

Mr. Levin
Office: OSH 210D
Phone: 801-587-9096
Email: daniel.levin@poli-sci.utah.edu
Http://www.poli-sci.utah.edu/~dlevin/

Spring 2008
Office Hours:
Mon/Wed 3-4 pm
Tues: 4-5:30 pm
or by appointment

Political Science 5212: Civil Rights and Civil Liberties

Mon/Wed 1:25-2:45pm, OSH 234

Course Objectives

The primary purpose of constitutional law is to balance individuals' rights with the powers necessary to properly govern a democratic society. American constitutional law is often divided into two different areas of study. The first focuses on the institutional powers and limitations of the branches and departments of American government; this area is presented in POLS 5211: Constitutional Law. In this course, we will examine how individuals' civil rights and civil liberties limit those governmental powers, including the majority's ability to establish moral and social rules and standards of behavior for others and to discriminate against minority groups and women. Over the past two centuries, the Supreme Court has provided authoritative definitions of Americans' civil rights and civil liberties. In this course, we will examine the Court's responses to increasingly complex questions regarding the balance between the rights of individuals against expanding forms of governmental and private power. We will examine how the Court has interpreted Americans' constitutional rights of free speech, press, association, religious exercise, and privacy, scrutinized government establishment of religion, and defined those civil rights protected against discrimination on the basis of race and gender. We will not have time to consider the protections provided to defendants in criminal trials or those facing punishment after conviction.

Required Materials

We will be using David M. O'Brien, *Constitutional Law and Politics, Vol. 2: Civil Rights and Civil Liberties*. (Norton, 6th Ed., 2005), hereafter *CLP*, and O'Brien, *Lanahan Readings in Civil Rights and Civil Liberties* (Lanahan, 2nd Ed., 2003), hereafter *Readings*. Additional readings are available through the Web version of this syllabus. There are also study sheets and topical materials which are accessible through a [linked website](#) which you should include in your preparation and which will aid you in studying for the exams. **Please bring the casebook, and the reader and additional materials when applicable, to every class.**

Because we will be focusing our discussions on the development of constitutional doctrine, **you are required to read the assigned cases and other readings before the class session for which they are assigned.** Case names are provided on the syllabus for you to focus on in preparing for class, however, you are just as responsible for reading the other assigned materials. The *Lanahan Readings* text provides useful background, for general constitutional doctrine and specific cases, and will be part of our discussions; the essay questions on the midterm and final will involve these readings. You will find that it is in your best interest to carefully outline and "brief" each of the cases before the class meeting so that we may begin our discussions informed and ready. A guide to briefing cases is attached to the syllabus. Much of our work in class will involve the case method, and **I reserve the right to call upon any of you to explain the ruling in an assigned case at any time.**

Course Requirements and Methods of Evaluation

Participation is required; it includes both contributions to class discussion and attendance. I will take attendance and students should, beginning with the second session, find and remain in a seat for the semester. **Electronic devices other than computers must be turned OFF and stowed during class; any sighting of cell phones or PDAs will result in that student being marked absent. Laptops may only be used for note-taking or viewing class related material.**

Written assignments include two in-class exams. Both will include multiple choice, short answer, and essay questions; the final will cover only that material covered since the midterm. **Please bring a blue book to both exams.** During the course of the semester, I will provide you with a series of **hypothetical cases** for which you

will be required to write three "**decision memoranda.**" Each assignment will be made for a period of one week; at the end of the week, the assignment will "time out" and you may only submit the new assignment assigned for the next week. The purpose of these assignments is to improve your writing and analytical skills; I will grade on the basis of writing and analysis as well as your command of course content. [A sheet detailing the proper form of these memoranda is attached to the syllabus.](#) While your first, second, and third memoranda must be submitted by the dates listed on the syllabus, the due date for each specific memorandum will be listed on the assignment itself. **Assignments will not be accepted from students who do not attend class on either the date assigned or the date due.**

Your grade will be computed as follows:

Participation	20%	Date or Date Due
Memorandum 1	10%	Must be received by February 20
Memorandum 2	15%	Must be received by March 24
Memorandum 3	15%	Must be received by April 21
Midterm Exam	20%	March 8
Final Exam	20%	April 30 at 10:30 am

Policy on Late Papers, Unsubmitted Work and Incompletes: Papers will be accepted until 5 pm on the date due. I will not accept a submitted paper that was either assigned or due on a date for which you have an unexcused absence. Late papers will lose one full grade if submitted within a week of due date; after a week, papers will not be accepted. Failure to complete any assignment will result in failure of the course. A grade of incomplete is only available in cases of documented emergency at the semester's conclusion.

