Syllabus—Civil Rights
Law 619, Section 001
Professor Dawson

Course Time and Room: Monday And Wednesday, 1:30-2:20, Room 104i

Office Hours Time and Room: Monday and Wednesday 2:30-4:00, Office #252

Professor's Information and Availability:

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Office #252
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My office hours are Monday and Wednesday from 2:30-4:00; you don’t need to make an appointment to come see me during office hours. You may also request an appointment outside office hours by email, or stop in anytime I’m in my office and the door is open. You can also send me questions by email, but I may ask you to come by if the question isn't easily answered by email. I check my email regularly during business hours (9 am-6 pm) during the week; outside of those times I may not respond the same day.

Required Course Book:

- Nahmod, Wells, and Eaton, Constitutional Torts (4th ed. 2015) (The syllabus refers to this book as “Nahmod”)

Additional Materials:

These resources provide additional information about the subject, one is a detailed treatise and one is a set of pattern jury instructions for the Seventh Circuit. In places on the syllabus, I either require or suggest that you look at these sources’ coverage of our topic. (Here, and throughout the syllabus, highlighting indicates a hyperlink.)

- Proposed Seventh Circuit Pattern Jury Instructions for 1983 cases, available at http://www.ca7.uscourts.gov/Pattern_Jury_Instr/Proposed_revised_1983_instructions.pdf (syllabus refers to these as “CA7 jury instructions”)

In addition to these two, which appear several times on the syllabus, there are also various links to articles, resources, and oral arguments that appear on individual days on the Weekly Schedule below. If you have any questions about what an assignment is or how to find it, feel free to ask me about it by email.
Course Overview and Learning Objectives:

This course focuses on litigating civil rights claims under 42 U.S.C. section 1983, in lawsuits by individuals suing government officials for violations of federal constitutional rights. The course’s learning objectives are that, by the end of the semester, a student should:

- Understand that 42 U.S.C. 1983 is a vehicle to vindicate individuals’ constitutional rights;
- Know the elements of the §1983 cause of action and be able to analyze new facts to determine whether they meet those elements;
- Know and be able to apply to new facts substantive liability standards for specific constitutional claims, including government-employee speech, unlawful search, excessive police force; unconstitutional prison conditions, denial of due process, and unlawful discrimination
- Know and be able to analyze defenses and immunities in §1983 litigation, and understand how current Supreme Court doctrine limits plaintiffs’ ability to recover under §1983;
- Form and be able to defend an opinion about whether current doctrine under §1983 properly balances plaintiffs’ rights against the public interest in officers’ performing official functions;
- Understand the procedural requirements and rules that apply to §1983 suits in federal court, as well as strategic and tactical considerations about how to litigate these lawsuits;
- Explain how courts’ interpretation of §1983 compares to how courts interpret “normal” statutes.

Reading:

For each class, you are expected to do the assigned reading, and I will ask you questions about the reading in class. The reading will include readings from the course book, and in a few places on the syllabus I assign supplementary reading that will be available on TWEN.

Oral Argument Audio:

For many class sessions, I include a link to the oral argument audio for a case assigned in the reading. Listening to the audio is not required unless the syllabus expressly says otherwise. Also, listening to arguments is not a substitute for doing the reading, but I include the audio links because they often provide additional interesting perspective on the cases.

Attendance:

You are allowed four absences for this course. Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary.

Workload Expectations:

As a reminder, ABA and SIU standards define a “credit hour” as one hour of direct instruction, and at least two hours of out-of-class student work. This means that for a two-hour class, like this class, you should expect each week to spend four hours on class preparation, which includes reading and preparing any required assignments.

Recording Policy:
The course sessions will not be recorded, unless required for a disability accommodation.

Call and Participation Policy:

In class I will use a mix of random call and asking for volunteers. The extent to which I use random call will depend on the extent and quality of the group’s voluntary engagement during class. If you haven’t done the reading or are unprepared when I call on you, I may deduct .1 from your final grade; this deduction can “stack” if you are repeatedly unprepared.

Grading Policy:

Your grade will be determined by the combination of your performance on our class writing assignment, and your performance on the final exam. The writing assignment will count for 25% of your grade, and the exam for 75% of your grade. Grades for the course will be assigned based on the law school grading policy, which is available at http://www.law.siu.edu/_common/documents/rules-code/grading.pdf

Writing Assignment:

Your writing assignment will require you to draft a memorandum or pleading relating to a hypothetical case or potential case under section 1983. I will provide more information on the assignment and the due date later in the semester—the due date will be some time before the beginning of Thanksgiving break.

