

POLI 451
CIVIL LIBERTIES

Spring 2008
MW 2:30-3:45 - Gambrell 151

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Office Hours:
Mon 10:00-11:00
Tues 10:0-11:30
Wed 10:00-11:00
or by appt.

Text:

Lee Epstein & Thomas Walker, Constitutional Law for a Changing America: Rights, Liberties and Justice (2007, 6th ed)
selected cases from: United States Reports (in law library, or online via *Findlaw*, or *LEXIS* and other electronic sources)

On Blackboard:

How to Brief - explanation of how to write a case brief
Reasoning in Law - two chapters from the book by Lief Carter explaining what makes a good opinion
Writing Appellate Briefs - chapter from a book on legal writing about how to write an effective legal argument
Digest - chapter from book on legal research about how to use digests to find cases.
Shepards - chapter from book on legal research about how to use Shepards Citations to find cases and to determine the status of precedents.
Encyclopedias - chapter from book on legal research about how to use legal encyclopedias to find cases and to determine the status of precedents.

Also Useful:

Jacobstein, Mersky & Dunn, Legal Research Illustrated
Block, Effective Legal Writing (4th edition)

Objectives

- 1) To enable you to develop your skills in legal research, analysis of cases and writing legal arguments.
- 2) Develop a basic understanding of the development of constitutional interpretation of civil liberties by the Supreme Court.
- 3) To increase your capacity to analyze the political, ethical, and legal aspects of selected unresolved civil liberties issues.

Nature of Assignments

The grading system was designed to evaluate your success in developing your skills of analysis, expression, and your comprehension of complex relationships. Ability to memorize is not considered important. Consequently **there will be no closed book tests or assignments.**

Participation in class and in small groups will be emphasized. I believe that achievement of the course goals requires extensive interaction. Therefore, most of the class time will be spent in discussion of cases (in which students will be expected to respond to each other in addition to the instructor), debate of issues, and in role playing exercises. Everyone will be expected to participate vigorously in all of these activities (and, of course, participation necessitates attendance).

Particular emphasis this semester will be placed on both legal research

and argumentation. Most of your written assignments will involve researching the law, using materials in the law library, in addition to the analysis of cases in the assigned reading. Development of effective skills of research and writing involves the ability to learn from criticism and to work as part of a team. Consequently, several of the written exercises will involve working in small groups. Some of your work will be read and critiqued by other class members as well as by the instructor. In class discussions, you will be expected to vigorously critique the positions advanced by others (i.e., the positions of both the instructor and students) and to vigorously defend the positions you take. Expect the positions you take to be vigorously challenged by both the instructor and classmates in every class and be prepared in every class to defend all statements that you make.

I also expect each student to be prepared to participate fully in every class. You are not expected to merely read each day's assignment before you come to class. Instead you are expected to be ready to **analyze** each assigned case, to discuss the **implications** of each case, and to be ready to **use** the assigned material to develop arguments in hypothetical cases posed by the instructor. Be prepared to defend your interpretation of the cases you have read each day. On some days, a version of the Socratic method will be used in which you will be pushed very hard to defend orally your interpretation of key points about the assigned cases or their implications.

You will have to work very hard in this course. Initially, many of the assignments will seem very difficult to most of you because you will be asked to learn a set of skills that few undergraduates possess at the beginning of the course. **However, for those willing to work hard, I offer two observations based on the many years I have been teaching this course: 1) the distribution of final course grades has in the past always been substantially higher than the distribution from a normal curve of grades and always higher than the distribution of grades in the sections of POLI 201 that I have taught. 2) The feedback I have received from the many students who have gone on to law school is that they realized when they got to law school that they were substantially better prepared than most of their peers for those rigors.**

Assignments and Grading

The final course grade will be based on the following components:

POINTS

20 Oral class participation.

0 Midterm exam: writing an appellate brief (in class) (Note: any exam rated as being of "A" quality will result in 5 points being added to your oral class participation grade)

30 first Supreme Court simulation

50 Final Exam (writing brief summaries & full court opinions)

Extra Credit

second Supreme Court simulation - may be used to replace grade on oral participation or first Supreme Court simulation

a) *Class participation* - everyone is expected to be prepared each day to discuss the reading assigned for the day, including the facts, rule, reasoning, and political/ethical implications of the assigned cases. We will often follow a format used in many law school classes in which students are called on to answer a question related to the elements of the case briefs or the implications of one or more of the assigned cases or the results of some homework assignment. In addition, students will be expected to be ready to play the role of attorneys arguing hypothetical mini-cases during class. If you don't answer at all when called upon it will be assumed you are unprepared. Students will be expected to critique the answers given by other students. If any student is called upon and provides an incorrect or inadequate analysis, other students will be expected to critique the inadequate answer provided. *If no student corrects the inadequate answer*

provided by one of their peers, then all students in the class (including those absent) will be graded as answering incorrectly !!

b) *Homework*- All homework assignments may be completed in groups of 2 or 3. You are encouraged to work in small groups and help each other learn. You will be expected to write case briefs for designated cases and you are encouraged to write case briefs for each case. Written briefs may be used to aid your responses to questions posed in class. Homework exercises designed to teach the skills of legal research and legal writing will be assigned and discussed in class.

