

**Penn State Dickinson School of Law**  
**Federal Court Practice – Skils 977D (Sections 101 and 201)**  
**Spring 2011 (Last Revised 12/27/10)**

**The Honorable Kim R. Gibson**  
United States District Court Judge,  
Western District of Pennsylvania

**Josh Blackman**  
Teaching Fellow, Dickinson School of Law  
Law Clerk for Judge Gibson

**Course Summary:**

This course introduces contemporary issues in several topical areas of particular interest to litigating in federal courts. The course topics are varied, with the unifying theme being that each topic possesses either particular prominence or exclusive jurisdiction within the country's federal court system. These topics include: the history and organization of the federal courts, the courts' relationship with Congress, the practical dynamics of federal procedure, strategic considerations involved in a litigant's choice of federal court, federal criminal matters, sentencing, civil rights cases, and habeas corpus.

**Class Meeting Time**

This class will meet on Thursday from 2:30-4:55 p.m. On the University Park Campus, the class will meet in Room 366. On the Carlisle Campus, the class will meet in Room 258. Judge Gibson and Professor Blackman will attend classes at both locations during the course of the Semester.

**Books**

You will be required to purchase three books.

1. Course Packet.

The Course Packet is available for purchase in the University Book Store, and is also available for purchase online. To purchase the course packet, please follow the instructions below:

Step 1: Log on to [www.universityreaders.com](http://www.universityreaders.com).

Step 2: Click on the "STUDENTS BUY HERE" button located in the "Student Store" section (upper right-hand corner of the page).

Step 3: Create an account or log in if you have an existing account to purchase.

Step 4: Easy-to-follow instructions will guide you through the rest of the ordering process. Payment can be made by all major credit cards or with an electronic check. Locate the Course Packet for SKILS 997D-101.

2. *United States v. Clark Case File*, National Institute for Trial Advocacy (NITA) Case File, available for purchase at <http://www.lexisnexis.com/nita/product.aspx?prodid=prod-US-NITA-FBA0997>
3. *Polisi v. Clark and Parker & Gould Case File*, NITA Case File, available for purchase at <http://www.lexisnexis.com/nita/product.aspx?prodid=prod-US-NITA-FBA0727>

**Teams**

The class will be divided into **two** teams who will participate in a criminal case and a civil case based on two case files from NITA (National Institute for Trial Advocacy).

The first is a criminal case, *United States v. Clark*:

- Team 1 (Prosecution) v. Team 2 (Defendant)

The second is a civil case, *Polisi v. Clark and Parker & Gould*:

- Team 1 (Plaintiff) v. Team 2 (Defendant)

Each team will be responsible for submitting five written assignments, and participating in four mooted sessions. No team member is allowed to participate in more than one mooted session. How you choose to structure your work is entirely up to you. Rather than ask each student to prepare all assignments individually we have decided to assign these projects to groups. Invariably, some team members will do more work than other team members. While this commons is quite tragic, there is no meaningful way to accurately and fairly grade the individual contributions of each team member. Accordingly, each member of the Team will receive the same grade for all writing assignments and mooted sessions.

### Grading

1. **Fifty-two percent** of your grade will consist of a 20-page paper, with proper Bluebook citations, on the topic of your choice. This paper will be due by midnight on May 13, 2011 (the end of the final exam period). While more details will be provided about the paper, please start thinking about paper topics. Though you are commended to select a topic dealing with something covered in class, you may write about anything affecting Federal Courts. If you want to discuss your topic with Judge Gibson or Professor Blackman, please e-mail your topic with a brief proposal (a few paragraphs) by March 24, 2011. This is optional, but it is highly recommended that you take advantage of this opportunity. During the last few classes, there will be time offered to individually discuss paper topics for those who avail themselves of the initial topic approval deadline.
2. **Thirty-two percent** of your grade will consist of five written assignments.
3. **Sixteen percent** of your grade will consist of five mooted sessions. The mooted sessions will consist of arguments only, and no witness examination is required.
4. **Class Participation.** Due to the small size of the class, class participation is vital to provide each student with the broadest range of ideas, comments, and insights. Judge Gibson reserves the right to increase a student's final grade by 1/3 (e.g., B to B+) for excellent participation or decrease a student's final grade by 1/3 (e.g., A to A-) based on poor participation.

