

Law 593-026
Seminar: Mexican Americans and the Law

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Fall 2005
Mondays 3-5 p.m., Rm. 3211
Office Hours: by appointment

Course Description

This course might be thought of as a hybrid between a legal history seminar (that focuses on Mexican Americans) and a civil rights law seminar (that focuses on Mexican Americans). It would be of interest to students who plan to serve a predominantly Chicano/Latino client base and/or who have an intellectual interest in issues related to Mexican Americans, ethnic studies, or civil rights law and litigation.

The course begins with a brief introductory unit that introduces several concepts and themes from the social science and historical literature on Mexican Americans, with a particular emphasis on New Mexico. The second part of the course is largely historical, exploring the Treaty of Guadalupe Hidalgo (which in 1848 ended the U.S. war with Mexico) and the early 20th century history of Chicanos in the U.S.

The third section of the course focuses on contemporary issues. We will focus on Mexican Americans as a case study to explore the successes and shortcomings of American civil rights legislation and litigation (in areas such as educational desegregation, jury service, voting rights, and English-only laws). We will read these cases critically, seeking to analyze doctrine, litigation strategies, as well as the larger social and political context in which they occurred. The reading is heavy and at times quite dense; it includes, in addition to appellate cases, law review articles, books, and book chapters from the social sciences and humanities.

Course Requirements

Attendance and Participation. Students are expected to come to class prepared to discuss the assigned reading. Participation will count for 15 percent of the final grade. In addition to regular participation in discussion, each student will be asked to formulate three questions for discussion for one week during the semester (and must plan to circulate the questions three days in advance). Given the small number of course meetings due to the seminar nature of the course, more than one absence will negatively impact the overall participation grade.

Term Paper. Each student will submit a written term paper of substantial length and high quality. The paper grade will be 85 percent of the final grade for the course. Papers may fall into one of two traditions: (i) the traditional law school research paper that would be modeled on a law review note format; or (ii) an empirically based research paper (probably using historical archives available at Zimmerman library or perhaps in

Santa Fe), more typical of early graduate school work. Prior to submission of the final paper, students will be required to submit (in a timely fashion) the following: topic statement/proposed research; outline; rough draft. Students also will be required to meet individually with me at least twice during the semester to discuss their papers. I have found that these requirements (individual meetings and preliminary written assignments) ease students' anxiety about the paper requirement and contribute to their overall writing success.

Writing Requirement. In most cases, students' term papers for this seminar will satisfy the advanced writing requirement for law school graduation. To be certain their papers will meet the standards, I encourage students who intend to use this course paper to satisfy the requirement to do the following (in the order listed): (1) carefully read the description of the requirement in the UNMSOL 2005-06 Bulletin and Handbook of Policies (p. 8-10); (2) talk with Registrar Pat Trainor about any remaining questions; (3) consult with me about any remaining questions.

Deadlines & Other Notable Dates

Note: all written assignments are due in my mailbox in *hard copy* form (e.g., copies sent via e-mail will *not* be accepted).

Monday, Sept. 5: No seminar meeting due to Labor Day Holiday.

Wed., Sept. 14: Topic statements due, 5 p.m.

Thurs. & Fri., Sept. 22-23: Individual meetings with me to discuss topic statements.

Monday, Oct. 10: No seminar meeting.

Wed., Oct. 12: Revised topic statements due, 5 p.m.

Monday, Oct. 17: Double-class meeting, 3-7 p.m. (includes film screening & pizza).

Friday, Oct. 28: Outlines due, 5 p.m.

Thurs.-Friday, Nov. 3-4: Individual meetings with me to discuss outlines.

Monday, Nov. 21: No seminar meeting.

Wed., Nov. 23: Rough drafts due, 5 p.m. (Note: this deadline is extremely important, as I will need the time over Thanksgiving break to provide feedback before you complete your final drafts.)

