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Political Science (POLS) 412
Constitutional Law III
DU 246 MW 2-3:15 p.m.
NIU Fall 2009

Constitutional Law and Civil Liberties

Course Description

This course covers major United States Supreme Court cases interpreting specific aspects of First, Fourth, and Fourteenth Amendment limitations on state power over individuals. Cases in the first part of the course define how the police and other state agents must act when searching for and seizing suspected criminals and evidence of their suspected crimes. Cases in the second part of the course define the extent to which states may restrict freedom of speech in the interests of national security and public order.

Course Requirements

Your grade in this course will be based on class participation, two take-home midterms, and an in-class final. *Class participation will determine a substantial portion of your grade (40%) and is further described on the next page.* The midterms and final will consist of hypothetical fact-patterns that I will ask you to analyze in terms of the cases we have been reading. Take-home midterm answers should be six pages in length, double-spaced, with 12 point type. If you want, the first midterm answer can be jointly authored with one other person from this class. The final is open-course-pack, open-note. Most readings are in a course-pack that can be purchased at the Holmes Student Center. Some readings are only available on e-reserves (see below). No outside reading or research is required.

Exam Schedule

September 21	Midterm #1 (15%)	Take-home, can be jointly authored; six pages; <i>due following Monday, September 28th</i> , at beginning of class
October 26	Midterm #2 (20%)	Take-home; must be your own work; six pages; <i>due following Monday, November 2nd</i> , at beginning of class
December 7	Final (25%)	In-class; open course-pack, open note; but no sharing of materials or discussion during exam; <i>Monday, 2-3:50 p.m.. Please bring your own blue books.</i>
Participation	(40%)	See following page for further explanation

Briefing Cases, the Socratic Method, and Class Participation

We will read and discuss many judicial opinions in this course. I will teach you how to read these cases so that you can extract their constitutionally relevant aspects. This specialized form of note-taking is called “briefing cases.”

In class, I will ask you questions about your readings, including the cases you have read. Your case briefs will be essential to answering these questions. This questioning approach to teaching is called the Socratic Method, the teaching style most commonly used in law schools.

Every day that we meet I will select several of you from the course enrollment roster to answer questions about the readings. If you are here and prepared to answer those questions, you will receive credit for participating in class discussion that day. If you are absent or unprepared, you will receive no credit that day.

Oral Argument and Class Participation

Periodically, I will ask you to act as lawyers, arguing constitutional cases before a judicial appellate panel composed of your fellow students. Lawyers will consist of teams of two to three students each. Judges will have the opportunity to question counsel before voting on the case. Lawyers will receive extra credit for participating in oral arguments; judicial questioning will contribute significantly to your participation grade.

Oral argument will consist of opening statements by lawyers for both sides, followed by closing arguments/rebuttals by co-counsel. Argument will focus on constitutional not factual or other legal issues in the cases.

You will be given advance notice of which cases we will be arguing in class, and who will be acting as lawyers and judges. This will allow counsel to prepare their arguments and judges to prepare their questions.

Counsel and judges will use majority, concurring, and dissenting opinions in our cases to re-create the arguments and questions that occurred during oral argument before the U.S. Supreme Court. Each attorney will have 3-5 minutes to make his or her argument.

Serving as a Witness or Juror in NIU Law School Mock Trials

There may be an opportunity for you to serve as a witness or juror in mock trials that function as final exams for students of NIU law school’s courses in trial advocacy. The availability of this opportunity will depend on the needs of the law school faculty who teach these courses and on how many public law students wish to serve as witnesses or jurors.

I encourage all of you to serve as a witness or juror and will give you extra credit for serving and even for observing these mock trials – an opportunity that should be available to everyone.

Other Opportunities to Participate and/or to Receive Extra Credit

At various points during the semester, I may announce other opportunities to improve your class participation grade and/or to receive extra credit. These opportunities may include analyzing law related events on campus, in the community, country, or world.

I am open to your suggestions for additional opportunities to participate and/or to receive extra credit in the course.

Other Course Requirements

Please do not...

