

Seminar in Social Issues: Psychology and Law
Psychology 443
Spring Semester, 2009

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Office Hours: T 10:30-12 or by appointment

Course prerequisites:

Psychology 210 (Statistics)
Psychology 211 (Research design)
Psychology 394 (Psychology and Law)

This course is about the application of psychological theory, research, and methods to legal issues and procedures. A role that psychologists often play in the legal system is to provide information that can be used by those who devise the law—legislators--and those who interpret the law—judges. If, for example, an issue arises as to the fairness of procedures used to impose the death penalty, psychologists can help to determine the impact of these procedures on the outcome of trials. This semester we will study how psychological theory, research, and methods can be used to inform and influence the law.

The objectives of this course are four-fold:

1. To read, understand and discuss psychological research studies
2. To read, understand and discuss judicial opinions
3. To assess the extent to which social science methodology and theory is useful to legal decision making and policy development
4. To communicate about these issues in public

The first portion of this course will be devoted to readings and discussion of the use of psychological research in legal cases. (Don't fear: I will teach you how to read and decipher a case and theoretically you already know how to read and understand psychological research studies.) We will examine amicus curiae ("friend of the court") briefs, appellate court opinions, psychological research studies, case studies, and examples of expert testimony relevant to various topics in psychology and law.

The second portion of the course will involve your application of social science research findings to assigned legal problems. Because psychologists' opportunity to influence law and policy is greatest at the appellate court level, I will ask you to prepare your own written appellate court arguments (position papers), and present them to the class by way of oral argument, just as in appellate courts. Details about the position papers and oral arguments are given below.

Readings and discussion

Because this is a seminar course, there will be almost no lecturing. Rather, for the first two months of the semester, class time will be spent discussing the assigned articles and the ideas that flow from those readings. Some readings are included in your course packets. Most are in my outbox. In addition, you will have to locate and read portions of several legal cases available online. I will give you the cites/sites. **In class, you will be asked questions about the readings and will be expected to be an active contributor to class discussions.** To ensure that you are reading the cases carefully, you will be required to “brief” each case by writing about the facts, issue, holding, reasoning, and use of social science data (more on this later). You will need to hand in your typed briefs at the end of the class period on the day that we discuss that case. (Do not plan to skip class and then show up at the end of the class with your brief in hand. You will not receive credit for class participation or for the written brief.)



Position papers, oral arguments, and judging.

Class members will write a 12-15 page position paper and each student will give an oral argument based on the position paper during in-class mock appellate court hearings. Finally, every student will serve in the role of appellate judge during the oral arguments of other students.

Oral arguments will be given during the last month of the semester. Each student will argue one side of a psycholegal issue. During these presentations, presenters will be questioned by other students acting as appellate court judges. I can meet with you throughout the semester to develop the issues to be addressed in the position papers and presentations and to provide some guidance to recent social science research findings related to these legal topics (most of the legwork will be done by you, however!)

Written work associated with position papers. Each student will prepare a position paper that describes the psychological research and theory that would help a particular party or legal position prevail. In other words, **your task is to present the best available psychological research in support of the legal position you are arguing.** At least 75% of your references must be from original sources, primarily articles published in scientific journals or edited books. Only 25% may come from websites or various news magazines. The paper must be written in APA-format including references. Position paper topics will be determined by lottery on Feb. 3. You are

strongly advised to begin work on your position paper at that time. Many of the articles on which you will rely will have to be found on-line or ordered through inter-library loan. Inter-library loan typically takes 2 weeks. If you begin work on your paper the week before it is due, you will not be able to complete this assignment.

Cooperation with the opposing side is limited to developing issues for the position papers, exchanging bibliographic references and the like. You may not read the text of drafts produced by the opposing side before they are filed.

