# End of Term Case Project

* Read Foucault:
  + The history of sexuality
  + An introduction volume 1
* End of Term case project
  + It is a mock trial: an appellate court hearing on a legal issue related to sex/sexuality
  + Stipulate the fact pattern, and argue the case based on those facts
  + You should not try to create new facts/find new facts
  + 2 sides, 4 people on each side
    - Each side has 25 minutes of talk
  + Responsibilities
    - Oral argument
    - Written argument (a brief) (6 pages per person)
* There are briefs in the supplement to the course reader
  + US v Windsor (2013)

# Todo

* Find readings on syllabus online #boom
  + All books are at the reserved desk at the library and can be checked out for two hours at a time

# Info

* 1/3 of grade is based on the end of semester mock trial
  + Will divide up into teams and argue a legal point
  + If you can argue a legal case by demonstrating your understanding of legal argumentation
  + Case: you will imagine plaintiffs and defendants and what case they could present to a court to get them what they want; or stop someone else from getting what they want

# Links

* Are We Having Sex Now or What? http://freethoughtblogs.com/greta/2006/09/17/are\_we\_having\_s\_1/

# 8/25/2014

* Legal Doctrines: what the law says
  + The legal doctrines process is about argumentation; the type of reasoning lawyers and judges engage in to talk about legal doctrines
  + Learning how lawyers think is just as good as learning about how they came to a particular solution
* Rational: there is a difference between good legal decisions and the other ones (bad legal decisions)
  + Depends on the strength of the legal doctrine & argumentation supporting the rational
* movie
  + A women is fighting with her husband
  + When a women does not want to have sex with her husband, the husband beats her up
  + A child was beat up
  + The family was really poor; the woman wanted a divorce because she was getting abused; the family was trying to protect the man and were defending the man – this was inside a sharia court; they urged the woman to reconcile with the man, when she said no, they allowed her to get a divorce
  + Parents around the world will beat their kids
  + One of the children were raped
  + One of the men being accused, was making a mockery of the court, laughing and such.
  + An abused women will get talked out of seeking a divorce > the man behaves himself for awhile > six months later and he is back at his old ways
  + They had a domestic violence law on the books for 17 years, but never got a conviction
* CEDAW: Committee on the Elimination of Discrimination against Women
  + Only two countries haven’t ratified this policy: and the US is one of them

# 9/8/2014

* Rachel Morans: interracial intimacy
  + anti-miscogenation laws
    - interracial intimacy was bad because: slaves, racial superiority, maintaining culture, white unfreed labor, to keep a hierarchy in the labor force, will lead to a class of mulattos
      * the ban on interracial marriage because the people that made the law could not trust certain races to make decisions on sex and marriage
  + Benjamin franklin ran away to become a great statesment, writer, etc.
  + Case verse Alabama
    - Put white people
  + Lovings case:
    - A judge found them guilty but gave them a lifetime of exile – he said almgiht gods create races white, black, red, and separated them on different continents, which indicates that god did not attend the people to intermarry
  + One drop rule: if you had one drop of African blood you were considered black: a person with at least one ancestor descended from Africa is African
    - Homer Plessy: kicked off the rail road train in 1890s in luisiana for being black; he deliberately goes on the train, deliberately advertises as black, and is trying to get arrested. He has 2 parents, 4 grand parents, 8 grand parents, and 16 great grand parents, one of his grandparents were black
      * Plessy v. ferguson

