

DEPARTMENT OF POLITICAL SCIENCE  
UNIVERSITY AT BUFFALO

PSC 302  
Protecting Civil Liberties  
Fall 2009

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General Course Description: This course deals with trends in Supreme Court development of civil liberties law in the United States. Topics to receive primary attention include the freedoms of speech, press, and religion, and the most important criminal procedure protections. This course does not address race, gender, or privacy; they are emphasized in PSC 301 (Cases in Civil Liberties).

Readings consist of Supreme Court decisions themselves, and students are expected to read and brief cases before they are analyzed in class. This course is designed for students with at least the status of sophomore. It is strongly recommended that students should have completed PSC 101 or PSC 215 before taking this course.

The study of civil liberties law can be an intriguing and challenging intellectual adventure. You can learn not only a great deal of legal substance but different ways of thinking about and analyzing sensitive legal issues. You can also learn about issues completely new to you. However, the key is that YOU read and think about cases before and after class, not simply attend class and take notes. If simply attending class is your approach, you will learn only a fraction of what is available.

Course Objectives: We have three objectives in this course. Our first objective will be to learn to think more clearly, logically, and critically about case law. You will do this in two ways: (a) by normally reading and briefing two or three cases before each class, and (b) by question-and-answer interactions in class regarding the assigned cases. Second, you will learn a great deal about substantive law in this course relating to civil liberties in America. Third, you are encouraged to further develop your public speaking skills, which are critical to the legal profession, by participating in class discussions and by volunteering to brief a case before the class.

Text: David M. O'Brien, Constitutional Law and Politics: Civil Rights and Civil Liberties, 7th ed., **Volume II** (New York: Norton, 2008), is available at the Follett Bookstore in the Commons and at the College Store at 3908 Maple Road, near the Boulevard Mall.

Class Procedure: The instructor will brief cases in class unless a student volunteers. Students need to read and brief cases BEFORE they are discussed in class in order to develop the ability to do that on your own, especially if you are considering law school. Class attendance is important in this course since its purpose, beyond teaching you civil liberties law, is to help train you to think logically and critically about legal concepts and constitutional reasoning in the classroom. Our principal concern is not with the justices' policy preferences and whether we agree with them, but instead whether they develop a strong line of logical constitutional reasoning, supplemented with other types of legal analysis.

Examinations and Grades: It is completely the student's responsibility to take exams when they are scheduled. There will be two multiple choice exams. **The first exam is on October 14; the second is on December 9.** Each exam will count 50 percent of your final grade.

Failure to take a regularly scheduled exam may be subject to penalty. Permission for a make-up exam will normally be warranted only for serious medical reasons certified in writing by a physician. The student or a member of his/her immediate family must have suffered a serious physical illness that clearly prevented the taking of the exam. Permission to take a make-up will normally be granted, moreover, only where there is prompt notification to the instructor for the reason for the absence. If one or more students miss an exam, one make-up for the first exam will be administered; make-ups for the second exam will be scheduled during the following semester. A make-up exam may be of a different nature, content, and structure than the scheduled exam. And, importantly, there will be only one make-up; if you miss it in addition to the exam originally scheduled, you will receive a grade of zero for the exam! No passing grade for the course can be achieved without taking two exams.

Extra Credit: Students volunteering to brief a case in class may earn up to three extra points on their final course average, if they do a good job. If interested, you should choose a case to brief in class and notify the instructor as soon as possible—but in all instances at least two classes before the brief is to be presented. The last date to volunteer to brief is November 23. Volunteers must read their case, in its entirety, in the United States Reports (Google the name of your case to find it in full), provide a copy of the final brief to the instructor at least 24 hours before it is to be presented, and provide a copy of their brief to each member of the class on the day it is presented. If the brief submitted to the instructor is unacceptable for any reason, it will be rejected and no credit will be received. Note that you can only receive extra credit for briefing one case. If you miss the class for the case in which you volunteered, you forfeit your opportunity to receive extra credit.