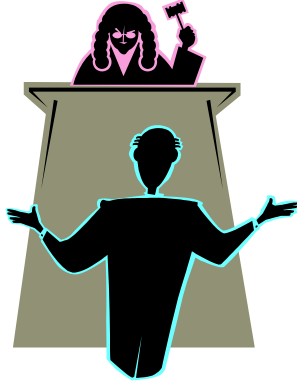
All students are required to seek input from the Writing Center for this assignment. The Writing Center offers individualized support both in the Center (Columbine 316) and through the online writing lab (OWL). You will need to be very clear with the consultant about the exact nature of this assignment. During in-person 45 minute sessions, consultants read your papers and talk with you about writing concerns. Although consultants will not edit your writing, they will help you develop the skills necessary for editing your own work and for producing an acceptable paper. Your fellow students and I will appreciate reading the improved product. When you hand in your paper, please provide proof of your consultation with the Writing Center.

You will serve a hard copy of the paper on the opposing side and on the instructor at the beginning of class one week before the oral argument. By the end of that day, you must also email an electronic version of your paper (written in Word) to all other students in the class to read in preparation for oral arguments. Position papers are limited to 15 pages (typed and double-spaced, excluding references).

In addition, each side must identify a single article of no more than 20 pages (available in electronic form) that you must email to the instructor and all students along with your paper. Class members are expected to read these in advance of the presentation. (Both sides may agree on a single, longer article for background reading, if desired.) I must approve the readings before you distribute them.

Readings associated with position papers. All students will complete each week's readings as part of their regular class assignment. During the last month of the course, you will read the position papers filed by both sides as well as the background articles chosen by both sides. You will need to have familiarity with this information in order to fulfill your role as judges (more below). In addition, there will be class discussion of the articles at the conclusion of each day's oral arguments.

Oral arguments. During oral argument, each student will have up to 30 minutes to present and 10 minutes for rebuttal. You should have practiced the presentation several times so that you fill the allotted time. However, you will be interrupted during your argument by persons playing the role of appellate court judges who may interrupt to ask questions. Visual aids are encouraged and a computer and monitor will be available.



Assignment of students as appellate court judges. Students will be assigned at the beginning of each oral argument to serve as appellate court judges that day. Your job is to question the presenters during the course of their arguments. (This is why you will need to have done all the readings and prepared questions in advance). You will be graded on your performance as judge.



News analyses.

In addition to your oral argument, you will each be expected to present to the class a news article of relevance to psychology and law and write a one-page description that reviews 2 relevant research studies. The assignment is four-fold:

- first, locate a news article that raises some interesting psycholegal issue(s);
- second, find a psychological research study relevant to the legal issue(s) described in the article;
- third, prepare a 10-15 minute oral presentation. Your presentation should begin with an overview of the news article and a description of the legal issue. Next, you should share the methodology and results of the research study. Finally, you should tie the two together by explaining how the results of the study shed light on the legal issues raised in the article and how, potentially, the study's findings could be used by the legal system; and
- fourth, write a 2- page description of the legal issue and the research study on which you relied. What was the objective of the research? What variables were manipulated and measured? What conclusions were reached? How does the study contribute to our understanding of the legal issue you identified?

This exercise will be a practice-run for your position papers and oral arguments later in the semester; it will give you an opportunity to practice explaining psychological research studies and connecting them to a legal issue. It will show you that it is possible to speak in front of the class and survive. You will be graded on the clarity and thoroughness of your presentation and your written description. Your research descriptions are due at the end of class on the day you make your presentation.

Good sources for news articles are the New York Times, Washington Post, Los Angeles Times (available in the library or on-line), various news magazines and internet sites. You may not use an article from the Colorado Springs Gazette or the Denver papers as these are usually too sketchy for our purposes. In order to avoid multiple reports of the same news event, you must clear your idea with me by email at least one week before your presentation. Obviously, the sooner you decide on a news item, the better your chances of actually presenting that event. Presentations will be held in February and March.

Grading criteria.

Throughout the semester, you will accumulate points for each assignment. (For the case briefs, position paper and oral argument, I will give you some guidelines so you will know what you will be graded on.) The maximum number of points available is 200. Your grade will be based on the following:

In-class contributions	30 points
Case briefs	15 points, 5 points per brief
New analysis	30 points, 15 for presentation and 15 for description
Position paper	70 points
Oral argument	40 points
Appellate judge questions	15 points

Failure to meet deadlines (e.g., for handing in position paper, placing article in out-box, clearing news article with professor) will result in a 25% reduction in available points for that aspect of the course for each day that you are late. You are advised to keep very careful track of the various deadlines that pertain to your work.

