdens Twenty Years after the Trilogy</i>, 63 WASH. &amp; LEE L. REV. 81 (2006), available at <a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=785826">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=785826</a></li> </ul>	<ul style="list-style-type: none"> <li>Optional - Submit Paper Topic for Approval</li> <li>Guest Lecture by Civil Litigator</li> <li>Submit Assignment #5 - Guilty Plea Colloquy (Teams 3 and 4)</li> <li>Submit Assignment #6 - Sentencing Guideline - Calculations (Teams 1 and 2)</li> </ul>
<b>10. 3/25 – Civil Litigation II</b>	<p><u>Civil Jury Selection</u></p> <ul style="list-style-type: none"> <li>Benchbook –Civil Jury Selection , Voir Dire pp. 165-170</li> </ul> <p><u>Preliminary Jury Instructions</u></p> <ul style="list-style-type: none"> <li>3rd Circuit Civil Model Preliminary Jury Instructions</li> <li>Benchbook – Preliminary Jury Instructions in Civil Cases pp. 171-174</li> </ul> <p><u>Final Jury Charge</u></p> <ul style="list-style-type: none"> <li>3rd Circuit Model Jury Instructions For Use at end of Trial</li> <li>Benchbook – Instructions to Jury at end of Civil case pp. 175-177</li> <li>Benchbook – Civil Verdict pp. 179-181</li> </ul>	<ul style="list-style-type: none"> <li>Moot Session # 4 -Sentencing Hearing (Teams 1 and 2)</li> <li>Submit Assignment #7 - Motion to Dismiss (Team 1) and Summary Judgment (Team 3)</li> </ul>
<b>11. 4/1 – Civil Litigation III</b>	<ul style="list-style-type: none"> <li>Option deadline to submit questions about paper via e-mail. We will meet with students during class time to discuss papers.</li> </ul>	<ul style="list-style-type: none"> <li>Submit Assignment #7- Opposition to Motion to Dismiss (Team 2) and Opposition to Summary Judgment (Team 4)</li> <li>Moot Session # 5 – Motion to Dismiss (Teams 1 and 2)</li> <li>Moot Session # 6 – Summary Judgment (Teams 3 and 4)</li> </ul>
<b>12. 4/8 – Federal Habeas Corpus &amp; Section 1983</b>	<ul style="list-style-type: none"> <li>28 U.S.C. §§ 2241, 2242, 2243, 2444, 2254, 2255</li> <li>42 U.S.C. § 1983</li> <li>H&amp;W- 1072-1079, 1084-1087, 1284-1302</li> </ul>	<ul style="list-style-type: none"> <li>Guest Lecture by Magistrate Judge Keith Pesto</li> <li>Submit Assignment #8 – Final Proposed Jury Instructions (Teams 3 and 4)</li> </ul>

	<ul style="list-style-type: none"> <li>Syllabus of <i>Padilla v. Rumsfeld</i>, <i>Rasul v. Bush</i>, <i>Boumedienne v. Bush</i></li> </ul>	<ul style="list-style-type: none"> <li>Moot Session # 7 – Jury Final Instruction Charging Conference (Teams 3 and 4)</li> </ul>
<b>13. 4/15 – Federal Employment Law</b>	<u>ADE, ADA, Title VII, FMLA, FLSA, Sexual Harassment, Retaliation</u> <ul style="list-style-type: none"> <li>Skim Practising Law Institute Employment Law 2009 Year in Review, 801 PLI/Lit 121 (2009).</li> </ul>	<ul style="list-style-type: none"> <li>Optional- Class time to discuss Papers</li> </ul>
<b>14. 4/22 – Recent Developments in Federal Jurisprudence</b>	<ul style="list-style-type: none"> <li>Readings TBD</li> </ul>	<ul style="list-style-type: none"> <li>Optional- Class time to discuss Papers</li> </ul>