Monday, Nov. 28: Last seminar meeting (to be held at my home); class will *begin* at 5 p.m. and be followed by a potluck dinner.

Wed.-Sat., Dec. 7-17, 2005: Final Papers due during exam period.

SYLLABUS

Week One: Aug. 22, 2005

The New Mexico Context and Some Basic Concepts from the Social Sciences

Sylvia Rodriguez, "Land, Water and Ethnic Identity in Taos," from Land, Water, and Culture: New Perspectives on Hispanic Land Grants (edited by Charles L. Briggs and John R. Van Ness) (1987), p. 313-403.

Week Two: Aug. 29, 2005

The Treaty of Guadalupe Hidalgo and 19th Century Land & Language Claims by Mexican Americans

Excerpts from Chap. 4, Race and Races: Cases and Resources for a Diverse America (edited by Juan F. Perea, Richard Delgado, Angela P. Harris, and Stephanie M. Wildman) (2000), p. 253-310.

Week Three: Sept 5: Labor Day Holiday

Week Four: Sept. 12, 2005

Law and Society in Interaction: Mexicans in 19th Century New Mexico

"Race, Colonialism and the Criminal Law: Mexicans and the American Criminal Justice System in Territorial New Mexico," Law and Society Review, 34:4:1129-1202 (2000).

"Off-White in An Age of White Supremacy: Mexican Elites and the Rights of Indians and Blacks in Nineteenth-Century New Mexico," 25 UCLA Chicano-Latino Law Rev. 9-59 (2005).

Week Five: Sept. 19, 2005: Guest Speaker¹

(no assigned reading)

Professor Margaret Montoya will facilitate a discussion with Mexican lawyer Gustavo de la Rosa Hickerson, who will be visiting UNMSOL that week.

Week Six: Sept. 26, 2005

Overview of Mexican American Civil Rights Litigation in the 20th Century

Martha Menchaca, "Chap. 8: The Treaty of Guadalupe Hidalgo and the Racialization of the Mexican Population," from Recovering History, Constructing Race: The Indian, Black and White Roots of Mexican Americans (2001), p. 215-276.

¹ I will be absent from this course meeting, as I am giving a talk at the Institute for Legal Studies at the University of Wisconsin, Madison.

George A. Martinez, "The Legal Construction of Race: Mexican-Americans and Whiteness," 2 Harvard Latino Law Rev. 321 (1997).

George A. Martinez, "Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980," 27 U.C. Davis Law Rev. 555 (1994).

Week Seven: October 3, 2005

A Brief Overview of Topics on Immigration & Mexican Immigrants

Excerpts from "Conquest and Immigration," Part II of The Latino Condition: A Critical Reader (edited by Richard Delgado and Jean Stefancic) (1998), p. 75-145.

Week Eight: Oct. 10, 2005: No class meeting.²

Week Nine: Oct. 17, 2005 (Note: class will meet from 3-7 p.m.)

Mexican Americans and Education: Segregation, Desegregation, and Now Resegregation?

Mendez v. Westminster School District of Orange County, 64 F. Supp. 544 (S.D. Cal. 1946).

Brown v. Board of Education, 347 U.S. 483 (1954).

Christopher Arriola, "Knocking on the Schoolhouse Door: Mendez v. Westminster, Equal Protection, Public Education, and Mexican Americans in the 1940's," 8 La Raza Law Journal 166 (1995).

Neil Foley, "Over the Rainbow: Hernandez v. Texas, Brown v. Board of Education, and Black v. Brown," 25 UCLA Chicano-Latino Law Rev. 139-152 (2005).

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973).

Erika Frankenberg and Chungmei Lee, "Race in American Public Schools: Rapidly Resegregating School Districts," 2002, Harvard Civil Rights Project (obtained Aug. 13, 2005 at www.civilrightsproject.harvard.edu).

Film (to be shown in class): *The Lemon Grove Incident* by Paul Espinosa.