At the end of the semester, I will determine the highest points earned over the course of the semester. Those scoring within 90% of this number will receive an A, those within 80% will receive a B, etc. I do give plus and minus grades.

Attendance is mandatory and active participation is required. In a seminar class, everyone shares the responsibility for teaching everyone else. Therefore, I require your attendance and your participation at every class session and will make note of both each week. Regarding participation: All of you should now have sufficient knowledge of research design and methodology, statistics, and substantive topics in psychology and law in order to contribute to the class discussion. If you truly feel that you are not up to the task, then I suggest that you not take this course. My expectations of you are very high.

Final rules: No cell phones in class. Ever. Please familiarize yourself with the LAS plagiarism policies. A link can be found on the Psychology Department website.

Preliminary Schedule and List of Readings

* denotes reading that you must get from my outbox

denotes case that you must find online

+ denotes a case that you must brief and hand in at the end of the class period

Jan. 20 Introduction to the course

Jan. 27 **Discussion topic: The relationship between the law and social science**

Reading 1: Psychology and law: An overview (Ogloff & Finkelman)

Reading 2: Psychology and law: An ambivalent alliance (Costanzo)

Learning how to “brief” a case

Bring Reading 3 to class: New Jersey v. Kelly (NJ Supreme Court)#

Psychology communicated to law by way of amicus briefs

Feb. 3 **Position paper topics and teams will be determined**

Discussion topic: Child witnesses and the confrontation clause

Reading 4: Social science and the courts: The role of amicus curiae briefs
(Roesch et al.)*

Reading 5: Child witnesses and the confrontation clause: The American
Psychological Association brief in Maryland v. Craig (Goodman et al.)*

Reading 6: Maryland v. Craig (U.S. Supreme Court)#+

New analyses session 1

Feb.10 **Discussion topic: Juvenile death penalty**

Reading 7: Less guilty by reason of adolescence: Developmental immaturity,
diminished responsibility and the juvenile death penalty (Steinberg & Scott)*

Reading 8: In the Supreme Court of the United States: Roper v. Simmons
Amicus curiae brief of the American Psychological
Association*

Reading 9: Roper v. Simmons (U.S. Supreme Court)#+

Feb. 17 **News analyses session 2**

Discussion topic: Jury decisions

Reading 10: Cleveland Plain Dealer articles on John Spirko*

Reading 11: In the Supreme Court of the United States: Spirko v. Bradshaw.
Amicus curiae brief of Mary Rose et al.*

Reading 12: Spirko v. Bradshaw (U.S. Supreme Court)#

Reading 13: Spirko update*

Feb. 24 **News analysis 3**

Discussion topic: Confession evidence

Reading 14: The psychology of confessions (Kassin)*

Reading 15 : Wright v. Pennsylvania case facts*

Reading 16: In the Supreme Court of Pennsylvania: Wright v. Commonwealth of
Pennsylvania. Amicus curiae brief of the American Psychological
Association.*

Psychology communicated to the law by way of expert witnesses

- Mar. 3 **News analysis 4**
Discussion topic: Eyewitness testimony
Reading 17: Eyewitness testimony (Wells & Olson)*
Reading 18: Police reports and transcript of expert testimony from People v. Ybarra
(Larimer County, CO District Court)
- Mar. 10 Individual meetings to discuss written briefs and oral arguments
- Mar. 17 No class
- Mar. 24 Spring break

Novel ideas connecting psychology and law

- Mar. 31 **News analyses session 5**
Discussion topic: Detecting deception through neuroscience
Reading 19: A few can catch a liar (Ekman et al.)*
Reading 20: Duped: Can brain scans uncover lies? (Talbot)*
Reading 21: The new lie detectors: Neuroscience, deception, and the courts
(Applebaum)*

Schedule for oral arguments (Apr. 7, 14, 21, 28, May 5) will be determined later
We will celebrate your hard work and thoughtful in-class contributions with a party at the end of class on May 5.