# 9/15/2014

* Anti-miscegenation laws
  + Social/economic function: enforcing a race hierarchy in a racialized labor system
* Creating race lines, racial hierachry “one drop rule”
* Slave
  + Unperson
  + No recognize right to: freely move; enter into contracts; own property; sue in court; defend oneself; vote; holding office; serving on a jury; serving in the militia;
    - interestingly marriage is a contract, which slaves could not enter in a contract, but still were made to have sex at the captor’s discretion
    - These are the traditional civil rights
  + The emancipation of American POWs,
    - Minimalist view: supposedly ended slavery; but in fact it just ends the ownership of one person by another, it does not give anyone any free rights
    - Maximalist view: it ended everything to do with slavery
* The black codes: established the old slave codes without the “ownership” of human beings in late 1865 and early 1866
  + Congress passes the civil rights act of 1866: says everyone has the same rights to own property, entry into contracts, have protection nof legal processes as white persons have
    - This was passed over a presidential veto
  + Fourtheenth amendment: has the goal to retroactively constitutionalize the civil rigths act just in case it wasn’t constitutional
    - Section 1: defines who is a citizen: all persons who are born or naturalized in the united states
      * Type 1: birth right citizenship
      * Type 2: naturalization citizenship
    - Your state citizenship is decided by the constitution, so the state cannot take away your citizenship
    - Priviledge and immunities of us citizens cannot be taken away
    - Nor shall any state deprive a person of life liberty or property without due process of the law
    - Nor deny to any person within its jurisdiction the equal protection of the law
  + Reconstruction
    - Allows interracial marriage
  + Alabama passes an anti-miscegenation laws
    - This is passed by 1877
    - Intraracial Adultery/fornication
      * 1st offense: $100/6 months
      * 2nd offense: $300/1 year
      * 3rd offense: 2 years
    - Interracial:
      * 1st offense is 2-7 years
      * For adultery/fornication/marriage
  + In 18873: the supreme court hears the first case that comes to it under the equal protection laws called the “slaughter house cases”
    - The city of new Orleans had passed and ordinance given the right to practice the trade of butcher to one group of people
    - The other butchers not part of the first group complained of being shut out of butchering in new Orleans
      * They claim it is part of US citizenship priviledge to practice a trade or occupation
      * The supreme court says it is not a priviledge
    - New Orleans is a major shipping pub, and animals would come to be transported all across the nation & world
* 1833 barson v mayor of baltimor
  + Bill of rights applies only to federal and not to state government
  + 19th century liberalism: primarily about the relationship between the state and everything else and advocates a very minimal role for the state
    - The state shouldn’t interfere in social or economic life;
    - Economic sphere: laissez-faire: classical adam smith economics
    - Social sphere: for the state to allow interracial marriage is to interfere in a social world where the members of the difference races want there separate existences; somehow the state encouraging something that is against the natural flow
* Yick wo vs board of supervisors of the city and county of San francicsco
  + The san Francisco board of supervisors passes and ordinance to the effect tthat all laundries in SF must be constructed out of brick (because in the 19th century it was a huge fire hazard to heat water over the open flame)
  + In 1906 there was a huge earthquake that lasted for 40 seconds, but caused a fire that lasted 3 days
  + In reality, the chinese own the wood laundries, and the whites owned the brick laundries
  + The case went before t supreme court and they threw it out: saying the constitution will expose simple & concealed racism,
* Separate but equal: a two tiered system; 1883
  + Tier 1: everyone is of the same race
  + Tier 2: (lower tier) mixed race
* 1896: Plessy vs fergoson
  + Gets on the trail car marked white and gets arrested
  + It’s a two tiered system of railroad travel
    - Two tiered sytem creates a hierarchy
  + Tier 1: stay in the car assigned to your race; if you stay in your race car, you can ride the train
  + Tier 2: go into the car marked for the other race; if you go into this car you will get fined and thrown off the train
* Brown v board of education 1954: (this is a k12 public school)
  + Social context
  + NAACP ink fund: started to push these cases in the late 20s and early 30s , they had a strategy to get rid of separate but equal
  + The NAACP were not going to touch the miscegenation laws because marriage was too hot, so their first attack on separate but equal as unconstitutional was on graduate and professionals chools
    - Professional school: dental school, law school. Medical school, etc
  + The states that cared most about education was those states who had a dual education systems, ( a two tiered system)
  + The state would pay for black students out of state tuition to attend an out of state school to get around the equal protection clause
    - The NAACP said this is against the law because even though both the in state and out of state may offer same level of education, there is more of a burden to go to the out of state college
    - The state of texas and law school were forced to integrate, because they were forcing a hierarchy within the citizenship of Texas
* Topeka vs BLAH
  + NAACP stipulates that the black and white school are material indifferent, but they were complaining that the fact of segregation, the fact of two tiered system, in of itself, creates a hierarchy within each school and the hierarchy is the offense against the equal protection clause
    - The purpose of the hierarch is to create a system of white supremacy
    - And a system of racial supremacy is inconsistent with a system of equal protection
    - In the field of education, separate but equal is inherently illegal