Academic Misconduct: All quotes must be cited as such and include a clear reference to the work from which they were drawn; they will otherwise be treated as plagiarism. All use of materials other than course materials must be accompanied by full citations. All work in this course is assigned as individual work; working as groups or teams is strongly discouraged (and may be treated as cheating), as is all but the most casual assistance from others; this includes parents, spouses and other family members. If you intend to submit a paper which significantly draws upon work for another class, you must first receive explicit permission to do so from both myself and the other instructor. **Any form of academic dishonesty will result in a failing grade for the course and other disciplinary action, up to expulsion from the University.**

Submission of Papers to WebCT: Memorandum must be submitted both in hard copy and through WebCt; instructions for submitting work through WebCT will be provided with the first assignment.

Americans with Disabilities Act Notice: Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

Accommodation of Sincerely Held Beliefs: I will work with students who require schedule changes due to religious or other significant obligations. I will not consider any requests based on course content. Because modern American politics includes many debates over race, sexuality, obscenity, religious practice and belief, and political ideology, any class that did not address such issues would be substantially limited. Students are required to attend all classes and to read all assignments. All assignments and lectures are related to our subject matter, and

I do not include gratuitously salacious material. If you have any objection to the frank and open discussion of any of the topics above, including the use of adult language when appropriate to subject matter, please drop the class.

Schedule of Readings and Assignments

The following schedule is approximate and subject to both additions and deletions.

Jan 7 - Introductory Meeting

CLP: Chap. 1-2 (read during first few weeks)

Jan 9 - A Too Brief Introduction to Constitutional Theory -

Readings: Strauss, "Due Process ... ," 47-60; Brennan, "Constitutional Interpretation," 60-70; Klarman, "Rethinking," 323-29.

Web: [DeShaney v. Winnebago County](#)

Jan 14, 16 – Incorporation, Due Process, and State Action, Chap. 4

CLP: *Barron v. Baltimore*; *Slaughterhouse Cases*, 266; *Palko v. CT*; *Adamson v. CA*; *Griswold v. CT*; *Duncan v. LA*; *Civil Rights Cases*, 1363; *Shelley v. Kramer*, 1377.

Readings: Hamilton, "The Path of Due Process," 3-11; Cortner, "Nationalization," 31-47.

Jan 21 - Martin Luther King Day

Jan 23 - Free Speech and its Dangers, Chap. 5, § A.

CLP: *Schenck v. U.S.*; *Gitlow v. New York*; *Dennis v. US*; *Brandenburg v. Ohio*.

Readings: Emerson, *The System of Freedom of Expression*, 73-78; Levy, *Blasphemy*, 138-145; Posner, "Security v. Civil Liberties," 151-154.

Jan 28 - Commercial Speech and Government Speech, Chap. 5, § D.

CLP: *Bigelow v. VA*; *44 Liquormart v. RI*; *Lorillard Tobacco v. Reilly*; *Bethel School Dist. v. Fraser*, 495; *Rust v. Sullivan*, 517.

Readings: Collins and Skover, "Communication and the Capitalist Culture," 107-13.

Web: [Utah Licensed Beverage Association v. Leavitt](#); [Morse v. Frederick](#)

Jan 30, Feb 4- Symbolic Speech, Fighting Words, and Hate Speech, Chap. 5, § B (2) and § H.

CLP: *Erie v. Pap's AM*; *Cohen v. CA*; *R.A.V. v. St. Paul*; *Wisconsin v. Mitchell*; *VA v. Black*; *WV v. Barnette*; *Tinker v. Des Moines*; *TX v. Johnson*

Readings: Greenawalt, "Hate Speech and Fighting Words," 101-107.

Feb 6 - Pornography, Obscenity and Indecency," Chap. 5, § B(1), § F. .

CLP: *Roth v. US*; *Miller v. CA*; *New York v. Ferber*; *FCC v. Pacifica*, 489; *Reno v. ACLU*, 465

Readings: Strossen, *Defending Pornography*, 96-101.

