SEMINAR IN GEORGIA LEGAL HISTORY

SYLLABUS

College of Law
Georgia State University
Spring Semester, 2010
Professor E. R. Lanier

General

The Seminar in Georgia Legal History is designed to introduce the student not only to the events, personalities, and movements which have characterized the development of law in Georgia since the establishment of the Colony in 1732 and the State at the time of the Revolution in 1776, but also to acquaint the student as well with a selection from the accumulated historiography which bears on Georgia legal history. In the course of this review, the student will have an opportunity to become more familiar with historical methodology, schools of historical thought, and the resources, both primary and secondary, which bear on the story of Georgia’s legal past.

The Seminar in Georgia Legal History is not a lecture course: it consists of a series of carefully structured readings arranged generally in topical and chronological order beginning with legal aspects of life in pre-charter “Georgia” and concluding at about the time of the gubernatorial administration of Jimmy Carter (1970-1974). The readings are the core of the experience in this Seminar and second to them are the discussions and activities associated with the class sessions which are held on a weekly basis on Mondays at 4:10 P.M. throughout the Semester. The organization and plan for the weekly class sessions will differ from week to week: on some occasions I hope to synthesize and summarize major legal developments in Georgia through a general class discussion which draws on the information contained in the readings; at other times, the class sessions will be used to supplement the readings and go beyond them, introducing the student to additional information not necessarily found in the reading assignments. In either case, the success of our class meetings is entirely dependent upon your level of preparation and the degree to which you have engaged the materials assigned for that week. As I explain more fully below, the readings for each week are broken into two groups, those which are mandatory for the successful completion of this Seminar and those which are elective in nature. Your weekly class preparation should, without fail, include the thorough preparation and review of the mandatory readings.

Grading and Evaluation

Your grade in this Seminar is based entirely upon the quality of a research statement which you will submit at the end of the semester on April 26, 2010, the last class meeting day of the Semester or, alternatively, the results of a take-home final examination, at your election. Because, however, the readings in this course are so centrally important in either case, the time, energy, and commitment which you invest in them is also factored into your final grade.
Mandatory Readings and Elective Readings

In the Reading List portion of this Syllabus there are indicated a series of readings for each class week of the Seminar. These readings are divided into mandatory and elective readings: in order to receive a grade in this Seminar, it is necessary that you read, with reasonable care and comprehension, all of the mandatory readings and that, prior to the end of the Seminar, you submit to me a written statement attesting to the fact that you have completed these mandatory readings in toto. In the absence of such a certification as to the mandatory readings, I will assign you a grade of “Incomplete” until such time as the certification is received. If no such certification is received, a grade of “F” will be assigned in administrative due course. I trust that no individual will encounter any difficulty in this respect.

Elective readings, too, bear on your grade in this Seminar. An individual student who completes the basic mandatory readings (and so certifies this fact) will receive a grade in the “C” range [up to a numerical value of 79] or lower, depending upon the quality of the research statement or examination submitted at the end of the Semester. However, a grade in the “B” range [up to a numerical value of 89] is obtainable (depending upon the quality of the research statement or examination submitted at the end of the Semester) if the student completes (and certifies the completion) an additional 25 modules drawn from the list of Recommended Readings reflected on the Reading List. Further, a grade in the “A” range [90 or above] will be available to any student who completes 40 modules of the Recommended Readings (and certifies this fact in writing), and whose written submission or examination at the end of the Semester warrants the award of a grade reflecting such excellence. In a very real sense, then, the grade you receive in this Seminar is a direct function of the time, energy, and effort which you put into its twin areas of activities, the assigned readings and the research statement or examination. I believe that this system is a fair one and will afford you a realistic opportunity to obtain a respectable grade for your work and effort during the Semester, dependent totally upon your interest and dedication throughout the Seminar.

Research Statements and Examination

In evaluation of your progress in this course and for purposes of the assignment of a final grade, you may either submit a research statement at the end of the Semester or you may, at your election, complete a take-home examination.

The submission of a research statement on a selected topic in Georgia Legal History is a core feature of your experience in this Seminar. I want to take this opportunity to establish some of the basic parameters of this research statement, if you elect to submit one, for your planning and guidance.