### Breakdown of Assignments and Scoring

- Assignment #1 – 4% (Voir Dire)
- Assignment #2 – 4% (Jury Charge)
- Assignment #3- 10% (Motion in Limine)
- Assignment #4- 4% (Sentencing)
- Assignment #5- 10% (Motion to Dismiss)
- Moot #1- 2% (Voir Dire)
- Moot #2- 2% (Jury Charge)
- Moot #3- 4% (Motion in Limine)
- Moot #4- 4% (Sentencing)
- Moot #5- 4% (Motion to Dismiss)

**All written assignments will be due the Tuesday before class at 5:00 p.m.**

	Readings	Notes
<b>1. 1/13 – Origins of the “Least Dangerous Branch”</b>	United States Constitution, Article III The Federalist Nos. 78-83 The Anti-Federalist, Brutus XI, XII, XV <i>Marbury v. Madison</i> , 5 U.S. (Cranch) 137 (1803).	
<b>2. 1/20 – Criminal Practice I</b>	<u>Steps of Criminal Proceeding</u> CP 1.2(i-t) pp. 12-17  <u>Pretrial Proceedings</u> <ul style="list-style-type: none"> <li>• Initial Appearance- Benchbook §§1.01, pp. 1-2</li> <li>• Release or detention pending trial- Benchbook § 1.03, pp. 9-14</li> <li>• Arraignment and pleas – Benchbook § 1.07, pp.-29-30</li> <li>• Federal Bail Reform Act CP 12.1(a) pp. 676-677</li> <li>• Bail Proceedings – CP 12.1(c-d) pp. 678-79</li> <li>• Constitutional Right to Speedy Trial - CP 18.1(a-b) pp. 886-887</li> <li>• Federal Speedy Trial Act of 1974- CP 18.3(b) pp. 895-897</li> <li>• Speedy Trial Act- Benchbook § 1.10, pp. 41-44</li> </ul> <u>Guilty Pleas</u> <ul style="list-style-type: none"> <li>• Benchbook – Taking a Guilty Plea, §2.01, pp. 71-81</li> <li>• Form and development of plea bargaining - CP 21.1(a-b) pp. 1000-1001</li> <li>• Plea Bargaining and Federal Sentencing Guidelines - CP 21.1(h) pp. 1006-1008</li> <li>• Receiving a plea- CP 21.4(b -d) pp. 1043-1048</li> </ul> <u>Jury Selection &amp; Voir Dire</u> <ul style="list-style-type: none"> <li>• S&amp;C 1189-1198, 1203-1207, 1213-1223 1254-1258</li> <li>• Jury Selection - Benchbook §2.05, pp. 93-96</li> <li>• Criminal Voir Dire- §2.06 pp. 97-99</li> </ul>	<ul style="list-style-type: none"> <li>• Select Teams</li> </ul>
<b>3. 1/27 – Criminal Practice II</b>	<u>Initial Jury Instructions</u> <ul style="list-style-type: none"> <li>• CP 24.8(a-c) Jury Instructions pp. 1176-1178</li> <li>• 3rd Circuit Model Preliminary Jury Instructions</li> <li>• Preliminary Criminal Jury Instructions - Benchbook §2.07 pp. 101-105</li> </ul> <u>Final Jury Charge</u> <ul style="list-style-type: none"> <li>• 3rd Circuit Final Jury Charge</li> <li>• Instructions to jury at end of criminal case - Benchbook §2.08, pp. 105-108</li> </ul> <u>Verdict</u> <ul style="list-style-type: none"> <li>• Criminal Verdict – Benchbook § 2.09, pp. 109-111</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #1 - Proposed Voir Dire (Teams 1 and 2)</li> <li>• Moot Session #1 - Voir Dire (Teams 1 and 2)</li> <li>• <b>Guest Speaker –Assistant United States Attorney, John Valkovci</b></li> </ul>

