Syllabus—Civil Rights
Law 619, Section 001
Professor Dawson

Course Time and Room: Tuesday & Thursday, 9:00-10:15, Room 108

Office Hours Time and Room: Room #240, Monday & Wednesday 2:45-4:00; Tuesday 10:15-11:30

Professor's Information and Availability:
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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) (“Nahmod”)

Additional Materials:

On the syllabus, I have links to additional reading that is required for class. When possible, I will also post the additional reading on TWEN. There are two sources that are assigned frequently enough that I am including links to them here for your convenience. One is a treatise on section 1983 and one is a set of pattern jury instructions for the Seventh Circuit. The treatise will help to give context and make “the rules” clear. The jury instructions will give examples of how a jury of non-lawyers would be instructed on the topic we’re covering and hopefully help to get you thinking about how these cases are actually litigated. (Here and throughout the syllabus highlighting indicates a hyperlink.)

• Martin Schwartz, Section 1983 Litigation (3d ed. 2014), available at https://www.casd.uscourts.gov/Attorneys/CJAAppointments/SiteAssets/docs/FJCSection1983Outline.pdf (syllabus refers to this treatise as “Schwartz”)
• Seventh Circuit Pattern Jury Instructions (2015), available at http://www.ca7.uscourts.gov/pattern-jury-instructions/7th_cir_civil_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 links to articles, resources, and oral arguments on individual days on the Weekly Schedule below. The hyperlinked reading material is part of the required reading and fair game for questions in class. 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 mainly on litigating civil rights claims under 42 U.S.C. section 1983, in lawsuits by individuals suing government officials and local government entities for violations of federal constitutional rights. We also will begin the class with a brief and broad overview of other civil rights statutes. 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 violations of equal protection
- 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.
- Develop a broad, big-picture understanding of the many other civil-rights statutes that create and allow citizens to sue for violations of civil rights.

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 on most days I also have assigned supplemental reading that is available by hyperlink or will be posted 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 and 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 six absences for this course. Since the material for this course is challenging, I recommend you not miss class unless it is truly necessary. The school’s attendance policy is available here: [http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay17-18.pdf](http://law.siu.edu/_common/documents/rules-code/attendance-rules-ay17-18.pdf)
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 three-hour class, like this class, you should expect each week to spend six hours on class preparation, which includes reading and preparing any required assignments.

Recording Policy:

The course sessions generally will not be recorded, unless required for a disability accommodation. If you are going to be absent and would like for me to record the class, if you give me advance notice I will try to get that set up for you.

Call and Participation Policy:

In class I will use a mix of random call, asking for volunteers, and assigning problems which require everyone in the class to discuss or write out an answer. Your preparedness when called on and participation in in-class problem assignments will determine your class participation score.

Grading Policy:

Your grade will be determined as follows: Class Participation—10%. Midterm Exam—20%; Final Exam—70%. 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

Midterm Exam:

Your midterm exam will be a closed-book exam that includes a number of multiple choice questions as well as one short essay question.

Final Exam:

The final exam will be on Thursday, December 14, at 8:15 a.m. The final exam will be a three-hour closed-book exam with a mix of multiple choice, short essay questions, and a longer 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.
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 the 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. Tuesday August 22

Topic: Introduction to course and to 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. 1-6
• 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).
  o Alabama police officer, fired for association with secessionist group, sues challenging firing [link] (1st am., 14th am. due process)
  o Chicago gun restrictions struck down [link] (2d am.)
  o Department of Justice investigations and settlements relating to systemic violations of constitutional rights by Albuquerque [link], Baltimore [link], and Chicago [link] police departments  (4th am search & seizure, excessive force, 14th am due process)
  o Attorney General Sessions orders review of DOJ investigations into and settlements with city police departments [link]
  o Settlements in police shootings of Philando Castile [link], Walter Scott [link], Tamir Rice [link], Michael Brown [link] (4th am excessive force)
  o City of Baton Rouge settles class-action lawsuit over arrests of protestors in wake of shooting of Alton Sterling [link] (1st am., 14. am. due process)
  o Lawsuit over allegedly illegal roadside body cavity search, officers were charged but charges were dropped (4th amendment search) [link] [link]
o Lawsuits by bikers arrested after Waco shootout (link) (4th am. arrest, 14th am. due process); article about civil suit and pending criminal prosecutions (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)