The length of a research statement is ultimately a function of the topic you choose and, just as importantly, the depth to which you take your research and writing on that subject. For these reasons, any statement of projected or expected length of the project is somewhat inappropriate and, in a certain sense, misleading. That having been said, however, I would suggest that a paper of less than 20 pages or so would not reflect well on your effort or interest; one beyond 50 pages would, on the other hand, represent something of an overkill in a two hour Seminar. A happy medium between
these two extremes would probably fall somewhere between 25-35 pages, more or less. I leave formatting issues pretty much to your discretion, although I find it helpful to have a bibliography attached as well as a table of contents which serves as a guide to the reader for your work. Professional standards in writing should be adhered to, including faithful (although not necessarily slavish) fidelity to the Blue Book models for citations. I find the use of a 12 pt font, with 1 inch margins all around, to be not distracting from the substance of your paper.

A far more weighty matter is the subject of your research and writing effort. The outer parameters of the permissible field are quite broad: any subject having direct relevance to Georgia Legal History is acceptable. A useful catalog of potential subjects is reflected in the Reading List of the Seminar and I suggest that you peruse these at an early moment for possible topic ideas. The Reading List, however, is by no means exhaustive and there are many useful (and acceptable) research subjects which are not reflected in that brief enumeration. In any event, it is always advisable—whether your proposed topic be on the Reading List or not—to confer with me briefly to make sure that your chosen subject is one of Georgia legal historical value. I have a keen interest in seeing you direct your efforts towards a subject which will necessarily entail the use of primary and secondary materials and my guidance to you on this subject will be conditioned in substantial measure by this criterion.

In the unlikely event that you are stymied in your effort to identify a research statement subject, I will be happy of course to assist you in identifying an appropriate topic. As a general proposition, you may want to do a little research in primary materials relating to the judicial structure and its history in the county where you reside. I have an ongoing research effort which I have informally dubbed the “1860 Project,” and which consists of a legal history sketch of a number of Georgia counties as they existed in the year 1860. This “one year portrait” would consist of a narrative description of the courts which existed in your selected county in 1860 and a quick survey and summary of the matters which passed through those tribunals throughout that year. Much of this information can be gleaned from the records available in the Clerk’s Office at your county Superior Court; what is not available locally is almost certainly available [if it exists at all] at the Georgia Archives. I have selected the year 1860 for this Project for reasons which are self evident: 1860 stands as a watershed in Georgia history generally and Georgia legal history in particular, straddling the antebellum chapter in Georgia’s past and the years of the 1861 War, Reconstruction, the period of Bourbon Democracy, Populism, Progressivism, and the emergence of the New South of which Georgia was and is an integral part. 1860 represents the apogee of cotton culture in our State, as well as of the chattel slave labor system which was so integral to it. That year represents, then, both the twilight and the fullest expression of a culture—legal and otherwise—which is quite literally “gone with the wind.” It is a fascinating study, and I invite you to participate in it in the absence of any other research project which fires your imagination.

I will provide you with more information on the take-home examination option as the time for the event approaches.

Guest Speakers
Because this Seminar in Georgia Legal History is, to some extent, integrated into Georgia legal
history initiatives across the state, our exercise together this Semester has attracted a bit of attention outside the boundaries of the law school and of the university. For this reason, we will have a number of special guests with us over the course of the semester, and I ask that you make special effort not only to be in attendance on those particular occasions but also to be extraordinarily prepared to engage in a dialogue with our visitors. As of this moment, the individuals who have committed (to some differing degree) to join with us in the Seminar include:

- January 11, 2010: Professor Nancy Johnson
- January 25, 2010: Professor Jack Williams
- February 1, 2010: Professor L. Lynn Hogue
- March 15, 2010: Dr. David H. Connolly, Jr.
- March 29, 2010: Professor Douglas Hurt Yarn
- April 19, 2010: Professor Anne Emanuel

Office Hours

For formal purposes, I am designating each Monday from 3:00 P.M. until 4:00 P.M. as the period for my office hours/contact time in Spring Semester, 2010. I ask, however, that you let me know if you intend to drop by the office (Room 416B, Fourth Floor, Urban Life Building; telephone 404 413 9185) if you intend to see me during those hours in order to make certain that I am not wandering around the faculty area when you arrive. At the same time, I invite you to see me at any other time during the week when we find it mutually convenient to meet. I am always open to appointments with you for this purpose. I welcome phone calls at home (706-468-0129) and, because of an unusually heavy research agenda in Spring Semester 2010 I expect to be at my desk in Monticello more often than not. Please call if you have any need. I have found that e-mail is a certain and efficient method of communication and I encourage you to use it: my e-mail address for this purpose is erlanier@aol.com and I ask that you use that private server and avoid the GroupWise/GSU e-mail system.