	<p><u>Criminal Trial</u></p> <ul style="list-style-type: none"> <li>• Trial Outline – Benchbook §2.03 pp. 87-89</li> <li>• The arguments of counsel - CP 24.7 (a-d) pp. 1169-1172</li> </ul>	
<b>4. 2/3 – Criminal Practice III</b>	<p><u>Protected Areas</u></p> <ul style="list-style-type: none"> <li>• <i>Katz</i> – CP 3.2 (a) pp. 149-151</li> <li>• Homes- CP 3.2(c) pp. 155-157</li> <li>• Vehicles- CP 3.2(f) pp.. 158-159</li> </ul> <p><u>Probable Cause and Warrant Requirement</u></p> <ul style="list-style-type: none"> <li>• General Characteristics - CP 3.3(a)-(b) pp. 163-168</li> <li>• Information from Informants - CP 3.3(c) pp. 168-173</li> <li>• Search Warrants - CP 3.4(a)-(b) pp. 181-184</li> <li>• Particularity- CP 3.4(e) –(f) pp. 186-190</li> </ul> <p><u>Searches</u></p> <ul style="list-style-type: none"> <li>• Prior to arrest- CP 3.5(b) pp. 205-208</li> <li>• Post-Arrest search- CP 3.5(c) pp. 208-210</li> <li>• Entry of home to arrest- CP 3.6(a) pp. 214-217</li> <li>• Residential premises- CP 9.1(b) pp. 515-519</li> <li>• Search of Vehicles- CP 3.7(a) pp. 225-227</li> <li>• Vehicles- CP 9.1(d)- p.. 520-521</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #2 - Proposed Final Jury Charge (Teams 1 and 2)</li> </ul>
<b>5. 2/10 – Criminal Practice IV</b>	<p><u>Exclusionary Rule</u></p> <ul style="list-style-type: none"> <li>• CP 3.1(a-c) and 3.1(f) p. 126-133, pp. 137-139</li> <li>• Fruit of the Poisonous Tree- CP 9.3(a-c) pp. 525-528.</li> <li>• Fruits of illegal arrests and searches- CP 9.4 (a-c) pp. 532-538</li> </ul> <p><u>Suppression Hearing</u></p> <ul style="list-style-type: none"> <li>• Burden of proof at suppression hearing – CP 10.3(a) pp. 560-564</li> <li>• The Suppression Hearing CP 10.5 (a-f) 568-572</li> </ul>	<ul style="list-style-type: none"> <li>• Moot Session #2 -Charging Conference (Teams 1 and 2)</li> </ul>
<b>6. 2/17 – Criminal Practice V</b>	<p><u>Self Incrimination</u></p> <ul style="list-style-type: none"> <li>• Self Incrimination and Miranda- CP 6.5(a)-(e) pp. 366-371</li> <li>• Custody- CP 6.6(a)-(b) pp. 371-373.</li> <li>• Interrogation- CP 6.7(a) pp. 378-380</li> <li>• Warnings- CP 6.8(a-d) pp. 388-393</li> </ul> <p><u>Reasonable Suspicion &amp; Terry</u></p> <ul style="list-style-type: none"> <li>• Stop and Frisk – CP 3.8(a)-(f) pp. 239-254</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #3 - Motion In Limine (Team 1 - Prosecution)</li> </ul>

<b>7. 2/24 – Criminal Practice VI</b>	<u>Sentencing Guidelines</u> <ul style="list-style-type: none"> <li>• S&amp;C 1471-1483</li> <li>• Release or detention pending sentence or appeal, Benchbook § 2.11 pp. 119-122</li> <li>• Sentencing Procedures- Benchbook, §4.01 pp. 139-148</li> <li>• 2010 United States Sentencing Commission Guidelines Manual §1B1.1 pp.16,</li> <li>• Sentencing Guidelines, Sentencing Table <a href="http://www.ussc.gov/Education_and_Training/Guidelines_Educational_Materials/SENTNTAB.pdf">http://www.ussc.gov/Education_and_Training/Guidelines_Educational_Materials/SENTNTAB.pdf</a></li> <li>• Benchbook - Sentencing Procedure pp. 129-136</li> <li>• Sentencing Guideline Worksheet, <a href="http://www.ussc.gov/Education_and_Training/Guidelines_Worksheets/worksheets_0308.pdf">http://www.ussc.gov/Education_and_Training/Guidelines_Worksheets/worksheets_0308.pdf</a></li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #3- Opposition to Motion in Limine (Team 2 - Defendant)</li> <li>• Moot Session #3 – Motion in Limine Hearing (Teams 1 v. Team 2)</li> </ul>
<b>8. 3/3– Getting into Federal Court I</b>	<ul style="list-style-type: none"> <li>• FC §7.42, pp. 258-266</li> <li>• 28 U.S.C. § 1332</li> <li>• FC §4.24 pp. 154-160</li> <li>• FC §4.26 pp. 163-165</li> <li>• FC §4.28 pp. 173-174</li> <li>• FC §4.29 p. 174-177</li> <li>• FC §5.32 pp. 192-193</li> <li>• FC §5.33 pp 197-201</li> <li>• Syllabus of <i>Exxon Mobil Corp. v. Allapattah Services</i> (2005)</li> <li>• Syllabus of <i>Hertz v. Friend</i> (2010).</li> <li>• 28 U.S.C. § 1441</li> <li>• §6.38 –pp. 227-232</li> <li>• FC §6.40 pp. 243-248</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #4 - Sentencing Guideline - Calculations (Teams 1 and 2)</li> <li>• Moot Session # 4 -Sentencing Hearing (Teams 1 and 2)</li> </ul>
<b>9. 3/17– Getting Into Federal Court II</b>	<ul style="list-style-type: none"> <li>• 28 U.S.C. § 1331</li> <li>• HW pp. 747-748</li> <li>• FC §3.17 pp. 102-110</li> <li>• FC § 3.18 pp. 110-116</li> <li>• Syllabus of <i>Grable &amp; Sons Metal Prods. Inc. v. Darue Eng’g &amp; Mfg</i> (2005).</li> </ul> <p><u>Supplemental/Pendent Jurisdiction</u></p> <ul style="list-style-type: none"> <li>• 28 U.S.C. § 1367</li> <li>• FC §3.19 pp. 116-123</li> </ul>	
<b>10. 3/24 – Civil Litigation I</b>	<p><u>Motion to Dismiss</u></p> <ul style="list-style-type: none"> <li>• F.R.C.P. 8(a), 12(b)(6).</li> <li>• Syllabus of <i>Ashcroft v. Iqbal</i> (2009)</li> <li>• Hon. T.S. Ellis, III and Nitin Shah, <i>Iqbal, Twombly, and What Comes Next: A Suggested Empirical Approach</i>, 114 PENN ST. L. REV. PENN STATIM 64 (2010), available at <a href="http://www.pennstatelawreview.org/114/114 Penn Statim 64.pdf">http://www.pennstatelawreview.org/114/114 Penn Statim 64.pdf</a>.</li> </ul> <p><u>Summary Judgment</u></p>	<ul style="list-style-type: none"> <li>• Optional - Submit Paper Topic for Approval</li> </ul>