c) *Appellate briefs* - To teach the skills of legal research and legal argumentation, you will be given hypothetical (or perhaps real) fact situations relating to cases in the appellate courts. You will be asked to assume the role of the attorneys for one of the litigants and to write their appellate brief. First you will have one or two exercises that will not be graded. Each will be a small group assignment. For these writing assignments, you will only need to write the questions presented, summary of argument, and argument sections of the brief. For your midterm examination you will be expected to write in class, by yourself, the questions presented, summary of argument, and argument sections of a major appellate brief. You will be free to use notes you have prepared in advance for this exam. For briefs written in connection with the simulations, you will be expected to write a complete formal brief, suitable for presentation to a real federal appellate court.

d) *Supreme Court Simulations* - each student will play the role of either a particular Supreme Court justice, or an attorney in the consideration of two civil liberties cases. Attorneys will research their position and write a brief to submit to the simulated Court. Briefs are expected to be as close as possible to briefs actually submitted in "the real world." Attorneys will then engage in oral argument before the Court. Judges will research the past positions taken by their justice, read and analyze the briefs submitted, question the attorneys during oral argument, discuss and decide the case in conference, and write the opinion of the Court and any dissenting opinions that are needed. The first simulation will be required of all students. In the second simulation, students may elect to participate for extra credit. Typically we will have two courts consider each simulated case. One will be the Supreme Court as it existed on December 15, 2007 (with the assumption that all the justices are healthy and able to fully participate). The second court will be the one that existed in 1971 (but for this court as for the other the state of the law will be assumed to be that of the present). All students who are not one of the 18 justices will form teams of two attorneys. Half of the teams will represent the appellant and half the respondent. Each team will write the brief for their side. The instructor will select one team on each side to make the oral arguments. Selection will be based on the quality of the written brief. Teams presenting oral argument will receive extra credit for their work.

d) *Final Examination*. This will be an open book, in class exam taken during the scheduled exam period. It will be approximately 3 to 4 hours in length. You will be free to use any notes or case briefs you have written during the semester. The exam will consist of a series of short hypothetical situations for which you will be asked to write a brief summary (e.g., 200 words or less) of a court resolution of the case. There will also be one or two longer hypotheticals for which you will be expected to write a full opinion of the court.

Tentative Outline of Assignments

Specific daily assignments will be announced in class and posted on

Blackboard. You are responsible for keeping up with all of these changes. **Check Blackboard frequently !** Ignorance of an announced change will not be considered a legitimate excuse - you are responsible for any material presented in class and for announcements made in class regardless of whether or not you were in attendance. Some of the assigned reading will not be from the book to be purchased from the bookstore, but instead will consist of Supreme Court opinions on civil liberties cases. These opinions are available either electronically or in a number of sources in the law library. Simple notation of pages (e.g. pp660-685) or chapters (e.g., Chapt 1) refer to pages or chapters in your main text (i.e., Epstein & Walker) and these should be read **before class** on the day indicated.

Date	Assigned Reading	Other Assignment
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Introduction. Understanding the Supreme Court

Jan. 14	Amendments v Judicial Review Chapt. 2 How to brief a case (available on Blackboard)	
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Jan 16	Chapt 1 & 3 Digests- on Blackboard	
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Jan 21 - No Class - Martin Luther King Holiday

Part I. Civil Rights & Equal Protection of the Law

Jan. 23	<u>Race Discrimination</u> Pp 617 - 646	legal research ex. 1 due
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Jan. 28	pp. 647-659 Milliken v Bradley, 418 US 717 (1974) "Writing the Appellate Brief" - Blackboard	
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Jan 30	<u>Gender Discrimination</u> read an appellate brief pp. 660-685	legal research ex 2 due
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Feb 4	<u>Sexual Orientation & Other Discrimination</u> pp.686 - 705	
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Feb 6	Remedies - pp 706- 735 Aaron v. Cooper, 357 US 566 (1958) Jones v Mayer 392 US 409 (1968)	
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Part II – Rights in Criminal Procedure

Feb 11	<u>Search & Seizure</u>	
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pp. 475-525

Feb 13 (continued)

Feb 18 Self Incrimination
Pp 526- 546
Research other cases on consent searches

Feb 20 Right to Counsel
pp. 549 - 577

Feb 25 **MIDTERM EXAMINATION**

Feb 27 New Rules for Terrorism suspects ?
pp 605- 612
Rasul v Bush (2004)
Hamdan v Rumsfeld (2006)
Rochin v CA 342 US 165 (1952)

Mar 3 Death Penalty
Herrera v Collins 506 US 390 (1993)
Pp 581 - 604
Shepard's Citations (on Blackboard)

Mar 5 wrap up
Pp 578 - 580
Pp 602-604

(Mar 10 & 12 - **SPRING BREAK**)

Part III. Freedom of Religion

Mar 17 Free Exercise Clause
Pp 99 - 137 **Legal research ex. 3 due**

Mar 19 (continued) **Briefs for Simulation due**

SIMULATION 1 - Rights of Criminal Defendants

Mar 24 **ORAL ARGUMENT**

Mar 26 - **CONFERENCE**

Mar 31 Establishment Clause
Pp 138-207

April 2 (continued) **Simulation opinions due**

Part IV – The Right to Privacy

April 7 Privacy & Abortion
pp. 412 - 469

Part V – Freedom of Speech and Press

April 9 Basic Standards
pp. 210 - 243

April 14 Political Speech
pp. 244 - 311

April 16 Freedom of Press
Pp . 314 - 344

Briefs for Simulation due

SIMULATION 2 - Gitmo detainees or Free Expression

April 21 **ORAL ARGUMENT**

April 23 - **CONFERENCE**

April 28 Obscenity
pp. 347 - 379

April 30 Libel
pp. 380 - 400

Simulation opinions due

Thursday, May 1 - 2:00 P.M. --- FINAL EXAMINATION