Attendance

In a Seminar such as this, the small numbers of participants virtually demand that everyone be regular in their attendance at class meetings. Attendance does not mean, however, mere physical presence; attendance entails preparation. Preparation, in turn, means more than simply leafing through the required readings; rather, in a Seminar environment true attendance and participation requires a certain mental engagement with the materials to the point that you absorb them, make them your own, and form mental impressions and reactions –the essence of perspective– which will permit you to engage in a spirited discussion of the subjects at hand. This does not mean, of course, that you have to commit to a slavish preparation for every class meeting; far from it. I do ask that you consciously review the materials, think about them, and be prepared to advance your own reactions to them in the course of the class meeting. Some of our classes will not afford an opportunity for much discussion of the material; others, however, are given over almost singularly to this purpose. Please come to class and come prepared.
Because we have only fourteen class meetings in the Semester, I think it fair to limit absences for all reasons –excused and unexcused-- to two. Absences in excess of this number will render you ineligible to submit a research statement in the Seminar or to stand the take-home examination, and therefore disqualified to receive a final passing grade in the course.
Class #1
January 11, 2010
Seminar Organization

Overview of the Seminar

Discussion of the Syllabus

Required Readings

This Day in Georgia History (January 11)


Lanier, E. R., “Some Preliminary Thoughts on Legal History, Georgia Legal History, and the
Historiography of Early Georgia Law” (unpublished paper)

Recommended Readings

545 (1998)

2. “Georgia Legal Documents,” complied by Rebecca Simmons Stillwagon (Government

Speakers

Professor Nancy Johnson, “Georgia Legal Research and Georgia History”
Class #2
January 25, 2010
Georgia’s Native American and Colonial Legal Roots

Required Readings

This Day in Georgia History (January 25)

Chapter I (“Colonial Georgia”), pp. 1-14, in Georgia History in Outline (Revised Edition), Kenneth Coleman, University of Georgia Press (Athens, Georgia, 1978)

Georgia Trusteeship Charter 1732 (http://www.cviog.uga.edu/Projects/gainfo/gacontoc.htm)


Recommended Readings


Speaker: Professor Jack Williams
Class #3
February 1, 2010

Law and Legal Issues in Revolutionary and Early National (and Nationalist) Georgia

Required Readings

This Day in Georgia History (February 1)

Chapter II (“Georgia in the Revolution”), pp. 15-28, in Georgia History in Outline (Revised Edition), Kenneth Coleman, University of Georgia Press (Athens, Georgia, 1978)

*Chisholm v. Georgia*, 2 U. S. 419 (1793)

*Fletcher v. Peck*, 10 U.S. 87 (1810)

Recommended Readings


3. Rules and Regulations of 1776 (http://www.cviog.uga.edu/Projects/gainfo/gacontoc.htm)

4. Georgia Constitution of 1777 (http://www.cviog.uga.edu/Projects/gainfo/gacontoc.htm)

5. Georgia Constitution of 1789 (http://www.cviog.uga.edu/Projects/gainfo/gacontoc.htm)


Speaker: Professor Lynn Hogue
Class #4  
February 8, 2010

Creek Land Cessions and the Cherokee Removal: Legal Conflict between Georgia and the Union

Required Readings

This Day in Georgia History (February 8)


Worcester v. Georgia, 6 Peters 515 (1832)

Cherokee Nation v. Georgia, 5 Peters 1 (1831)

State of Georgia v. Canatoo

Recommended Readings


Class #5
February 15, 2010

An Age of Great Reforms: Early Nineteenth Century Georgia and the Legal Reform Movement

Required Readings

This Day in Georgia History (February 15)