Final Exam:

The final exam will be on Wednesday, December 7, at 8:15 a.m. The final exam is a closed-book exam with a mix of multiple choice, short answer, and a longer policy essay.

TWEN Page:

There is a TWEN page for this course, and you should sign up for it. On that page I will post course documents such as this syllabus, handouts, additional reading when assigned, and any powerpoint slides I use in class.

Emergency Procedures:

Emergency Procedures. Southern Illinois University Carbondale is committed to providing a safe and healthy environment for study and work. Because some health and safety circumstances are beyond our control, we ask that you become familiar with the SIUC Emergency Response Plan and Building Emergency Response Team (BERT) program. Emergency response information is available on posters in buildings on campus, available on BERT’s website at www.bert.siu.edu, Department of Safety’s website www.dps.siu.edu (disaster drop down) and in Emergency Response Guideline pamphlet. Know how to respond to each type of emergency.
Instructors will provide guidance and direction to students in the classroom in the event of an emergency affecting your location. It is important that you follow these instructions and stay with your instructor during an evacuation or sheltering emergency. The Building Emergency Response Team will provide assistance to your instructor in evacuating the building or sheltering within the facility.

**Disability Support Services:**

Disability Support Services provides the required academic and programmatic support services to students with permanent and temporary disabilities. DSS provides centralized coordination and referral services. To utilize DSS services, students must come to the DSS to open cases. The process involves interviews, reviews of student-supplied documentation, and completion of Disability Accommodation Agreements. [http://disabilityservices.siu.edu](http://disabilityservices.siu.edu). Upon completion of a Disability Accommodation Agreement with DSS, students should bring the agreement to the School of Law Registrar’s Office to ensure the School of Law provides the proper classroom and examination accommodations.

**Saluki Cares:**

The purpose of Saluki Cares is to develop, facilitate and coordinate a university-wide program of care and support for students in any type of distress—physical, emotional, financial, or personal. By working closely with faculty, staff, students and their families, SIU will continue to display a culture of care and demonstrate to our students and their families that they are an important part of the community. For Information on Saluki Cares: (618) 453-5714, or siucares@siu.edu, [http://salukicares.siu.edu/](http://salukicares.siu.edu/). At the School of Law, Assistant Dean Judi Ray is also available to help students access university resources. Her email is judiray@siu.edu, and her phone number is 618-453-3135.
Weekly Schedule and Outline

Below is a list of the reading assignments and topics for each course session. The sessions are organized within an outline format that is intended to give you an overview of how each session fits into the larger structure of the course.

For the reading assignments, “Nahmod” means the course casebook. You should read both the lead cases and “notes” assigned. The notes have important information about how these topics have been handled by federal circuit courts, and are fair game for class discussion and the exam. The schedule also lists other assigned materials, some from the Schwartz treatise (“Schwartz”) and 7th Circuit pattern jury instructions (“7th Circuit jury instructions”) mentioned above, and others as listed and linked to on the daily schedule below. If you have a question about how to find assigned reading please ask.

Finally, for many class sessions, I include a link to the Supreme Court oral argument audio from a case we are reading. These links (and all the links in the syllabus) should be clickable if you download the syllabus and open it in Word. Listening to the audio is optional, but interesting.

I. Introduction and Basics

1. Monday August 22

**Topic:** Introduction to Course and 42 USC §1983

**Assignment:** Take the text of 42 USC §1983 (Nahmod p. 2), from the beginning through to “proper proceeding for redress,” and identify the elements of the 1983 cause of action.

**Reading:**

- Nahmod pp. 1-3 (stop @ heading III.)
- Schwartz p. 3-4 (“Nature of 1983 litigation”)
- U.S. Constitution Article III, Ams. 1, 2, 4, 5, 8, 14 (available in many places, e.g. [link])
- Browse these articles, all recent news stories about civil rights issues or lawsuits, to get a sense of the breadth of issues that can be litigated under section 1983. (You don’t have to read them all or memorize the details.) If you like, come to class with your own examples of current civil-rights issues.
  - Court strikes down campaign finance restrictions in Austin, TX ([link]) (1st am.)
  - Alabama police officer, fired for association with secessionist group, sues challenging firing ([link]) (1st am., 14th am. due process)
  - Chicago gun restrictions struck down ([link]) (2d am.)
  - Lawsuit against city of Baton Rouge over arrests of protestors in wake of shooting of Alton Sterling ([link]) (1st am., 14th am. due process)
  - Lawsuits by bikers arrested after Waco shootout ([link]) (4th am. arrest, 14th am. due process); article about civil suit and pending criminal prosecutions ([link])
  - Department of Justice releases report accusing Baltimore police department of systemic unconstitutional and racially biased police practices ([link]) (4th am. search and arrest, 14th am. equal protection)
  - DOJ opens similar investigation of Chicago police department ([link])
  - Lawsuit over recent police shooting in Chicago ([link]) (4th am. excessive force)
o Argument that public criticism of police use of force is producing “Ferguson effect” of increased violent crime (link)
o Attorney General Lynch argues no data shows a “Ferguson effect” (link)
o Settlement of suit against small town in St. Louis area over traffic warrants, fines, and imprisonment (link) (14th am. due process and equal protection)
o Lawsuit over denial of clothing and feminine products to women in Louisville jails (link) (link) (8th and 14th am. prison conditions)
o Lawsuit filed over choking death in Oklahoma prison (link) (8th am. use of force against prisoners)
o “Clock Boy” sues over being detained and searched for clock/ “hoax bomb” brought to school (link) (4th am., 14th am. equal protection)

