

## SYLLABUS

POL 316  
CIVIL LIBERTIES

THORNBERRY  
FALL 2003

### Required Texts

Craig Ducat -- Constitutional Interpretation (8th edition): Civil Liberties  
David O'Brien – Lanahan Readings in Civil Rights

### Course Procedure

This course will analyze the Bill of Rights of the United States' Constitution, especially in the context of the 14th Amendment. This analysis will focus on decisions of the Supreme Court of the United States as it has interpreted such terms as due process and equal protection. The table of contents in Ducat is a good outline of the course, and we will generally follow it. You should certainly use it as a study guide when you review for the tests. Plan on bringing the book to class with you every day. We will refer to passages in the cases, and you will need to reference material easily. The O'Brien book provides background material.

Class will be a combination of lecture (minimal) and question and answer sessions. You should have read the material before coming to class and thought about the cases. However, it is important to be in class even on those rare occasions when you have not had a chance to do the reading. Very soon you need to develop some format for briefing cases; a suggested outline is given on page 3. If you keep up, preparing for the exams should not be an overwhelming task. I will supply case lists as study aides and as part of the exams themselves so that you need not worry about memorization of case names.

### Paper Assignments

You should learn how to analyze complex arguments and how to apply ideas in various settings. In order to facilitate such skills, you will participate in three mock Supreme Court decisions. I will divide the class into groups of nine or ten students each and you will meet at separate times on these days. Three class sessions will be set aside for this purpose. Each group will role-play the conference at each session. Preparation for these sessions involves not only writing an opinion as if you were a specific Justice but also defending your views and trying to convince other members of the Court. In order to do such a task well, you will need to become familiar with the thinking of one particular Justice whom you will represent.

These papers will be your Justice's opinion in a hypothetical case which I will hand out several days in advance. Each paper is to be in **two** sections. In the first part, imagine that you are one of the clerks, interested in copying the style and ideology of your Justice but at the same time doing a credible job that will impress other members. In the second section explain why you took that viewpoint and developed those arguments. You will write the paper before the

oral argument. Late papers will be penalized at the rate of six points per day; it is not fair to other students to make special waivers.

### Tests, Grading

In addition to the papers (15% each), there will be a mid-term review (15%) and a self-scheduled final (30%). There will also be a quiz every Thursday. The average of the 10 highest quiz grades will count 10% of your final grade. Grades may be shifted slightly upwards on the basis of class participation. Note that Davidson academic regulations call for failing grades to be given to any student who misses more than 20% of the scheduled classes.

Exams will ask you to take cases we have covered and apply them to hypothetical problems. The situations will be more complex and cover a wider range of issues than those for the papers, but the same type of format will apply. On exams you will generally be expected to talk about the Court as a whole and not your particular Justice. Case lists will be provided.

The Davidson Honor Code applies to all written work. Please do not hesitate to discuss with me any questions concerning style, footnotes, or related matters. Generally you should not need to consult any sources other than the assigned texts for the first part of the papers. Footnotes for specific cases can be done in terms of page numbers from the text. [Note that the usual method for footnoting cases would be: Barron v. Baltimore, 32 U.S. 243 (1833).] You will **always** need a works cited section for the second part of the papers. Material for that part can be found in the library and on the web.

### Guidelines for Briefing Cases

What follows is a suggested list of material you should extract from the cases we read. Just how you do so is up to you. Some people find marking in the margins of the text helpful, but you will need more since the weekly quizzes allow for open notes but closed textbook. You could summarize cases on 3x5 cards or buy a special notebook. I do not care what you do as long as it works for you. Do not merely read the cases, however, and plan to come back and "learn" them for a test. Keep up!

Who: plaintiff, defendant. Not all names are relevant but they may help you to keep clear the individuals involved and to remember the case.

Facts: some idea of the general problem that lead to the case coming to the courts.

Legal issue: law, specific section of the Constitution. Pay attention to language.

Holding: ruling of the Court. Note that it must be in **generalizable** form. It is not the same thing as the decision, which applies only to the case at hand.

Reasoning: major points raised by the Justices. Note concurring and dissenting

opinions as well.

Pattern: how does the case fit with earlier ones. Are previous precedents cited, overturned, expanded?