Checklist

In addition to completing all assigned readings, briefing the assigned cases, attending all classes and contributing to class discussion, you must:

Get news article approved at least one week prior to presentation

Present news analysis and **write 1-page paper** summarizing relevant research

Write position paper

Two weeks before oral argument, clear background article with instructor

Get assistance with your paper from a consultant at the Writing Center

One week before oral argument, serve copies of your position paper on opposing side and instructor and email a copy of your paper to instructor. That same day, email electronic version of background article to instructor.

Present oral argument

Act as appellate judge during oral argument of other students

Read the papers written by fellow students and background articles that accompany those papers

Selected websites that may be useful in preparing your news analysis and position paper. Some of these may require passwords, authorization etc. Check with reference librarian.

New York Times <http://www.nytimes.com/>

Washington Post <http://www.washingtonpost.com/wp-adv/archives/>

Lexis-Nexis (appellate decisions, law review articles, etc.) <http://web.lexis-nexis.com/universe/>

Internet legal resources (all sorts of legal references): <http://www.findlaw.com/>

PsychInfo (your first stop for abstracts and complete citations of articles published in psychology journals): From library website, go to Periodical Indexes by Name and Subject, then to Psychology, and then to PsychInfo

American Psychological Association: <http://www.apa.org> and <http://www.apa.org/psychlaw> (APA site related to psychology and law)

American Psychological Society: <http://www.psychologicalscience.org>

American Psychology-Law Society: <http://www.ap-ls.org>

Cases to read for Psy 443
Senior Seminar in Psychology and Law

Directions for finding cases online:

Go to the UCCS library homepage.

Go to Select a Database, View Databases by A-Z list

Click on L

Click on Lexis-Nexis Academic

Click the Legal tab

On far right, click Federal and State Cases

At this point you enter the citation number

Legal cases are cited with the volume number preceding the volume name.

At the end of the citation is the page number from that volume on which the case starts.

Example: The citation to Maryland v. Craig is 497 U.S. 836

This means that it is located in the United States Supreme Court Reporter, Volume 497, beginning on page 836.

Citations:

Here are the citations to the cases we will read. Enter the underlined part of the citation EXACTLY as noted below:

New Jersey v. Kelly 478 A.2d 364 (New Jersey Supreme Court)

Maryland v. Craig 497 U.S. 836 (U.S. Supreme Court)

Roper v. Simmons 543 U.S. 551 (U.S. Supreme Court)

Spirko v. Bradshaw (enter case name as well as citation number) 544 U.S. 948 (U.S. Supreme Court)

Required Reading:

For each case:

You may skip the headnotes, footnotes, endnotes, and concurring and dissenting opinions

You must read the syllabus

You must read and “brief” the majority opinion in one, type-written page

Your brief should include the following headings:

1. **Identify the parties** in the case and their specific role.
2. **Review the facts** of the case. Address the following questions:
 - a. What happened in the case?
 - b. What decisions were made in lower courts?
 - c. What were the circumstances that led to the appeal?
3. **Frame the legal issue** or question before the court in the form of a question. Use your own words.
4. **Identify the decision** or holding (the answer to the question). In other words, what was the bottom line? Use your own words.
5. **Discuss the reasoning** of the court. Why did the court reach this decision? What arguments did the justices use to justify their decision? Be as succinct as possible.
6. **Describe the role (if any) that social science research findings played** in helping the justices reach their decision. In other words, did the opinion refer to psychological research studies.? If the answer is “no”, just say so. If the answer is “yes”, discuss what impact that research had on the final decision.

