

**The Constitution and Civil Liberties**  
**Political Science 354 (course # 23216)**  
**University of Illinois at Chicago**  
**Syllabus for Fall 2005**

- **Instructor: Dr. Evan McKenzie**
- **Class meetings: Tuesday/Thursday 11:00-12:15 BSB 369**
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- **Please note that this syllabus is subject to revision throughout the semester. .**
- **Office hours: T/Th 8:30-9:30am and by appointment**

**Course Description:**

Please read this syllabus carefully before deciding whether to take this course. The syllabus is subject to change. For example, I may change the cases for briefing after the Supplement arrives.

This is a demanding course. It is a popular elective with pre-law students who want to get some taste of what they will encounter in law school. Consistent class attendance, reading and preparation, and participation are essential. The reading material consists mainly of edited versions of United States Supreme Court opinions. The language and logic are complicated, unfamiliar, and sometimes hard to follow. It takes effort to read and understand judicial opinions, and you will need to be prepared for class, listen to my explanations and those of your classmates, ask questions, and discuss the material. Cramming for the exams is impossible if you want better than a C.

If you are not prepared to make this commitment please drop this course because others are waiting to register for it. Also, if you get angry or offended when people say things about controversial issues that you disagree with, you may be wise to choose another class. The casebook is about one controversial issue after another and I encourage expression of divergent perspectives. On the other hand, if all this is your cup of tea and you are serious about learning civil liberties, I believe you will find the course rewarding.

This course has two main goals. One is to help students develop an understanding of how governmental power over the individual is limited by the American Constitution, as interpreted by the federal judiciary and mainly the United States Supreme Court.

The other goal of this course is to advance your intellectual development in preparation for law school, the rest of your education, and life in general by helping students learn to think like constitutional lawyers. You will learn how to analyze fact patterns using legal rules, construct legal arguments, and critically evaluate arguments.

Most political scientists see judges as political actors and policy-makers, and don't think they are all that different than members of congress or the executive branch--all three branches involve people advancing their policy preferences. When considering a Supreme Court decision, they focus on the judges' backgrounds, partisan affiliations, the political significance and context of the case, and so forth.

Lawyers view court decisions very differently. They are interested and trained in law, so they employ legal reasoning, something that most non-lawyers don't know how to do. They focus on the legal authority cited, the logic of the opinions, and the rule or rules that emerge from the case as precedent for future cases. Judges are not given to exposing their policy preferences in opinions, and instead couch their decisions in neutral principles of law.

Both these ways of looking at cases have merit and validity, depending upon your objective. For this course we are interested in the legal perspective more than the political. That means if I ask you "what is the rationale for this decision?" you need to give a legal explanation rather than a political one. For example, if I asked you to explain the majority ruling in the case of Bush v. Gore, you would answer in terms of the equal protection clause, other constitutional provisions, federal statutes, federalism, and state law. You would not say, "because the majority were Republicans!" That would be unresponsive, for purposes of this course. This is a law course, and it is designed to expose you to the way lawyers and judges think. They are trained to apply legal rules to fact situations, and to explain their decisions in terms of those rules. I want you to practice doing that. It is something you do not presently know how to do and come to this class to learn. I do not want you to fall back on easy political judgments of the sort anybody could produce without even doing the reading. For the same reason, just giving personal opinions about the issues we study doesn't amount to much, either. You need to back up your opinions with reasoning.

**Text:**

Craig R. Ducat, Constitutional Interpretation, Eighth Edition: Volume Two, Rights of the Individual (Wadsworth: 2004), and Supplement for Eighth Edition. The supplement covers recent decisions that happened after the main book went to press. Please note that whenever you read anything in the textbook you are responsible for reading any additional new material on that topic in the supplement, so check it out every week. The text is available in the UIC Student Bookstore, and the Supplement is due in a week or two (the publisher is late getting it in press with new Supreme Court decisions).

The course is being taught using Blackboard and there are many links to web pages and other material that you will be using as well. You are required to use Blackboard for turning in papers and for some of the essential readings.

**Requirements:**

- Mid term examination: 20%. This will be a take-home essay exam with a time limit and a length limit
- Final examination: 35%. Same format as mid term, but twice as long.
- Class participation and attendance: 15%. This includes several things.
  - First, you must be present in your seat and on time when class starts. Six absences means you are eligible for a zero for participation. I will take roll at the start of class every day and anybody arriving after it is collected is late, which equals 1/2 of an absence. I make announcements, explanations, and changes to assignments at the start of class and don't repeat them later. You are responsible for knowing about these changes regardless of whether you were actually present. Please sit in the same seat every day (or as close to it as you can get), at least until I get everybody's name memorized.
  - Second, you must participate in class discussions, simulations, and other activities, which means being prepared and speaking coherently, intelligently, and civilly, recognizing that we need to be free to disagree with each other so that we can learn from each other.
  - Third, you must be a good classroom citizen, which means not doing things like letting your cell phone ring, eating in class (a violation of campus rules), talking to

the people sitting next to you, arriving late, leaving early, being disrespectful of other students in the course of discussion, and other breaches of good manners.