2. Thursday August 24
   Topics: Brief overview of civil-rights statutes; Monroe v. Pape and the beginning of modern 1983 litigation
   Reading:
   • Nahmod, pp. 3-22 (stop @ heading VI.)
   • Congressional Research Service, Federal Civil Rights Statutes: A Primer (2008), (link), also posted on TWEN
   • Schwartz p. 12-13
   • CA7 jury instruction 7.04, p. 136
   Oral Argument: Monroe v. Pape, (link)

3. Tuesday August 29
   Topic: Bivens actions compared and contrasted with §1983
   Reading:
   • Nahmod pp. 22-42
   • Schwartz pp. 7-11
   • Excerpt from Ziglar v. Abbasi (2017), to be posted on TWEN
   Oral Argument: Minecci v. Pollard, (link)

II. Under Color of Law

4. Thursday August 31
   Topics: “Under color of law”; state action and suits against private parties; conspiracy
   Reading:
   • Nahmod pp. 43-56; 69-80; 90-95
   • Schwartz pp. 81-86
   • Excerpt from Butler v. Sheriff of Palm Beach County; to be posted on TWEN.
   • CA7 jury instruction 7.03, p. 135
III. Substantive Civil Rights Claims Under Section 1983

A. Claims for Government Infringement of Constitutional Rights

5. Tuesday September 5
   Topic: Due Process pt. I: Liberty and Property Interests
   Reading:
   • Nahmod pp. 97-125
   • Schwartz pp. 34-37
   • Center for Human Rights, Fundamentals of Constitutional Law (2014) (link), pp. 17-21
   Oral Argument: Town of Castle Rock v. Gonzales, (link)

6. Thursday September 7
   Topic: Due Process pt. II: Procedural and Substantive Due Process
   Reading:
   • Nahmod pp. 125-151
   • Schwartz pp. 37-45
   Oral Argument: County of Sacramento v. Lewis, (link)

7. Tuesday September 12
   Topic: Due Process pt. III: Relevance of State Remedies to Due Process Claims; “Affirmative Duty” claims
   Reading:
   • Nahmod pp. 164-176; 219-225, 230 (n. 4)-233, 238-47
   • Schwartz pp. 38-39, 42-45, 162
   • CA7 jury instruction 7.16 pp. 153-54

8. Thursday September 14
   Topic: Rights of Persons in Custody
   Reading:
   • Nahmod pp. 151-164
   • Schwartz pp. 57-60, 65-68
   • CA7 jury instructions 7.10, 7.11, 7.12, 7.13, 7.14, 7.15 pp. 145-52
   • National Lawyers’ Guild, The Jailhouse Lawyer’s Handbook (2010), (link), pp. 5-11, 36-47
9. **Tuesday September 19**  
**Topic:** Fourth Amendment—Excessive Force  
**Reading:**  
- Nahmod pp. 177-200  
- **Schwartz** pp. 43-57, 60-65  
- **CA7 jury instructions** 7.08, 7.09, 7.15 pp. 141-44, 151-52  
**Suggested:**  
- 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 Argument:** *Scott v. Harris*, ([link](#))

10. **Thursday September 21**  
**Topics:** 4th amendment excessive force cont’d; 4th amendment search and seizure  
**Reading:**  
- Excerpts from *Plumhoff v. Rickard*, to be posted on TWEN  
- Excerpts from *County of Los Angeles v. Mendez*, to be posted on TWEN  
- **Schwartz** pp. 43-57, 60-65  
- **CA7 jury instructions** 7.05, 7.06, 7.07, pp. 137-140  
**Oral Argument:** *County of Los Angeles v. Mendez*, ([link](#))

11. **Tuesday September 26**  
**Topic:** Equal Protection  
**Reading:**  
- Nahmod pp. 260-66  
- **Schwartz** pp. 73-74  

12. **Thursday September 28**  
**Topic:** 1st Amendment (Government-employees’ 1st amendment rights)  
**Reading:**  
- Nahmod pp. 205-217  
- Excerpt from *Lane v. Franks*, available on TWEN  
- **Schwartz** pp. 68-72  
- **CA7 jury instructions** 6.01, pp. 128-29  
**Oral Argument:** *Lane v. Franks*, ([link](#))

13. **Tuesday October 3:** Midterm Exam  
- I will provide more information about the midterm during September.
IV. Suing Government Entities – “Persons,” Pleading, and Theories of Liability

14. Thursday October 5
   **Topic:** Which Government Entities Are Suable 1983 “Persons”
   **Reading:**
   Nahmod pp. 267-282
   Schwartz pp. 87-91, 94-95, 123-26
   **Oral Argument:** *LA County v. Humphries*, (link)