Georgia Judiciary Act of 1797, as amended February 16, 1799

Georgia Penal Code of 1816, as amended December 20, 1817

Recommended Readings


African Americans and the Early Georgia Law: Slavery and Black Codes in Georgia during the Late Eighteenth and First Half of the Nineteenth Century

Required Readings

This Day in Georgia History (February 22)


“An Act for the Trial and Punishment of Slaves and Free Persons of Color,” enacted December 19, 1816, in Prince, A Digest of the Laws of the State of Georgia (Athens, Ga., 1837)

Recommended Readings


Video

Trial of Slaves in Baldwin County, Georgia, 1820-1830
Class #7  
March 1, 2010  
Establishing the Supreme Court of Georgia

Required Readings

This Day in Georgia History (March 1)

“History of the Supreme Court of Georgia,” Katie Wood, 1 Ga. St. B.J. 47

Recommended Readings

1. A Unique and Unfamiliar Chapter in Our American History,” Justice Joseph R. Lamar, 10 ABA Journal pp. 513-518 (1924)

2. John B. Harris, “The Supreme Court of Georgia: An Account of its Delayed Birth,” in A History of the Supreme Court of Georgia, A Centennial Volume (John B. Harris, ed., 1948)
March 8, 2010

Spring Break
Class #8
March 15, 2010

Biography: Judge Joseph Henry Lumpkin

Required Readings

This Day in Georgia History (March 15)


Recommended Readings


Speaker: Dr. David Connolly, Georgia College & State University
Class #9  
March 22, 2010  
*The Codification Movement: The Nation’s First True Code*

**Required Readings**

This Day in Georgia History (March 22)


**Recommended Readings**


Class #10  
March 29, 2010  

*Industrialization in a Society with Feudal Elements*

**Required Readings**

This Day in Georgia History (March 29)


**Recommended Readings**


**Video**

- The Last Duel in Georgia

**Speaker:** Professor Douglass H. Yarn
The War, Georgia’s Three Reconstructions, and Bourbon Democracy

Required Readings

This Day in Georgia History (April 5)

Chapter IV (“Slavery, Secession, and the Civil War”), pp. 48-68, and Chapter V (“Reconstruction, Bourbonism, and Populism, 1865-1900”), pp. 69-93, in Georgia History in Outline (Revised Edition), Kenneth Coleman, University of Georgia Press (Athens, Georgia, 1978)

Recommended Readings

1. Georgia Constitution of 1861 (http://www.cviol.uga.edu/Projects/gainfo/gacontoc.htm)


4. Georgia Constitution of 1865 (http://www.cviol.uga.edu/Projects/gainfo/gacontoc.htm)

5. Georgia Constitution of 1868 (http://www.cviol.uga.edu/Projects/gainfo/gacontoc.htm)


7. Georgia Constitution of 1877 (http://www.cviol.uga.edu/Projects/gainfo/gacontoc.htm)


10. Appling v. Odum, 46 Ga. 584 (1872)


Video

A House Divided
Class #12  
April 12, 2010  
The Century’s Turn: Populism, Progressivism, Peonage, and Prejudice

Required Readings

This Day in Georgia History (April 12)

Chapter VI (“Twentieth Century Georgia”), pp. 94-118, in Georgia History in Outline (Revised Edition), Kenneth Coleman, University of Georgia Press (Athens, Georgia, 1978)

Recommended Readings


6. Frank v. State, 142 Ga. 617 (1914)


Video

The Murder of Mary Phagan
Class #13  
April 19, 2010  
“But I Stole for You:” Politics and Political Reform, Early and Mid-Twentieth Century, Georgia Style  

Required Readings  

This Day in Georgia History (April 19)  

Recommended Readings  


3. All White Primary Case: Chapman v. King, 154 F.2d 460 (5th Cir., 1946)  

4. The 1945 Constitution (http://www.cviog.uga.edu/Projects/gainfo/gacontoc.htm)  


7. Civil Rights Cases: Heart of Atlanta Motel  


Speaker: Prof. Anne Emanuel
Required Readings

This Day in Georgia History (April 26)


*Furman v. Georgia*, 408 U.S. 238 (1972)


Recommended Readings


2. Biography: Judge Charles Longstreet Weltner