- ask for extensions on turning in your midterms. Midterms will be graded down one third of a grade per day that they are late.
- ask to take make-up exams or an incomplete in the course unless you have a very, very compelling reason to do so.

Definitely do not...

- engage in “academic misconduct,” defined by the NIU *Student Judicial Code* as the “receipt or transmission of unauthorized aid on assignments or examinations, plagiarism, unauthorized use of examination materials, or other forms of dishonesty in academic matters.”

Department of Political Science Announcements

Undergraduate Writing Awards

The Department of Political Science will recognize, on an annual basis, outstanding undergraduate papers written in conjunction with 300-400 level political science courses or directed studies. Authors do not have to be political science majors or have a particular class standing. Winners are expected to attend the Department’s spring graduation ceremony where they will receive a certificate and \$50.00. Papers, which can be submitted by students or faculty, must be supplied in triplicate to a department secretary by February 28. All copies should have two cover pages – one with the student’s name and one without the student’s name. Only papers written in the previous *calendar* year can be considered for the award. However, papers completed in the current spring semester are eligible for the following year’s competition even if the student has graduated.

Statement Concerning Students with Disabilities

Under Section 504 of the Rehabilitation Act of 1973, NIU is committed to making reasonable accommodations for persons with documented disabilities. Those students with

disabilities that may have some impact on their coursework and for which they may require accommodations should notify the Center for Access-Ability Resources (CAAR) on the fourth floor of the Health Services Building. CAAR will assist students in making appropriate accommodations with course instructors. It is important that CAAR and instructors be informed of any disability-related needs during the first two weeks of the semester.

Department of Political Science Web Site

Undergraduates are strongly encouraged to consult the Department of Political Science web site on a regular basis. This up-to-date, central source of information will assist students in contacting faculty and staff, reviewing course requirements and syllabi, exploring graduate study, researching career options, tracking department events, and accessing important details related to undergraduate programs and activities. To reach the site, go to <http://polisci.niu.edu>.

Reading Assignments and Lecture Topics

WEEK 1 INTRODUCTION, HISTORICAL BACKGROUND, BRIEFING CASES

David O'Brien, "The Politics of Constitutional Interpretation," *Constitutional Law and Politics* (Little, Brown, and Company, 1991), 70-94.

Jesse Choper, "The Current Justices of the U.S. Supreme Court: Their Philosophies, Ideologies, and Values," and Kathleen Sullivan, "Commentary," *Bulletin of the American Academy of Arts and Sciences* (September/October 1997), 54-71.

David O'Brien, "The Selective Nationalization of Guarantees of the Bill of Rights," *Constitutional Law and Politics*, 277-86.

Bill of Rights and 14th Amendment

Reading a Supreme Court Decision

Palko v. Connecticut (1937) (double jeopardy in state courts)

Fourth Amendment Searches and Seizures

WEEK 2 POLICE POWER, CRIME CONTROL, AND CIVIL LIBERTIES

Jim Carlton, "The Trade-Off: Project Residents Gain Freedom from Crime, but Pay Price in Rights; At Geneva Towers, Drugs, Gangs Are Replaced by Searches, Surveillance; The Beefy 'Beijing' Guards," *The Wall Street Journal*, April 26, 1994, A1.

David Rudovsky, "The Criminal Justice System and the Role of the Police," *The Politics of Law*, David Kairys, ed., (Pantheon Books, 1982), 242-52.

Samuel Walker, "Searches, Seizures, and Interrogations," *Taming the System* (Oxford University Press, 1993), 44-51.

James Q. Wilson and George L. Kelling, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic Monthly*, March 1982, 29-38.

Samuel Walker, "Arrest Discretion, Generally," *Taming the System*, 39-41.

Fred Inbow, et al, "Outline of Criminal Procedure," *Criminal Law and Its Administration*, 5th ed., (The Foundation Press, 1990), 1-15.

THE EXCLUSIONARY RULE

Malcolm Feeley and Samuel Krislov, "Searches, Seizures, and the Warrant Requirement," *Constitutional Law*, 2nd edition, (Scott, Foresman/Little, Brown, and Company, 1990), 555-69.