Facts and issues in cases set for oral argument

Based on some mix of real and imagined facts

1. Minnesota v. Brown (Reliability of polygraph)

Edward Brown, a 31-year old postal clerk, was convicted of illegal drug use after he tested positive for methamphetamines. At his trial, Brown tried unsuccessfully to introduce the results of a polygraph test that indicated that he did not knowingly ingest illegal drugs. An appeals court reversed his conviction, saying the trial court's refusal to allow polygraph evidence was unconstitutional. That decision has now been appealed by the State of Minnesota to the United States Supreme Court. The question for our debate is whether evidence from the polygraph is reliable (Minnesota believes that it is not; Brown believes that it is) and whether Brown's Sixth Amendment right to defend himself would be violated if he were denied the opportunity to introduce this evidence.

2. Oregon v. Black (Sexual predator statute)

Donald Black had a long record of sexually abusing children, beginning in 1965 when he pleaded guilty to exposing himself to two girls. Since then, he has been convicted of sex crimes involving children five times. He has received sporadic professional help for his pedophilia. In 1989, he was sentenced to 10 years in an Oregon state prison for taking indecent liberties with two 13-year old boys. By August, 1999, he had done his time. But under a state law called the Sexually Violent Predator Act, Black walked out of prison and was immediately transported to a mental health facility where he has been locked up ever since. A judge ordered Black confined indefinitely after ruling that his "mental abnormality" made him likely to attack again. Black requested a jury trial on the issue of whether he is a sexually violent predator, destined to reoffend. Although the jury determined that he was, the Oregon Supreme Court reversed this finding. The state of Oregon now appeals.

The question for our debate is two-fold: 1) Are sex offenders more likely than other offenders to re-offend? 2) Historically, we have been reluctant to lock people up for crimes they might commit, but haven't yet. The major exception has been when future criminal conduct is fairly certain and clearly dangerous. Can psychologists reliably predict which sex offenders will reoffend and which ones will not? For our purposes, Oregon asserts that sex offenders are more likely than other offenders to reoffend and that psychologists can accurately predict which sex offenders will reoffend. Black challenges these two assertions.

3. Green v. Gold (Reliability of repressed memories)

Charles Green alleged severe physical, sexual, and psychological abuse by a priest, Father Gold, at a parochial high school during the 1960s and 1970s. Green claims that, to avoid the pain of the abuse, his memory of the events was repressed. The memories began to reappear in 1998. In 2001, he sued the priest, the school, the archdiocese, and the archbishop. At a pretrial hearing, the judge ruled in favor of the defendant on the grounds that the statute of limitations on the plaintiff's claim had expired. (According to the applicable law, the "date of wrong" is when the plaintiff knew or should have known that harm had been done to him, and he had three years beyond that point to file suit.) The plaintiff, Charles Green, is now appealing that decision.

Green argues that his memories were repressed, rather than forgotten. Thus, the court should use the delayed-discovery rule, which was developed for other cases that involved belated awareness of harm, to begin the statute of limitations at the time the abuse memories were recovered.

The question for our debate concerns the reliability of so-called repressed memories. The plaintiff, Green, contends that repression exists apart from the normal process of forgetting and that there is scientifically valid evidence documenting the existence of repressed memories in situations of abuse. (The implication of this argument is that repressed memories should be treated differently than forgotten memories in terms of statute of limitations). The defendant, Gold, argues that the 3-year statute of limitations should apply because repressed memories are indistinguishable from forgotten memories, because of the dangers of therapist-created memories of child sexual abuse, and because there is scientifically valid evidence documenting the existence of false memories.

4. White v. Silver (Conflicting rights in adoption cases)

Berry White, a 55-year old machinist, wants his birth certificate. Knowing about his birth will, he claims, help him fill in some of the blanks of his life. Fortunately for White, he lives in a state that grants adult adoptees access to long-sealed birth records. Lynette Silver is a birth mother on the other side of this case, fighting to block access to birth records. She and other birth mothers claim that such disclosure violates the promises made by counselors and adoption agencies years ago, that their identities would never be revealed against their will to the children they gave up for adoption. However, it is not clear that such assurances were legally binding. Mr. White, representing a group of adult adoptees, argues that he has the right to know: “When you know that there’s a piece of paper in a courthouse concerning an event that took place between you and your birth mother, you should be allowed to see it.”