	<ul style="list-style-type: none"> <li>• FC §10.99 – pp. 711-716</li> <li>• CV §2.2 pp. 79-83</li> </ul>	
<b>11. 3/31 – Civil Litigation II</b>	<p><u>Civil Jury Selection</u></p> <ul style="list-style-type: none"> <li>• Civil Jury Selection, Benchbook §6.03, pp. 179-180</li> <li>• Civil Voir, Benchbook §6.04, pp.181-183</li> </ul> <p><u>Preliminary Jury Instructions</u></p> <ul style="list-style-type: none"> <li>• Trial Outline- Civil, Benchbook §6.01, pp. 173-174</li> <li>• 3rd Circuit Civil Model Preliminary Jury Instructions</li> <li>• Preliminary Jury Instructions in Civil Cases, Benchbook, § 6.05, pp. 185-188</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #5 - Motion to Dismiss (Team 1)</li> </ul>
<b>12. 4/7 – Civil Litigation III</b>	<p><u>Final Jury Charge</u></p> <ul style="list-style-type: none"> <li>• 3rd Circuit Model Jury Instructions For Use at end of Trial</li> <li>• Instructions to Jury at end of Civil case, Benchbook §6.06, pp. 189-191</li> <li>• Civil Verdict, Benchbook § 6.07, pp. 179-181</li> </ul>	<ul style="list-style-type: none"> <li>• Submit Assignment #5- Opposition to Motion to Dismiss (Team 2)</li> <li>• Moot Session # 5 – Motion to Dismiss (Teams 1 and 2)</li> <li>• <b>Guest Speaker –Attorney Gerard Cipriani</b></li> </ul>
<b>13. 4/14 – Federal Habeas Corpus &amp; Section 1983</b>	<ul style="list-style-type: none"> <li>• 28 U.S.C. §§ 2241, 2242, 2243, 2444, 2254, 2255</li> <li>• 42 U.S.C. § 1983</li> </ul> <p><u>Collateral Attack on State Conviction</u></p> <ul style="list-style-type: none"> <li>• HW pp. 1213-1217</li> <li>• HW pp. 1238-1241</li> <li>• HW Retroactivity and Teague pp. 1242-1246</li> <li>• 2254 and <i>Terry Williams v. Taylor</i>, pp. 1261-1266</li> </ul> <p><u>Collateral Attack on Federal Convictions</u></p> <ul style="list-style-type: none"> <li>• HW pp. 1303-1310</li> </ul>	<ul style="list-style-type: none"> <li>• Optional- Class time to discuss Papers</li> <li>• <b>Guest Speaker –Magistrate Judge Keith Pesto</b></li> </ul>
<b>14. 4/21 – Recent Developments in Federal Jurisprudence</b>	<ul style="list-style-type: none"> <li>• Readings TBD</li> </ul>	<ul style="list-style-type: none"> <li>• Optional- Class time to discuss Papers</li> </ul>