# 9/22/14

* Anti miscegenation laws
  + Equal protection satisfied
  + Separate but equal doctrine: started with Pace v Alabama in 1883 (sex in the bedroom)
  + Plessy vs ferguson: the racial segregation of the railroad carts could be allowed only if the cars are substantially the same
  + NAACP vs segregation: in the education context, it was clear that the tangible elements of education (Classroom, books, etc) were unequal but even if they were equal – racial segregation in effect gave unequal education to students of different races
  + Education was also about the intangibles, the interactions between students and students & Teachers. The intangibles are so important that even if the tangible factors are equal, the equal protection laws would still be violated
  + Segregation is inherently unequal
  + Civil rights and segregation
    - 1955 montgomery bus boycott
    - 1960 freedom rides
* In the 1950s there were 4 free African coutnries: Egypt ethipia Liberia and southa frica
  + By 1964 all of French Africa was free, ghana became free in 1957, and some others
* Supreme court asked to throw out the segregation because

# 10/6

* Random house: decided to publish Ulysses by James Joyce which uses the F word a lot!
  + It was published in Paris
* First amendment: the freedom of speech of the press
  + Only to federal government not to state government
  + The law of obscenity: speech which appeals to certain feelings, lurid, or unhealthy

# 10/13

* Miller
  + Obscenity: 19th century
  + From the elisis case in 1933 to the miller case in 1973, you get a loosening on the description of the obscenity laws
    - Art & literature is excluded from obscenity
    - Scientific & medical discussion excluded from obsecenity
    - Political messages are excluded from obscenity
  + Miller test: has to be patently offensive according to contemporary community standards, is an offensive appeal to the prurient interest, is an offensive depiction of some specific sexual act or body parts, and its not science, art, literature, politics,
    - All are tested by community standards
* First amendment protects the scope of the freedom of speech
  + Judges are more protective of free speech than they were 40 years ago
  + In miller test (1973): the court draws a contrast between protected political speech and unprotected commercial exploitation
  + In 1976; the supreme court said specifically in regulating the advertisement of candidates for political office, they said money is speech
    - A candidate for federal office has a constitutional right to spend money for his/her election, and that that spending cannot be constitutionally limited by an act of congress.
    - There is no ceiling on the amount of money a candidate for office can spend on their campaign
* Equal protection of the laws
  + In 1926, applies to race and sex
  + The state has power under section 5 of the equal protection clause to secure greater equality for disfavored groups

# 10/27/14

* 1905 lochner v new York
  + Liberty of employees restricted by a maximum hours law
  + Due process amended, life liberty and property
* Muller v Oregon in 1980
  + Muller sues the state of oregon
* Fourthenth amendment
  + No state shall deny to any person in its jurisdiction equal protection of the laws
* Discrimination laws is based on grounds of race or color

# 11/3/2014

* Judicial review
  + If fundamental rights are at stake
  + If legislation is aimed at a discreet and insular minority
  + If the legislation arose from a corruption of the democratic process
  + Under the due process/equal protection clauses of the constitution the supreme court would strictly scrutinize the legislation to see if it was aimed at a achieving a compelling state interest in the least onerous manner
    - To do the right for the minority/democratic process in the least burdensome way

# 11/10/2014

* Corporation
  + A legal etntity
  + An artificial person
  + A shield against personal assets (limited liability)
* Protected class
  + Are the poor a constiutitionally protected class?
  + Are the rich?
  + Are the middle classes
* Legally protected sex
  + Is legally protected in marriage
  + In all other cases ,it is not legally protected
  + Sodomy = criminalize sex, early common law, based on sodomy goes against morals & welfare