### Matters of Style

In writing papers, you are expected to follow all rules of standard English and to produce a product of which literate Justices would be proud. Buy a dictionary and use it. By all means, make use of Spell Check. Papers should be typed, have a cover sheet, and be held together firmly with some marvel of modern technology. Visit the writing center early and often.

### Office Hours

MWF 10:00-11:30, TR 9:15 – 10:00.

Goals: Each student by the end of the course should:

1. Know the basic issues of civil liberties as they have developed in the Western tradition.
2. Know some of his/her basic rights as a citizen.
3. Be able to recognize major "terms of art" and understand how they are used in the courts.
4. Be able to make and defend arguments as to why certain rights are important. Emphasis on form and skill is sometimes as important as content here.

### Study Questions

As you read cases, ask yourself how the point of law being developed relates to the overall topic of the chapter. Here are some typical questions you might want to raise about some of our first cases.

Barron: What is Marshall's position as to the meaning of the Bill of Rights? On what foundation does he rest his argument? What is the Constitutional issue?

Hurtado: What does the Court say about the history of the 14th Amendment here? Why does Harlan dissent? How does his view differ from that of the majority?

Palko: Note the reference to Twining v. New Jersey. What was the rule in that case? What is the standard here? What is the crucial phrase the Court is trying to interpret? On p. 867, column 2, what does "seismic innovation" imply?

## Tentative Schedule

August 26 –Slaughterhouse Cases + #1 (O’Brien)

28 –Gideon v. Wainwright + # 3, 16

September 2 –New York v. Quarles + #18

4 – Lockyer v. Anrade + #21, 22

9 – Coolidge v. New Hampshire + #13

11 – Cupp v. Murphy

\* **16 – Court I**

18 – Katz v. U.S.

23 – Feiner v. New York + #5

25 – Cohen v. California

30 – Texas v. Johnson

October 2 – Central Hudson Gas v. PSC + #9

7 – Island Trees School District v. Pico + #6

9 – Reno v. ACLU

14 – Fall Break

\***16 – Mid-term**

21 – Walz v. Tax Commission + #11

23 – Santa Fe School District v. Doe + #12

28 – Oregon v. Smith

\***30 – Court II**

November 4 – Arlington Heights v. Metro Housing+ #23,24

6 – Grutter v. Bollinger + #25,26,27

11 – Roberts v. U. S. Jaycees + #14, 17

13 – Georgia v. Ashcroft

18 – Labine v. Vincent

\***20 – Court III**

25 – Nevada v. Hibbs + #28

27 – Thanksgiving

December 2 – Plyler v. Doe + #32

4 – Rust v. Sullivan + #29

9 – Vacco v. Quill + #30,31

For each day, the last case you will need to have read is listed here. These should correspond to the cases underlined in the case list. # chapters are from the O’Brien reader.

Please note the dates for the three Court sessions: September 16, October 30, and November 20. These sessions will be held in the Rare Book Room of the library.

## Case List – Fall 2003

Barron v. Baltimore  
Slaughterhouse Cases  
 Hurtado v. California  
 Palko v. Connecticut  
 Adamson v. California  
 Rochin v. California  
 Powell v. Alabama  
Gideon v. Wainwright  
 Miranda v. Arizona  
 Brewer v. Williams  
 Rhode Island v. Innis  
 Nix v. Williams  
 California v. Byers  
New York v. Quarles  
 Robinson v. California  
 Powell v. Texas  
 Furman v. Georgia  
 Lockett v. Ohio  
 McClesky v. Kemp  
 Harmelin v. Michigan  
Lockyer v. Andrade\*  
 Mapp v. Ohio  
 Chavez v. Martinez\*  
 United States v. Leon  
 United States v. Drayton  
 Chimel v. California  
 Warden v. Hayden  
Coolidge v. New Hampshire  
 California v. Ciraolo  
 Kyllo v. United States  
 Michigan v. Tyler  
 Terry v. Ohio  
 Sibron v. New York  
 Peters v. New York  
 Brown v. Texas  
Cupp v. Murphy  
 Nat. Treas. Employees v. von Raab  
 Vernonia School District v. Acton  
 New Jersey v. T.L.O.  
 Michigan State Police v. Sitz  
 Wyoming v. Houghton  
 California v. Greenwood