2. Wednesday August 24
   Topic: Monroe v. Pape and the beginning of modern 1983 litigation
   Reading:
   - Nahmod pp. 3-22 (stop @ heading VI.)
   - Schwartz p. 1-3 (“Historical Background”)
   Oral Argument:
   - Monroe v. Pape, (link)

3. Monday August 29
   Topic: Bivens actions compared and contrasted with 1983
   Reading:
   - Nahmod pp. 22-42
   - Schwartz pp. 7-11
   Oral Argument:
   - Minecci v. Pollard, (link)

II. Under Color of Law

4. Wednesday August 31
   Topic: “Under color of law” and state action
   Reading:
   - Nahmod pp. 43-56; 75-80; 90-95 (“Notes on Conspiracy”)
   - Schwartz 81-86
   - CA7 jury instruction 7.03 (p. 11-12)
III. Substantive Civil Rights Claims Under Section 1983

A. Claims for Government Infringement of Constitutional Rights

Monday September 5—No Class (Labor Day)

5. **Wednesday September 7**
   Topic: Due Process – Liberty and Property
   Reading:
   - Nahmod pp. 97-113 (stop @ Heading C)
   - **Schwartz** pp. 34-39
   Oral Arguments:
   - *Town of Castle Rock v. Gonzales*, (link)

6. **Monday September 12**
   Topic: Procedural and Substantive Due Process
   Reading:
   - Nahmod pp. 114-134
   - **Schwartz** pp. 39-41
   Oral Argument:
   - *County of Sacramento v. Lewis*, (link)

7. **Wednesday September 14**
   Topic: Relevance of State Remedies to Due Process Claims
   Reading:
   - Nahmod pp. 134-151, 164-167, 172-176 (skip Zinermon)
   - **Schwartz** pp. 38-39

8. **Monday September 19**
   Topic: Rights of Persons in Custody
   Reading:
   - Nahmod pp. 151-164
   - **Schwartz** pp. 57-60, 65-68
   Suggested:
   - CA7 jury instructions pp. 25-26, 35-49 (model jury instructions on prisoner claims)
9. Wednesday September 21  
**Topic:** Fourth Amendment—Excessive Force  
**Reading:**  
- Nahmod pp. 177-200  
- [CA7 jury instructions](#) pp. 21-24  
**Suggested:**  
- [Schwartz](#) pp. 45-57  
- Washington Post article in which experts analyze whether police used best practices in five recent, high-profile shootings. ([link](#)) Specifically, consider the difference between “best practices” and “unconstitutionally excessive force.”  
**Oral Arguments:**  
- [Scott v. Harris](#) ([link](#))  
- [Plumhoff v. Rickard](#) ([link](#))  

10. Makeup Class—We will have a makeup class to make up for the Labor Day holiday; it will probably be in the form of a video makeup. I will give you more details on timing during the semester, but it will probably be posted around this time. The main purpose will be to familiarize you with basic principles of some constitutional rules you may encounter on the constitutional law or criminal procedure portions of the bar exam.  
**Topics:** 4th amendment excessive force cont’d, 4th amendment search and seizure, “affirmative duty” claims  
**Reading:**  
- Schwartz pp. 43-57, 60-65  
- [CA7 jury instructions](#) pp. 14-20, 28-31  

11. Monday September 26  
**Topic:** Equal Protection  
**Reading:**  
- Nahmod pp. 201-205, 260-66  
- Schwartz pp. 73-74  
- [Chicago v. Smith](#), 2015 WL 6859299, (also on TWEN)—pp. 748-49 (“Background”), 755-56 (“IV. Equal Protection”)  
- ACLU rights of women treatise, pp. 1-9  
- [CA7 jury instructions](#) p. 50
12. Wednesday September 28