The questions for our debate concern the advantages and disadvantages of open versus closed adoptions on all parties involved (adoptees, birth parents, adoptive parents) and the effect of reunions (between adoptees and birth parents) on these individuals’ well-being. Mr. White claims that both open adoption and reunions can have emotional benefits and that knowledge of one’s kinship ties can enhance psychological well-being. Ms. Silver claims that open adoption and reunions cause stress and confusion on adoptees and parents, disrupt adoptive parents’ ability to form and maintain healthy attachments to the child, and open up long-held secrets that birth parents do not want disclosed.

5. Ivory v. Slate (Effects of prior sexual abuse on perceptions of workplace harassment)

Janet Ivory was hired as a sheriff’s deputy by Roger Slate, the Sheriff of Peters County, California. She alleges that while employed as a sheriff’s deputy, she was subjected to the following conditions: during her interview, she was asked questions about her personal life and sexual activities; that she found sexually explicit pictures of nude men taped to her ticket book; and that she suffered from unwanted sexual advances from Sheriff Slate and other officers during her 14 months of employment, including references to her breasts, being straddled and fondled by a fellow deputy, and being pressured into having sex. She filed charges of sexual harassment against Sheriff Slate and Peters County.

At trial, over objections from the plaintiff, the defendants argued the victim’s history of sexual abuse as a child affected her personality and psychological make-up as an adult and is relevant to every aspect of her case, including her welcomeness to sexual activity, her reasonableness, and her credibility. They noted that many victims of childhood sexual abuse suffer psychological problems later in life and that emotional distress attributed by Ms. Ivory to workplace experiences may

actually be better explained by her history of abuse. (The argument is essentially that women who have histories of sexual abuse may interact with others in eroticized or seductive ways and actually provoke the experience for which they seek legal redress.) The jury found in favor of the defendant. Ms. Ivory now appeals the judge's decision to admit evidence concerning the effects of past sexual abuse. The question for our debate is whether a history of childhood sexual abuse makes women particularly hypersensitive to sexually-suggestive encounters as adults and therefore vulnerable to various forms of revictimization in adult life (including sexual harassment). Sheriff Slate argues that it does; Ms. Ivory argues that it does not.

6. Indiana v. Maroon (Parental notification of abortion)

In 1998, Indiana enacted a statute that required any girl less than 18 years of age who was requesting an abortion to notify both parents at least 48 hours prior to an abortion or, failing that, to convince a judge that she was mature and that an abortion without parental notification would be in her best interest. Melissa Maroon, a minor, challenged the statute as unconstitutional, arguing that, among other things, it interfered with a family's decisionmaking processes and with her right to choose, and that the state cannot mandate full communication among family members.

The question for our debate concerns the effects of parental notification requirements. Indiana claims that they promote informed decision making, provide additional sources of support for minors, and facilitate family unity. Maroon argues that they deter minors from seeking abortions thereby increasing rates of teen pregnancy, impede access to competent medical care, cause delays in pregnancy outcome decisions and increase contentiousness in some families.

(N.B. This is not a debate about the morality or legality of abortion. You must confine yourselves strictly to the effects of parental notification requirements.)

7. Mauve v. Taupe (Relocation of children of divorce)

Among the thorniest cases in family court are those that involve children of divorced couples. Questions of relocation pose considerable dilemmas for courts. They pit a custodial parent's reasonable wish to better her circumstances by moving against a noncustodial parent's reasonable desire to maintain frequent contact with his minor child, an essential element of any parent-child relationship.

Karen Mauve and Kevin Taupe were married in 1997. Their only child, Serena, was both in 2000, when the couple was living in Maryland. In 2003, Mauve filed for divorce, citing reasons of cruelty. Mauve and Taupe entered into a consent order that provided for Mauve to maintain custody of Serena and for Taupe to have liberal visitation privileges. The order restrained both parties from leaving Maryland with Serena. However, in 2006, after trying and failing for three years to find work, Karen Mauve filed an amended complaint for divorce requesting permission to relocate to Wisconsin where she had the support of her parents and a job offer. She acknowledged that Taupe was a good father to Serena and offered to allow him to visit Serena one week a month in Wisconsin.