Katz v. U.S.  
 Schenck v. United States  
 Gitlow v. New York  
 Terminiello v. Chicago  
 Brandenburg v. Ohio  
 Forsyth County v. Nationalist Movement  
Feiner v. New York  
 Adderly v. Florida  
 ISKCON v. Lee  
 Ward v. Rock Against Racism  
 City of Chicago v. Morales  
 Madsen v. Women's Health Center  
 Colorado v. Hill  
 Virginia v. Hicks\*  
 Univ. of Wisconsin v. Southworth  
 City of Ladue v. Gilleo  
Cohen v. California  
 WV Board of Education v. Barnette  
 Tinker v. Des Moines School  
 United States v. O'Brien  
 Barnes v. Glen Theater  
Texas v. Johnson  
 R.A.V. v. St. Paul  
 Wisconsin v. Mitchell  
 Virginia v. Black\*  
 Buckley v. Valeo  
 Colorado Republicans v. FEC  
 First National Bank of Boston v. Bellotti  
 Consolidated Edison v. PSC  
Central Hudson Gas/ Electric v. PSC  
 Near v. Minnesota  
 New York Times v. United States  
 Hazelwood School District v. Kuhlmer  
 Branzburg v. Hayes  
 Zurcher v. Stanford Daily  
 Houchins v. KQED  
Island Trees School District v. Pico  
 Roth v. U.S.  
 Stanley v. Georgia  
 Miller v. California  
 National Endowment v. Finley  
 U. S. v. American Library Assn\*

New York Times v. Sullivan  
 Time v. Firestone  
 Nebraska Press Assn. v. Stuart  
 Richmond Newspapers v. Virginia  
Reno v. ACLU  
 Engel v. Vitale  
 Lee v. Weisman  
 Wallace v. Jaffree  
Walz v. Tax Commission  
 Lemon v. Kurtzman  
 Tilton v. Richardson  
 Mitchell v. Helms  
 Edwards v. Aguillard  
 Lynch v. Donnelly  
Santa Fe School Dist. v. Doe  
 Kiryas Joel v. Grumet  
 Rosenberger v. UVA  
 Thomas v. Indiana Employment  
 Wisconsin v. Yoder  
Oregon v. Smith  
 Plessy v. Ferguson  
 Sweatt v. Painter  
 Brown v. Board I  
 Brown v. Board II  
 Cooper v. Aaron  
 Swann v. Charlotte-Mecklenburg  
 Milliken v. Bradley  
Village of Arlington Heights v. MHDC  
 Palmer v. Thompson  
 Regents of UCal v. Bakke  
 Gratz v. Bollinger\*  
Grutter v. Bollinger\*  
 \*\*Dred Scott v. Sanford  
 Civil Rights Cases  
 Shelley v. Kraemer  
 Moose Lodge v. Irvis  
 Jones v. Alfred H. Mayer Co.

Runyon v. McCrary  
Roberts v. U. S. Jaycees  
 S. Carolina v. Katzenbach  
 Bush v. Gore  
 Baker v. Carr  
 Shaw v. Reno  
Georgia v. Ashcroft\*  
 Shapiro v. Thompson  
 Saenz v. Roe  
 Plyler v. Doe—p 1320  
 San Antonio v. Rodriguez  
Labine v. Vincent  
 Bradwell v. Illinois  
 Frontiero v. Richardson  
 Craig v. Boren  
 U. S. v. Virginia  
 Nguyen v. INS  
Nevada v. Hibbs\*  
 Massachusetts Board v. Murgia  
 Heller v. Doe  
 City of Cleburne v. Cleburne Living  
 Ambach v. Norwick  
Plyler v. Doe  
 Griswold v. Connecticut  
 Roe v. Wade  
 Planned Parenthood v. Casey  
 Sternberg v. Carhart  
 Maher v. Roe  
 Harris v. McRae  
Rust v. Sullivan  
 Bowers v. Hardwick  
 Romer v. Evans – p 1309  
 Lawrence v. Texas\*  
 United States v. Oakland Cannabis  
 Washington v. Glucksberg  
Vacco v. Quill

If you go to the Cornell web site, you will find links to the recent cases (\*) on this list.  
 Note that we put Chapter 10 at the end of the course and move Romer and Lawrence there.

\*\*Dred Scott v. Sanford is on electronic reserve.

JUSTICES of the  
SUPREME COURT of the  
UNITED STATES

\*William Rehnquist -- 1972/1986, Nixon/Reagan; state's rights conservative, now The Chief.