**Topic:** 1st Amendment – Government-Employee Speech

**Reading:**
- Nahmod pp. 205-217
- Schwartz pp. 68-72
- CA7 jury instructions pp. 1-8

**Oral Arguments:**
- *Lane v. Franks,* (link)
- *Heffernan v. City of Patterson,* (link)

IV. Suing Government Entities – “Persons,” Pleading, and Theories of Liability

13. Monday October 3

**Topic:** Which Government Entities Are Suable 1983 “Persons”

**Reading:**
- Nahmod pp. 267-282
- Schwartz pp. 87-91, 94-95, 123-25

**Oral Argument:**
- *LA County v. Humphries,* (link)

14. Wednesday October 5

**Topic:** Government Liability Pt. I

**Reading:**
- Nahmod pp. 282-289
- Schwartz pp. 96-98

15. Monday October 10

**Topic:** Government Liability Pt. II

**Reading:**
- Nahmod pp. 289-313
- Schwartz pp. 98-107

16. Wednesday October 12

**Topic:** Government Liability Pt. III (Failure to Train)

**Reading:**
- Nahmod pp. 314-330;
- Schwartz pp. 107-111

**Oral Argument:**
- *Connick v. Thompson,* (link)
17. Monday October 17  
 Topic: Government Liability Pt. IV (Failure to Train, Hiring Liability, Supervisor Liability)  
 Reading:  
 - Nahmod pp. 330-348  
 - Schwartz pp. 112-113  

V. Causation  

18. Wednesday October 19  
 Topic: Causation pt. I  
 Reading:  
 - Nahmod pp. 357-385  
 - Schwartz pp. 91-93  

19. Monday October 24  
 Topic: Causation pt. II  
 Reading: Nahmod pp. 386-399  

VI. Suing Government Officers—Official Immunities  

A. Absolute Immunity  

20. Wednesday October 26  
 Topic: Absolute Legislative and Judicial Immunity  
 Reading:  
 - Nahmod pp. 401-406, 410-415, 418-432  
 - Schwartz pp. 128-132, 141-143  

21. Monday October 31  
 Topic: Absolute Prosecutorial Immunity; Procedure for Claims of Absolute Immunity  
 Reading:  
 - Nahmod pp. 433-454  
 - Schwartz pp. 132-141  
 Oral Argument: Rehberg v. Paulk, (link)  

B. Qualified Immunity  

22. Wednesday November 2  
 Topic: Qualified Immunity—Origins and Evolution  
 Reading:  
 - Nahmod pp. 457-475  
 - Schwartz pp. 143-145
23. **Monday November 7**  
**Topic:** Qualified Immunity—“Clearly Settled” Law  
**Reading:**  
- Nahmod pp. 475-496  
- **Schwartz** pp. 147-151  
**Oral Argument:**  
- *Wood v. Moss*, [link](#)  

24. **Wednesday November 9**  
**Topics:** Qualified Immunity—Procedure and Adjudication  
**Reading:**  
- Nahmod pp. 496-519  
- **Schwartz** pp. 152-161  
**Oral Argument:** *Pearson v. Callahan*, [link](#)  

25. **Monday November 14**  
**Topic:** Qualified Immunity; Procedure cont’d; QI for Private Persons  
**Reading:**  
- Nahmod pp. 519-543  
- **Schwartz** pp. 145-147  
**Oral Argument:** *Falarsky v. Delia*, [link](#)  

VII. Remedies  

26. **Wednesday November 16**  
**Topic:** Compensatory Damages  
**Reading:**  
- Nahmod pp. 545-569  
- **Schwartz** pp. 187-189  

27. **Monday November 28**  
**Topic:** Injunctive Relief and Class Actions  
**Reading:**  
- Nahmod pp. 595-612  
- **Schwartz** pp. 27-28  
- *Chicago v. Smith* 143 F. Supp. 3d 741 (N.D. Ill. 2015), [2015 WL 6859299](#), (also on TWEN)—pp. 751-753 (section entitled “II. Article III Standing”)  

VIII. Attorney’s Fees and Ethical Issues  

28. **Friday November 30**  
**Topics:** Attorneys’ Fees and Ethical Issues  
**Reading:**  
- Nahmod pp. 349-356; 702-709; 764-769; 772-777  
- **Schwartz** pp. 194-199  
**Oral Argument:** *Perdue v. Kenny A*, [link](#)