Feb. 11 - Libel, Chap. 5, § C, E, F, G.

CLP: *New York Times v. Sullivan*; *Gertz v. Robert Welch, Inc*; *Masson v. The New Yorker*; *Red Lion v. FCC*

Readings: Abramson and Bussiere, "Free Speech and Free Press," 89-95

Web: [Hustler Magazine v. Falwell](#); [Libel Doctrines](#)

Feb. 13 - Right of Free Association, Chap. 5, § I.

CLP: *NAACP v. Alabama*; *Roberts v. Jaycees*; *Boy Scouts v. Dale*

Web: [First Unitarian Church v. Salt Lake City](#)

Feb. 18 - Presidents Day

February 20 - You must have submitted your first memorandum by this date.

Feb 20, 25 - State Aid to Religion and Religious Education, Chap. 6, § A.

CLP: *Everson v. Bd of Ed*; *Lemon v. Kurtzman*; *Zobrest v. Catalina*; *Kiryas Joel v. Grumet*, *Agostini v. Felton*; *Zelman v. Simmons Harris*.

Feb 27, Mar 3 - Prayer and Religious Instruction in Public Schools, Chap. 6, § A.

CLP: *Engel v. Vitale*; *Abington v. Schemp*; *Wallace v. Jaffree*; *Lee v. Weisman*; *Rosenberger v. UVA*

Readings: LaRue, "Virginia's Moment of Silence," 145-47.

Web: *Zorach v. Clausen*; *Edwards v. Aguillard*

March 5 - Midterm Exam

Mar 10 – Public Display of Religion

Web: *Lynch v. Donnelly*, *Allegheny County v. Greater Pittsburgh ACLU*; *McCreary County v. ACLU*; *Van Orden v. Perry*.

Readings: Bellah *et. al.*, *Habits of the Heart*, 117-26; Hunter, *Culture Wars*, 126-38.

March 12, 24 - Free Exercise of Religion, Chap. 6, § B

CLP: *Wisconsin v. Yoder*; *Employment Division v. Smith*; *Church of Lukumi Babalu Aye v. Hialeah*; *City of Boerne v. Flores*; *Locke v. Davey*.

March 17-22 – Spring Break

March 24 - You must have submitted your second memorandum by this date.

Mar 26 - Race in the Constitution, Chap. 12, § A.

CLP: *Dred Scott v. Sandford*; *Civil Rights Cases*, *Plessy v. Ferguson*; *Shelley v. Kramer*.

Mar 31, Apr 2 - Race and the Schools, Chap. 12, § B.

CLP: *Brown v. Bd (I)*; *Brown v. Bd (II)*; *Cooper v. Aaron*; *Swann v. Charlotte-Mecklenberg*; *Milliken v. Bradley*; *Freeman v. Pitts*; *U.S. v. Fordice*.

Readings: Kluger, *Simple Justice*, 245-52; Orfield, *Dismantling Desegregation*, 252-62.

Apr 7 - Affirmative Action, Chap. 12, § C.

CLP: *Regents v. Bakke*; *Richmond v. J.A. Croson*; *Adarand v. Peña*; *Gratz v. Bollinger*; *Grutter v. Bollinger*.

Readings: Shaw, "In Defense of Affirmative Action," 262-70; Jones, "Towards Ending Preferences," 270-80.

April 9 - Gender and Discrimination, Chap. 12, § D (1).

CLP: *Frontiero v. Richardson*; *Craig v. Boren*; *Michael M. v. Sonoma County*; *U.S. v. VA*.

Readings: Williams, "The Equality Crisis, 280-90; O'Brien, "Sexual Harassment," 312-23.

April 21 - You must have submitted your third memorandum by this date.

April 14-23 - The Right to Privacy: Abortion, Sex, and Death, Chap. 11; Chap. 12, § D (1).

CLP: *Griswold v. CT*, 339; *Stanley v. GA*, 442; *Roe v. Wade*; *Planned Parenthood v. Casey*; *KY v Wasson*; *Lawrence v. TX*; *Cruzan v. MO*; *WA v. Glucksberg and Vacco v. Quill*; *Romer v. Evans*, 1534.

Readings: Ginsburg, "Speaking," 290-97; Dworkin, "Sex, Death & the Courts," 297-311.