Week Ten: Oct. 24, 2005

Mexican Americans and Jury Service: The Historical Record

Hernandez v. State of Texas, 251 S.W.2d 531 (1952).

Hernandez v. Texas, 347 U.S. 475 (1954).

² I will be speaking at the 10th annual LatCrit conference in San Juan, Puerto Rico. Please use the time to work on your revised topic statements, due Wed., Oct. 12.

Michael A. Olivas, "Commemorating the 50th Anniversary of *Hernandez v. Texas*," 25 UCLA Chicano-Latino Law Rev. 1-8 (2005).

Kevin R. Johnson, "*Hernandez v. Texas*: legacies of Justice and Injustice," 25 UCLA Chicano-Latino Law Rev. 153-182 (2005) (first half of article).

Steve Harmon Wilson, "Some Are Born White, Some Achieve Whiteness, and Some Have Whiteness Thrust Upon Them...," 25 UCLA Chicano-Latino Law Rev. 201-225 (2005).

Ian Haney Lopez, "Race and Colorblindness After *Hernandez* and *Brown*," 25 UCLA Chicano-Latino Law Rev. 61-76 (2005).

Week Eleven: Oct. 31, 2005

Mexican Americans and Jury Service: the Contemporary Record

Hernandez v. New York, 500 U.S. 352 (1991).

Miller-El v. Dretke, U.S. Supreme Court (decided June 13, 2005, No. 03-9659).

Kevin R. Johnson, "*Hernandez v. Texas*: legacies of Justice and Injustice," 25 UCLA Chicano-Latino Law Rev. 182-200 (2005) (second half of article).

Sandra Guerra Thompson, "The Non-Discrimination Ideal of *Hernandez v. Texas* Confronts A "Culture" of Discrimination: The Amazing Story of *Miller-El v. Texas*," 25 UCLA Chicano-Latino Law Rev. 97-137 (2005).

Clare Sheridan, "Peremptory Challenges: Lessons from *Hernandez v. Texas*," 25 UCLA Chicano-Latino Law Rev. 77-95 (2005).

Selections regarding language and jury service in New Mexico (*material to be distributed later in the semester*).

Week Twelve: Nov. 7, 2005

Race, Ethnicity and Language: Is the Assault on Spanish an Assault on Us?

Garcia v. Spun Steak Company, 998 F.2d 1480 (9th Cir. 1993).

Yniguez v. Arizonans for Official English, 42 F.3d 1217 (9th Cir. 1994).

Arizonans for Official English v. Arizona, 520 U.S. 43 (1997).

Ruiz v. Hull, 191 Ariz. 441 (1998).

Excerpts from "English-Only, Bilingualism, Interpreters," Part XI from The Latino/a Condition: A Critical Reader, edited by Richard Delgado and Jean Stefancic (1998), p. 557-624.

Mari J. Matsuda, "Voices of America: Accent, Antidiscrimination Law and a Jurisprudence for the Last Reconstruction," 199 Yale Law Journal 1329 (1991).

Week Thirteen: Nov. 14, 2005

Mexican Americans and the Voting Rights Act

Excerpts from The Making of a Chicano Militant: Lessons from Cristal by Jose Angel Gutierrez (1999), Chaps. 1-2, 12.

Gómez v. Watsonville, District Court Decision, Jan. 30, 1987 (unpublished).

Gómez v. Watsonville, 863 F2d 1407 (9th Cir. 1988).

Excerpts from Latinos: A Biography of the People, Earl Shorris (1992).

Week Fourteen: Nov. 21: No seminar meeting.

Nov. 28, 2005 (last seminar meeting)

Minorities in the Legal Profession: Illusive Equality and "Diversity"

Chapter 2, "Critical Race Theory and the Legal Profession," from Critical Race Theory: Cases, Materials, and Problems (edited by Dorothy A. Brown) (2003), p. 20-97.