The question for our debate concerns whether custodial parents should be allowed to move their children over the objections of the noncustodial parent and more generally, the effects of relocation on children. Karen Mauve argues that what is good for the custodial parent is good for the child, whereas Kevin Taupe argues that children who move away from their parents or who undergo a large number of environmental changes are significantly disadvantaged in many ways.

8. Grey v. Little Rock (Arkansas) Public School District (Corporal punishment)

Support for and use of corporal punishment is strong in the United States; 94% of American parents report having spanked their children by the time they were 3 or 4 years old. Indeed, corporal

punishment has been an integral part of how parents discipline their children throughout history and the use of corporal punishment by parents is legal in all states. Matters are only slightly different in schools. Although 27 states have adopted legislation that prohibits the use of corporal punishment by teachers and school administrators, the U.S. Supreme Court has upheld the right of teachers to use corporal punishment with their students and 23 states (including Arkansas) allow spanking in public schools.

Stanley and Elizabeth Grey sued the Little Rock Public School District on behalf of their 9-year old son, Alex, alleging that Alex's 4th grade teacher used excessive force in repeatedly spanking him for talking, whistling, and eating candy in class. On three occasions, the teacher forced Alex to grab his ankles and then struck him three or more times on his backside with a ½-inch board, 2 ½ feet long.

The question for our debate concerns the effectiveness of corporal punishment, both in schools and in homes. The Greys argue that corporal punishment is ineffective at best and harmful at worst, that it harms learning and self-image, and that it is linked to aggression and later mental-health problems. The Little Rock Public School District argues that state law allows teachers and parents to impose corporal punishment on children because it is both effective and desirable, and that excessive child misbehavior, rather than spanking, leads to detrimental outcomes.

9. Cobalt v. City of Wake-Forest (Drug testing of pregnant women)

The Baptist Medical Center of Wake Forest University had a policy that women who were receiving prenatal care at a public hospital operated by the University must undergo drug testing. The tests were conducted to induce patients to obtain treatment in order to minimize harm to their fetuses. The policy, developed in consultation with the Wake Forest Police Department, established procedures for identifying and testing pregnant patients suspected of drug use, provided for education and treatment referral for patients who tested positively, and allowed for prosecution on drug offenses and child neglect.

Ashley Cobalt tested positive for cocaine, was arrested, and sued the hospital and the city of Wake Forest on the grounds that testing for drugs and releasing results of drug tests to police for possible prosecution violated her 4th Amendment right to be free of unreasonable search and seizure. The defendants contended that the searches were reasonable because they were justified by "special needs", (i.e., the well being of the fetus) and that the possibility of criminal sanctions deters pregnant women from using drugs. The question for our debate concerns the consequences of drug testing. Cobalt argues that tests of drug usage are often inaccurate, that the prospect of drug testing does not deter drug use, and that testing of pregnant women could cause them to avoid seeking prenatal care. The City of Wake Forest argues that drug testing is generally accurate, that it can deter drug use in pregnant women and further, that prenatal care providers are well-positioned to help pregnant women with substance abuse problems.

Grades for case briefs, position paper, oral argument, judging and news analysis.

Case briefs (15 possible points):

Position paper: (70 possible points)

- Quality, structure, and organization of arguments (20 possible):
- Reliance on scientific studies (15 possible):
- Clarity of writing (15 possible):
- Evidence of consultation with Writing Center (5 possible):
- Formatting (APA style, appropriate use of headings, 5 possible):
- Overall persuasiveness (10 possible):

Oral Argument (40 possible points)

- Quality, structure, and organization of arguments (15 possible):
- Clarity of presentation (15 possible):
- Overall persuasiveness (10 possible):

Judge (15 possible points)

- Probing nature of questions (10 possible):
- Number of questions (5 possible):

News Analysis (30 possible points)

- Clarity and thoroughness of presentation (15 possible):
- Clarity and thoroughness of written analysis (15 possible):