Akhil Reed Amar, *The Constitution and Criminal Procedure* (Yale University Press, 1997), 1, 3-13, 16-24, 31-35, 37-44; as excerpted in *Civil Rights and Civil Liberties*, David O'Brien, ed., (Lanahan Publishers, 1999), 137-58.

Mapp v. Ohio (1961) (exclusion of unconstitutionally obtained evidence)

WEEK 3 THE WARRANT REQUIREMENT

NOTE: NO CLASS MONDAY, SEPTEMBER 7th, LABOR DAY

Payton v. N.Y. (1980) (homes)

Steagald v. U.S. (1981) (homes)

Wilson v. Arkansas (1995) (“knock and announce”)

WEEK 4 EXCEPTIONS TO THE WARRANT REQUIREMENT

Schneekloth v. Bustamante (1973) (consent exception)

Ohio v. Robinette (1996) (consent exception)

“Entry of Building for Caretaking” (*Bute, Rohrig, Wood, Dull*)

Illinois v. Gates (1983) (probable cause for warrants)

WEEK 5 SEARCHES INCIDENT TO ARREST OR INVESTIGATORY STOP

**NOTE: MIDTERM #1 HANDED OUT AT END OF CLASS ON MONDAY,
SEPTEMBER 21st**

Phillip Johnson, “Introductory Commentary,” *Cases and Materials on Criminal Procedure*, (West Publishing, 1988), 200-4. (*Robinson, Sibron, Adams*)

Terry v. Ohio (1968) (“stop and frisk”)

Maryland v. Wilson (1997) (search of auto passenger)

Illinois v. Caballes (2005) (search after traffic violation)
(ON E-RESERVES)

**WEEK 6 MIDTERM #1 DUE AT BEGINNING OF CLASS ON
MONDAY, SEPTEMBER 28th**

Chimel v. California (1969) (search after arrest)

California v. Hodari (1991) (reasonable suspicion)

Phillip Johnson, “Note on Flight to Evade Officers”

Florida v. Bostick (1991) (random sweeps)

“Illegal Searches Used in Illinois, Suit Alleges,” *New York Times*, September 9, 1994, Section 1, 9.

David A. Harris, “The Use of Traffic Stops Against African Americans: What Can Be Done?,” Congressional Black Caucus Annual Legislative Conference, September 18, 1998.

WEEK 7 RESTRICTING THE EXCLUSIONARY RULE

H. L. Pohlman, “The Exclusionary Rule: *United States v. Leon*,” *Constitutional Debate in Action* (Harper Collins, 1995), 189-212.

U.S. v. Leon (1984) (“good faith” exception)

Craig Bradley, *The Failure of the Criminal Procedure Revolution* (University of Pennsylvania Press, 1993), 37-41, 45, 48-51.

WEEK 8 SURVEILLANCE AND PRIVACY

Katz v. U.S. (1967) (electronic listening devices)

U.S. v. White (1971) (surreptitious recording)

California v. Greenwood (1988) (garbage)

Kyllo v. U.S. (2001) (thermal imaging) **(ON E-RESERVES)**

WEEK 9 SEARCHES IN THE ADMINISTRATIVE STATE

Camara v. Municipal Court (1967) (regulatory searches)

New Jersey v. TLO (1985) (school search)

People v. Dilworth (1996) (school search)

Wyman v. James (1971) (welfare search)

WEEK 10 DRUG TESTING AND STRIP SEARCHES

NOTE: MIDTERM #2 HANDED OUT AT END OF CLASS ON MONDAY, OCTOBER 26TH

Skinner v. Railway Labor Executives (1989) (drug testing)

Michigan Department of State v. Sitz (1990) (roadway checkpoints)

Vernonia School District v. Action (1995) (drug testing in school)

Pottawatomie City v. Earls (2002) (drug testing in school)
(ON E-RESERVES)

Safford Unified School District v. Redding (2009) (strip search in school)
(ON E-RESERVES)

First Amendment Rights to Free Speech

National Security and Political Dissent

INTERPRETING THE FIRST AMENDMENT

Geoffrey Stone, et al, "Freedom of Expression," *Constitutional Law* (Little, Brown, and Company, 1991), 1011-24.