Web: *Gonzales v. Carhart*; *Goodridge v. MA Dept. of Public Health*

Final Exam -Monday, April 28, 2008, 1:00 – 2:30 pm

Instructions on Memoranda

Over the course of the semester, you must write two memoranda concerning hypothetical cases which I will furnish to you with every topic, generally one a week. You must submit two memoranda before the dates given on the syllabus or your memoranda will be dropped one full grade, and you may submit a third memorandum and drop the lowest grade. In writing the memoranda, you should follow these guidelines:

1) Organization

- a) Each memoranda will have four sections. You may use subheadings to distinguish sections. These sections are: facts, constitutional question(s), decision (a very brief announcement of the rule of law that resolves one of the constitutional questions above), and reasoning.
- b) Briefly (in one or two paragraphs) recount the significant facts.
- c) Describe the constitutional questions that the case presents. Use only two or three sentences for each question. You may wish to number these questions for easy reference later on. Arrange your questions, and answers, so that they logically follow each other; in some cases, how you answer one question will determine how the others are properly answered.
- d) Answer each of these constitutional questions in several sentences, providing a very brief summary of the reasoning resolving each of these questions. You will first announce your decision, and then, in the final section, justify it (see below).
- e) Justify your answers by providing the central point of your argument (“The President’s decision to disregard the War Powers Act is clearly unconstitutional because of Congress’s power to make laws governing the Armed Forces.”) Then review the history of precedents which back up your argument (In *Smith v. Jones*, the Supreme Court found that Congress cannot delegate its law making responsibilities to the President. In that case, it said ‘blah, blah.’”) Then demonstrate why this precedent provides the proper rule, or why another does not (“As in *Smith*, the President does not rely on a specific statute . . . Unlike *Johnson v. Miller*, the act is not pursuant to a treaty obligation”). Then move on to the next issue.

2) Approach.

- a) Assume that you are a law clerk, arguing before your judicial employer about how a case should turn out. Your reasoning justifying the decision is the most important part of your work. You are NOT the judge, and certainly are not the entire Supreme Court, so do not create new law previously unknown to the constitutional jurisprudence of the United States.
- b) While you are encouraged to have fun with the cases, please do not add facts or make up precedents. Cuteness is its own punishment.

3) Format

- a) Papers must be typed, three to five pages, double-spaced, with one inch margin all around. Do NOT exceed five pages. Use black ink and a twelve point (ten characters per inch) or larger font; Times New Roman or CG Times are preferred. Violators will be forced to purchase new bifocals for the instructor.

b) Prose must be grammatically correct, with proper usage and attention to style. If you wish to argue persuasively, you must write in language that your reader will easily understand. Proofreading and spell checks are expected; a poorly executed and careless paper displays the author's disrespect for the reader. Such disrespect will be noted.

4) Proper Style

a) Avoid long quotes.

However, if you do have a quotation longer than two full lines, please "block quote." To block quote, double indent (one on each side) and single space - like this. Do not place quotation marks at either end of a block quote. Most word processing programs have a double indent function.

b) Capitalize proper nouns, ie. Congress, First Amendment. Do not capitalize adjectives, ie. congressional, constitutional. The President has presidential powers.

c) Be aware of the differences between possessives and plurals. "It is" is properly abbreviated "it's," whereas "its" indicates the third person gender neutral possessive. Failure to follow this rule identifies one as less than fully literate. The use of an apostrophe to signal a plural noun is strictly verboten. The lack of an apostrophe in a possessive noun will be punished. There/their and that/which confusion will be disciplined appropriately. Please ensure that all verbs agree fully with their subjects.

d) Punctuation belonging to a quote belongs inside of the quotation marks. You do not need a comma before all quotations, although it may be appropriate in particular instances (see a grammar text). The use of ellipses (...) to begin or end a quote is discouraged; ellipses should be used only to indicate missing content within a quote.

e) You are encouraged to cite and quote from the cases we have read and other appropriate cases. Please *italicize* or underline case names. You should follow the case title with the year in parentheses, which is not italicized or underlined, i.e. *Jones v. Smith* (2007). If you cite or quote a case more than once, you may abbreviate its title and discard the year, i.e. *Jones*; use the second party's name if the first party is the U.S. or a state. You need not include all the legal citation which follows the title. If you are quoting from the casebook, please indicate the page, i.e. (O'Brien, 243). If you are citing or quoting from a case outside of the casebook, please simply use the official reporter citation, i.e. *Jones v. Smith*, 123 U.S. 456 (1919), at 468 [the first number is the volume, the second number is the page on which the case begins, and the "at" number indicates the page from which the quote is drawn]; you may abbreviate on second citation, i.e. *Jones*, at 469.