University Policy on Incomplete Grades: Note the University's policy on "Incompletes": "A grade of 'Incomplete' (I) may be given a student who has not completed all of the assigned work in a course, if he/she has a passing average and there exists a well defined means by which the course requirements can be completed. The grade of 'I' must be removed within a period of fifteen months. At the time an 'I' is given, the instructor must specify the default grade that the student will receive if no grade change is filed by the instructor before the expiration of the grace period. The default grade is the grade that the student will receive as a course grade if the additional work is not completed. Individual instructors may set shorter time limits for removing an 'Incomplete' within the time limits specified." Also note that, for this course, all 'Incompletes' for missing the second exam must be removed through the taking of an exam during the next semester. It is the student's responsibility to find out from the instructor when the make-up exam will be administered.

University Policy on Classroom Distractions: According to the University, classroom "etiquette" expectations should include:

- \*Attending classes and paying attention. Do not ask an instructor in class to go over material you missed by skipping a class or not concentrating.
- \*Not coming to class late or leaving early.

- \*Not talking with other classmates while the instructor or another student is speaking. If you have a question or a comment, please raise your hand, rather than starting a conversation about it with your neighbor.
- \*Showing respect and concern for others by not monopolizing class discussion. Allow others time to give their input and ask questions. Do not stray from the topic of class discussion.
- \*Not eating or drinking during class time.
- \*Turning off the electronics: cell phones, pagers, and beeper watches.
- \*Avoiding audible and visible signs of restlessness. These are both rude and disruptive to the rest of the class.
- \*Focusing on class material during class time. Sleeping, talking to others, doing work for another class, reading the newspaper, checking email, and exploring the internet are unacceptable and can be disruptive.
- \*Not packing bookbags or backpacks to leave until the instructor has dismissed class.

Office Hours: Monday, Wednesday, and Friday 9-10; Tuesday 8-9 (unless announced otherwise in class). Office: 503 Park Hall (enter through 501 Park Hall). You may also see me immediately after class.

Schedule: Since it is quite difficult to determine how much time will be required to discuss different cases in class, the precise cases to be covered for each class meeting will be assigned during the preceding class. However, the general order of case coverage will be as noted below.

8/31 Introduction and Overview

Freedom of Expression and Association

Fifty Years of "Clear and Present Danger" 420-25

Schenck v. United States 427-8

Gitlow v. New York 428-33

Dennis v. United States 433-44

Brandenburg v. Ohio 445-47

Rust v. Sullivan 538-43

Fighting Words and Offensive Speech 501-6

Cohen v. California 507-11

FCC v. Pacifica Foundation 511-16

Bethel School District No. 403 v. Fraser 516-20

R.A.V. v. City of St. Paul 520-29

Wisconsin v. Mitchell 529-31

Virginia v. Black 531-38

Symbolic Speech and Speech-Plus-Conduct 651-55

Tinker v. Des Moines Ind. Community School 664-67

Morse v. Frederick 669-74

Texas v. Johnson 674-81

Freedom of Association 688-93

NAACP v. Alabama 694-97

Roberts v. U.S. Jaycees 697-700  
Boy Scouts of America v. Dale 700-8

Freedom of Press and Obscenity

The Doctrine of No Prior Restraint 601-3  
Near v. Minnesota 604-7  
New York Times v. United States 607-15  
Libel 547-53  
New York Times v. Sullivan 555-60  
Gertz v. Welch, 560-67  
Indirect Prior Restraints 615-17  
Branzburg v. Hayes 618-23  
Regulating Broadcast, Cable, and Internet 627-31  
Red Lion Broadcasting v. FCC 632-34  
Obscenity and Pornography 453-59  
Roth v. United States and Alberts v. California 460-64  
Stanley v. Georgia 464-66  
Miller v. California 466-71  
Paris Adult Theatre I v. Slaton 471-77  
New York v. Ferber 477-80  
City of Erie v. Pap's A.M. 481-87  
Reno v. American Civil Liberties Union 487-95  
Ashcroft v. Free Speech Coalition 495-501