Geoffrey Stone, et al, "Expression that Induces Unlawful Conduct," *Constitutional Law*, 1025-26.

Geoffrey Stone, et al, "Overbreadth and Vagueness: *Gooding v. Wilson*," *Constitutional Law*, 1121-30.

Geoffrey Stone, et al, "From *Dennis* to *Brandenburg*," *Constitutional Law*, 980-87.

WEEK 11 ADVOCACY OF REVOLUTION

**NOTE: MIDTERM #2 DUE AT BEGINNING OF CLASS ON
MONDAY, NOVEMBER 2nd**

Masses Publishing v. Patten (1917) (“direct incitement to violence”)

Schenck v. U.S. (1919) (“clear and present danger”)

Whitney v. California (1927) (organizing to advocate violence)

Dennis v. U.S. (1951) (“conspiracy creates the danger”)

Brandenburg v. Ohio (1969) (“imminent lawless action likely”)

WEEK 12 ORGANIZATIONAL LOYALTY AND FREEDOM OF SPEECH

Parker v. Levy (1974) (Army captain denounces Vietnam war)

Pickering v. Board of Education (1968) (teacher criticizes school board)

Rust v. Sullivan (1991) (family planning clinic and free speech of doctors)

Public Order and Free Speech

INDIVIDUAL SPEAKERS AND HOSTILE AUDIENCES

Terminiello v. Chicago (1949) (fascist to anti-fascists)

Cantwell v. Connecticut (1949) (Jehovah’s Witnesses criticize Catholics)

Feiner v. N.Y. (1951) (white-bashing speaker)

WEEK 13 MASS DEMONSTRATIONS AND HOSTILE AUDIENCES

Edwards v. South Carolina (1963) (civil rights march)

Peter Irons and Stephanie Guitton, “Oral Argument in *Cox v. Louisiana*,”
May It Please the Court, 105-120. (civil rights march)

Gregory v. Chicago (1969) (civil rights march)

THE “PUBLIC FORUM” DOCTRINE

Geoffrey Stone, et al, “The Public Forum: Streets and Parks” and “Regulating the Public Forum,” *Constitutional Law*, 1177-83.

Adderly v. Florida (1966) (civil rights march on jail)

Frisby v. Schultz (1989) (“focused picketing” in residential area)

International Society of Krishna Consciousness v. Lee (1992) (airport)

WEEK 14 *City of Ladue v. Gilleo* (1994) (residential signs)

Madsen v. Women’s Health Care Center (1994) (abortion clinic picketing)

NOTE: NO CLASS WEDS., NOVEMBER 25TH; THANKSGIVING BREAK

WEEK 15 OFFENSIVE SPEECH

Chaplinsky v. New Hampshire (1942) (“fighting words”)

Cohen v. California (1971) (“fuck the draft”)

Geoffrey Stone, et al, “Fighting Words,” *Constitutional Law*, 1098-1100.

Beauharnais v. Illinois (1952) (group libel)

Peter Irons and Stephanie Guitton, “Oral Argument in *Texas v. Johnson*,” *May It Please the Court*, 151-65. (flag burning)

HATE SPEECH

Ira Eisenberg, “Fighting Words: Race and Free Speech at the University of California,” and Charles Lawrence and Gerald Gunther, “Is There Ever a Good Reason to Restrict Free Speech on a College Campus?,” *This World, The San Francisco Chronicle*, (September 9, 1990), 8-16.

Sarah Lubman, “Judicially Suspect: Campus Speech Codes are Being Shot Down as Opponents Pipe Up,” *The Wall Street Journal*, December 22, 1993.

Marc Hardie, "Living Hell: The Price of Dissent," *The Defender*, January 1995, 9.

H.L. Pohlman, "Hate Speech: *R.A.V. v. St. Paul*," *Constitutional Debate in Action*, 212-37.

Virginia v. Black (2003) (cross burning) **(ON E-RESERVES)**

WEEK 16 FINALS

**NOTE: FINAL EXAM, MONDAY, DECEMBER 7TH, 2-3:50 P.M.;
GOOD LUCK!**