15. Tuesday October 10
   **Topic:** Government Liability Pt. I (policy, custom, and policymaking)
   **Reading:**
   - Nahmod pp. 282-313
   - Schwartz pp. 96-107
   - CA7 Jury instructions 7.19, 7.20, p. 157-158

16. Thursday October 12
   **Topic:** Government Liability Pt. II (policy cont’d, training liability)
   **Reading:**
   - Nahmod pp. 314-330
   - Schwartz pp. 107-111
   - Excerpts from *Connick v. Thompson*, posted on TWEN
   - CA7 Jury instructions 7.21, p. 159
   **Oral Argument:** *Connick v. Thompson*, (link)

17. Tuesday October 17
   **Topic:** Government Liability Pt. III (training cont’d, hiring liability, supervisor liability)
   **Reading:**
   - Nahmod pp. 330-356
   - Schwartz pp. 112-122
   - CA7 Jury instructions 7.17 p. 155

V. Causation

18. Thursday October 19
   **Topic:** Causation pt. I
   **Reading:**
   - Nahmod pp. 357-385
   - Schwartz pp. 91-93
   - CA7 Jury instructions 7.02 p. 134
19. **Tuesday October 24**  
   **Topic:** Causation pt. II  
   **Reading:**  
   - Nahmod pp. 386-399  
   - Excerpt from *County of Los Angeles v. Mendez* (2017), to be posted on TWEN  
   **Oral Argument:** *County of Los Angeles v. Mendez*, [link](#)  

VI. **Suing Government Officers—Official Immunities**  

A. **Absolute Immunity**  

20. **Thursday October 26**  
   **Topic:** Absolute Legislative and Judicial Immunity  
   **Reading:**  
   - Nahmod pp. 401-407, 410-415, 418-432  
   - Schwartz pp. 128-132, 141-143  

21. **Tuesday October 31**  
   **Topic:** Absolute Prosecutorial Immunity; Procedure for Claims of Absolute Immunity  
   **Reading:**  
   - Nahmod pp. 433-456  
   - Schwartz pp. 132-141  
   **Oral Argument:** *Rehberg v. Pauk*, [link](#)  

B. **Qualified Immunity**  

22. **Thursday November 2**  
   **Topic:** Qualified Immunity—Origins and Evolution  
   **Reading:**  
   - Nahmod pp. 457-475  
   - Schwartz pp. 143-145  
   - Excerpt from *Mullenix v. Luna* (2015), to be posted on TWEN  

23. **Tuesday November 7**  
   **Topic:** Qualified Immunity—“Clearly Established” Law  
   **Reading:**  
   - Nahmod pp. 475-496  
   - Schwartz pp. 147-151  
   - Excerpt from *City of San Francisco v. Sheehan* (2015), to be posted on TWEN  
   **Oral Argument:** *City of San Francisco v. Sheehan*, [link](#)
24. **Thursday November 9**  
**Topics:** Qualified Immunity—Procedure and Adjudication  
**Reading:**  
- Nahmod pp. 496-519  
- **Schwartz** pp. 152-161  
- **CA7 Jury instructions** 7.18, p. 156  
**Oral Argument:** *Pearson v. Callahan*, (link)

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

VII. **Remedies**

26. **Thursday November 16**  
**Topic:** Compensatory Damages  
**Reading:**  
- Nahmod pp. 545-569  
- **Schwartz** pp. 187-189  
- **CA7 Jury instructions** 7.22, 7.23, pp. 61-62

27. **Tuesday November 28**  
**Topic:** Punitive Damages, Injunctive Relief, and Class Actions  
**Reading:**  
- Nahmod pp. 569-78, 595-612  
- **Schwartz** pp. 27-28, 189-90  
- *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”)  
- **CA7 Jury instructions** 7.24, pp. 163-64

VIII. **Attorney’s Fees and Practical Litigation Issues**

28. **Thursday November 30**  
**Topics:** Attorneys’ Fees; Pleading and Practice  
**Reading:**  
- Nahmod pp. 702-731  
- **Schwartz** pp. 13-21; 113-15, 153, 194-199  
**Oral Argument:**  
- *Perdue v. Kenny A*, (link)
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. Please remember either to insert this language in your syllabus, distribute a handout with the language to your students on the first day of class, or post the notice in a document on your TWEN page. (Of course, you may do all three if you wish.)

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/. 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/index.html. 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.