Freedom from and of Religion

Free Exercise of Religion 819-25  
West Virginia Board of Education v. Barnette 655-64  
Sherbert v. Verner 828-31  
Wisconsin v. Yoder 834-37  
Employment Div., Dept. Human Res. v. Smith 837-45  
Church of Lukumi Babalu Aye v. Hialeah 846-52  
City of Boerne v. Flores 852-62  
The (Dis)establishment of Religion 718-27  
Everson v. Board of Education 735-41  
Engle v. Vitale 742-46  
Abington School District v. Schempp 746-51  
Lemon v. Kurtzman 751-58  
Wallace v. Jafree 758-66  
Lee v. Weisman 768-73  
Zobrest v. Catalina Foothills School District 773-76  
Rosenberger v. Rector of University of Virginia 777-87  
Agostini v. Felton 787-93

## Criminal Procedure

Requirements for Warrant and Reasonable Search 873-78  
Rochin v. California 354-57  
Chimel v. California 879-84  
Terry v. Ohio 895-900  
U.S. v. Sokolow 900-3  
Special Problems of Automobiles 916-22  
California v. Acevedo 927-31  
Knowles v. Iowa 931-33  
Atwater v. Lago Vista 933-38  
Other Governmental Searches 939-42  
National Treasury Employees Union v. Von Raab 946-52  
Vernonia School District v. Acton 953-58  
Bd. of Ed. v. Earls 963-67  
Ferguson v. Charleston 958-63  
Wiretapping, Bugging, and Police Surveillance 967-73  
Olmstead v. United States 975-78  
Katz v. United States 978-82  
California v. Ciraolo 982-84  
Kyllo v. United States 989-94  
The Exclusionary Rule 997-1001  
Mapp v. Ohio 1002-10  
Nix v. Williams 1010-15  
United States v. Leon and Mass. v. Sheppard 1015-25  
Arizona v. Evans 1025-27  
Coerced Confessions and Police Interrogations 1037-43  
Miranda v. Arizona 1045-56  
In re Gault 1056-60  
Rhode Island v. Innis 1060-64  
Arizona v. Fulminante 1069-72  
Dickerson v. U.S. 1073-78  
Missouri v. Seibert 1078-82  
The Right to Counsel 1096-98  
Powell v. Alabama 1102-04  
Gideon v. Wainwright 1104-08  
Argersinger v. Hamlin 1108-10  
Indictment by a Grand Jury 1121-22  
Hurtado v. California 341-46  
The Right to an Impartial Jury Trial 1122-28  
Duncan v. Louisiana 368-73  
Batson v. Kentucky 1130-32  
Williams v. Florida 1136-38  
Burch v. Louisiana 1138-40  
The Guarantee Against Double Jeopardy 1147-50  
Palko v. Connecticut 346-49

Noncapital Punishment 1160-63  
Ewing v. California 1163-67  
Capital Punishment 1168-71  
Furman v. Georgia 1178-88  
Lockett v. Ohio 1189-94  
McCleskey v. Kemp 1194-1204  
Payne v. Tennessee 1204-08  
Atkins v. Virginia 1208-14  
Roper v. Simmons 1214-22

Other Rights

Wealth, Poverty, and Illegitimacy 1563-64  
Shapiro v. Thompson 1564-67  
San Antonio Indep. School Dist. v. Rodriguez 1567-74  
Alienage and Age 1564-65  
Plyler v. Doe 1583-88  
Heller v. Doe 1589-92

**12/9 Second Examination (*Be there!*)**

Additional Readings: At times in this course you may wish to consult references beyond the O'Brien textbook. Although O'Brien is the best general book for our purposes, the following volumes are recommended if you wish to gain a further understanding of a particular case, a cluster of cases, or a general substantive area of constitutional law: Lee Epstein and Thomas G. Walker, Constitutional Law for a Changing America (Congressional Quarterly Press); Louis Fisher, American Constitutional Law (Carolina Academic Press); Craig R. Ducat, Constitutional Interpretation (West Group).