f) Thesaurus abusers will be required to enter an appropriate twelve step program. A word is a terrible thing to waste. Simple writing is the key to communication. Keep your sentences simple. Passive voice, incomplete sentences, and hanging subjunctive clauses are not acceptable.

g) The ultimate authority for all rules of style is William Strunk, Jr. and E.B. White's *The Elements of Style* (MacMillan, any edition). If you do not own a copy, buy one. Read it while revising your own work. It will serve you well. For a better understanding of grammar, please refer to Margaret Shertzer, *The Elements of Grammar* or to any recent edition of the *Merriam-Webster Collegiate Dictionary*, which contains a section on proper usage. The *MLA Handbook* and the *University of Chicago Manual of Style* are also good resources for proper usage and citation formats.

HOW TO BRIEF A CASE

DECIDE ON A FORMAT AND STICK TO IT: Structure is essential to a good brief. It enables you to arrange systematically the related arguments that are scattered throughout most cases, thus making them manageable and understandable. While there are an unlimited number of formats, it is best to find one that suits your needs and stick to it. It is important that a brief contain the following:

TITLE AND VENUE

CONCISE RULE OF LAW: A statement of the general principle of law that the case illustrates. Determining the rule of law of a case is a procedure similar to determining the issue of the case. Avoid being fooled by red herrings; there may be a few rules of law mentioned in the case excerpt, but usually only one is the rule with which the casebook editor is concerned. The techniques used to locate the issue, described below, may also be utilized to find the rule of law. Generally, your best guide is the chapter heading. It is a clue to the point the casebook editor seeks to make and should be kept in mind when reading every case in the respective section.

FACTS: A synopsis of only the essential facts of the case which directly bear on to the issue. The facts entry should be a short statement of the events that led one party to initiate legal proceedings against another in the first place. While some cases conveniently state the salient facts at the beginning of the decision, in other instances they will have to be culled from hiding places throughout the text, even from concurring and dissenting opinions. Some of the *Afacts@* will often be in dispute and should be so noted. Conflicting evidence may be briefly pointed up. It is impossible to tell what is relevant until the entire case is read, as the ultimate determination of the rights and liabilities of the parties may turn on something buried deep in the opinion. The facts entry should seldom be longer than five sentences.

ISSUE: A statement of the general legal question answered by or illustrated in the case. For clarity, the issue is best put in the form of a question capable of a yes or no answer. In reality, the issue is simply the Concise Rule of Law put in the form of a question. The major problem presented in discerning what is the issue in the case is that an opinion usually purports to raise and answer several questions. However, except for rare cases, only one such question is really the issue in the case. Collateral issues not necessary to the resolution of the matter in controversy are handled by the court by language known as *obiter dictum* or *merely dictum*. While *dicta* may be included later in the brief, it has no place under the issue heading.

To find the issue, the student again asks who wants what and then goes on to ask why did that party succeed or fail in getting it. Once this is determined, the "why" should be turned into a question. Since many issues are resolved by a court in coming to a final disposition of a case, the casebook editor will reproduce the portion of the opinion containing the issue or issues most relevant to the area of law under scrutiny.

HOLDING AND DECISION: This section should succinctly explain the rationale of the court in arriving at its decision. In summarizing the reasoning of the court, you should include an application of the general rule or rules of law to the specific facts of the case. You should also address the reasons for the state of the law, the public policies, the biases and prejudices, those considerations that influence the justices' thinking and, ultimately, the outcome of the case. At the end, there should be a short indication of the disposition or procedural resolution of the case. You may wish to put this portion of the brief in outline form and use very brief quotations.

CONCURRING AND DISSENTING OPINIONS: Note the major objections to, and qualifications placed on, the court's opinion. What are the key points of difference? Do you agree with the criticisms expressed? You should very briefly outline the reasoning in the dissents and concurrences.

EFFECT ON PRECEDENTS AND LATER CASES: You should relate how the rule of law discernible from this case compares with that derived from earlier and later cases. Where does this case fit in the series of cases which has shaped the relevant portion of the law?