John Paul Stevens -- 1975, Ford; unpredictable and very interesting, thoughtful; will often write separately; seen as a liberal by comparison with the rest of the Court.

Sandra Day O'Connor -- 1981, Reagan; originally a conservative except on women's rights, now staking out a position in the center with Kennedy. Quite often, the swing vote.

Antonin Scalia, 1986 -- Reagan; conservative and the leader of the right wing; considered one of the more brilliant intellects on the Court; increasingly virulent.

Anthony Kennedy, 1987 -- Reagan; conservative at outset but joining with O'Connor to form a centrist group on many issues; precedent oriented.

David Souter, 1990 -- Bush; an unknown when he arrived, he is slowly identifying a position slightly to the left-center of the Court, cautious minimalist.

Clarence Thomas, 1991 -- Bush; conservative; Scalia clone except for brilliance; more outspoken in recent years, fascination with history

Ruth Bader-Ginsburg 1993 -- Clinton; Moderate, women's rights advocate.

Stephen Breyer 1994 -- Clinton; Moderate, the Professor.

There is good bibliographic material on the web. Reading Congressional Quarterly Weekly Report for the year your Justice got appointed will also be helpful. Rehnquist should use 1986. Closed Chambers, by Edward Lazarus, has some interesting information about the dynamics of the recent Court. The Brethren, by Bob Woodward and Scott Armstrong has some slightly older material that also provides good insights about how the Court works.

Also note: <http://www.usconstitution.net/const.html>.

## STYLE SHEET

Here are some suggestions for better papers:

1. Commit yourself to a specific stance. Frame and answer useful and interesting questions. Be controversial; don't be wishy-washy. You need to show that there may be other points of view, but you should show that your ideas are worth consideration and are superior. Never forget that you are arguing a case and that the opposition will have other points. It may be well to try to anticipate and rebut their stands.
2. Pre-write. Take time before you actually start the paper to jot down major points that have to be made. Consider what details you want to emphasize and what examples will illustrate your ideas.
3. Develop your thoughts. Not only the whole opinion but also each paragraph should have a beginning, a middle, and an end.
4. Use specific examples. Quote directly from sources where appropriate and useful. Cite precedent by US Reports numbers.
5. Be selective. Don't tell me everything you know. Use illustrations as an example of a larger point. Never waste time merely summarizing situations. On this point you exempt from the usual opinion, which often begins with a detailed summary of the fact situation.
6. Find your own voice. In the first part of the paper you should try to copy to style of your Justice. The first person (often plural) appears frequently in real opinions. In the second part of the paper, write about your Justice as a scholar might.
7. Use action verbs. Choose distinct nouns. Avoid "this" when the reference is vague.
8. Pay attention to spelling, punctuation, and grammar. [Examples include: Avoid split infinitives. Do not begin sentences with conjunctions except on rare occasions. Do not end sentences with prepositions.]
9. Use gender-inclusive language.
10. Document properly and concisely.
11. Watch transitions. Try reading your work out loud to a sympathetic friend. Can someone who hears your thoughts make sense of them?

12. Be sure to leave enough time for revising, editing, and proofreading your papers. You ought to have 24 hours between each draft. Two drafts are a minimum.

13. Keep a journal of your own errors. You will identify patterns of mistakes that will make improving your writing much easier.

\*\*\*\*\* MOST IMPORTANT RULE OF ALL \*\*\*\*\*

14. BE INTERESTING! Writing is hard work, but the results should be fun.

### Supreme Court Cases on the Web

The best site is <http://supct.law.cornell.edu/supct/>. On the left you will see a box which gives you several options for which group of cases to investigate. Under "Archive of Decisions," pick the 2002-2003 highlights. Almost all of the decisions you need will be there arranged by topic. Once you find the case, the first thing that will appear is the syllabus or summary. Skim it to get the legal issues clear. To get to the actual opinion, click at the top right on "Other Parts of the Opinion." A menu will appear which will show the various sections one at a time. Click on the one you want. HTML versions allow links to earlier cases and to the actual law or constitutional provision involved. The PDF version requires Adobe Acrobat for a reader, but all public machines should have that and it can be downloaded for free on your computer. That format gives the look that the slip opinion itself has. Once you have finished with each section, go back to the top and pick the next section.

Note that you can also access information about the individual Justices from the Cornell page. It includes links to some of their most important decisions, an asset when writing your papers.