- Weekly reaction papers/briefs: 15% There are 14 of these papers. Each paper has two parts. First is a **case brief**. Second is two or more **reactions or questions** on the readings for the week. You must have **both** in that order in clearly labeled sections. The limit for the assignment is **two pages total**. The papers are submitted via Blackboard, and be sure to print out a hard copy to bring to class for your own use during discussion. **NO LATE PAPERS WILL BE ACCEPTED.**
- Judicial biography paper and simulation: 15% In this paper you will become an expert on the background and judicial philosophy of a current member of the United States Supreme Court. This will enable you to participate in a simulation that we will stage in class involving cases currently before the Court.

### **Reading and assignment schedule:**

All these readings are to be done by the Tuesday of the week for which they are listed (the weeks are numbered, and identified by the Tuesday of each week), regardless of whether we fall behind in discussing them (which we will from time to time). On the reading list, the cases will be the focus of our discussion, so you should also brief on your own, or otherwise clearly understand, these cases. *You should always read the new cases that are in your supplement.*

WEEK OF:

1. August 23. **Unit One: Due Process of Law and Privacy**

Tuesday: Introduction to course. no readings.

Thursday--Theories of Constitutional Interpretation. Read the Introduction, pp. xxv-xxxiv. From your course documents section, go to Theories of Constitutional Interpretation, follow the link to Doug Linder's page, and read it. Go to course documents / legal thinking, reasoning and writing / how to brief a case, and read that

2. August 30 **Due Process of Law.** Brief: Barron v. Baltimore

Selective incorporation of the Bill of Rights into the Fourteenth Amendment Due Process Clause. Right to counsel. pp. 467-532.

3. Sept. 6 Brief: Maryland v. Craig

Right against self-incrimination. Confrontation and cross-examination. Cruel and unusual punishment. pp. 533-599.

4. Sept. 13 **Obtaining Evidence** Brief: Mapp v. Ohio

The exclusionary rule. Warrantless search and seizure. pp. 600-660.

5. Sept. 20 Brief: Katz v. US

Current controversies in search and seizure; wiretapping and eavesdropping. pp. 661-703.

6. Sept. 27 **The Right of Privacy** Brief: Roe v. Wade

Before Griswold. Recognizing the right of privacy. Abortion. Public funding. pp. 704-748.

7. October 4 Brief: Bowers v. Hardwick

Privacy and other lifestyle issues. The right to die. pp. 749-774.

### **Unit Two: The First Amendment**

8. October 11 **Freedom of Speech** Brief: Brandenburg v. Ohio

Clear and present danger. pp. 775-810. *Midterm exam due at the start of class on October 11.*

9. October 18 Brief: Hudgens v. NLRB

Time, place, and manner. Symbolic speech. pp. 811-886.

10. October 25 Brief: Buckley v. Valeo

Campaign finance. Commercial speech. pp. 887-929

11. November 1 **Freedom of the Press** Brief: New York Times v. US (The Pentagon Papers Case)

Censorship and prior restraint. pp. 930-974.

12. November 8 Brief: Miller v. California

Obscenity. pp. 975-1005.

13. November 15 Brief: New York Times v. Sullivan

Libel. Fair trial and free press. pp. 1006-1044.

14. November 22 **Freedom of Religion** Brief: Lemon v. Kurtzman

The Establishment Clause. pp.1045-1102

15. November 29 Brief: Employment Division v. Smith

The Free Exercise of Religion Clause. pp. 1103-1122.

16. Finals Week.

**Final comments:**

No late papers, makeup exams, email transmissions, or faxes will be accepted, and papers covering the wrong readings receive no credit. Only documented serious emergencies will be considered as possible excuses. If you know in advance that you can't be present for an exam or to turn in an assignment see me and if appropriate we will arrange for you to do it early. In no event will something you knew or should have known about in advance, such as elective surgery or a vacation, serve as an excuse for anything.

Civility is important in this course. Civility means classroom citizenship, including coming to class on time, being quiet except when you have the floor, and showing respect for your classmates at all times, especially when you disagree with them and are convinced that they have lost their minds. Incivility is walking in late, engaging in side conversations with your neighbors, and showing disrespect for your fellow students when they say things you disagree with or find offensive.