



POLSC 615 Constitutional Law II
Civil Rights and Liberties
Spring 2015 MWF 1:30
Waters Hall 041

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 Hours: T 9:00-11:00am, W 8:30-10:00am, 2:30-4:30pm,
 U 1:00-3:00pm, or by appointment

Introduction: Our civil rights and liberties are specified and guaranteed in a variety of documents, including: the U.S. Constitution, Bill of Rights, various amendments, federal laws, and even Supreme Court decisions. Although Congress and the President play a role in interpreting our rights and liberties, the federal courts are often the final arbiters of questions regarding constitutional issues. The most important court in this regard is the U.S. Supreme Court, which issues authoritative decisions on the meaning of the Constitution and the scope of our rights and liberties.

This is a constitutional law course within a political science curriculum. Political scientists are concerned not only with the substance or doctrine of Supreme Court decisions, but also the process by which these decisions are reached. An examination of the methods of constitutional interpretation may help explain judicial outcomes. In addition to legal criteria, such as the text of the Constitution or intent of the framers, political scientists have identified a number of extralegal forces that influence Supreme Court decision making, including judicial attitudes and values, small group dynamics, public opinion, politics, and interest groups. Ultimately, it is important that we arrive at some understanding of the role of the courts, especially the Supreme Court, in our political system. Judicial review is inherently an anti-majoritarian power, so we must find some way to reconcile the power of the federal courts with representative political institutions. When civil rights and individual liberties are threatened, how much deference should the Court give to the States and the coordinate branches of the federal government?

With these issues in mind, our goals for this semester are: (1) to learn about the substance and impact of Supreme Court decisions in cases involving civil rights and liberties; (2) to critically examine the process and politics of Supreme Court decision making; (3) to evaluate the role of the federal courts as policymakers in our political system; and (4) to improve your verbal and written communication skills. These course objectives fit departmental learning objectives:

Course SLOs	Departmental SLOs
1. Learn about the <u>substance</u> of Supreme Court decisions and the <u>impact</u> of case outcomes on government and society	d. Comprehend domestic and international policy issues facing the U.S. and the world community and be able to critically analyze policy choices
2. Understand the <u>process</u> and <u>politics</u> of Supreme Court decision making;	a. Understand political structures, institutions and governing processes in the U.S. and other countries
3. Understand the <u>role</u> of the federal courts as policymakers in our political system	b. Understand and be able to apply normative and behavioral theories and methods to understand and explain political phenomena
4. Improve your verbal and written communication skills	

Course Description: This course is designed to give students a thorough introduction to American constitutional law and Supreme Court decision making in cases involving our civil rights and liberties. Any student interested in expanding his or her knowledge of their rights under the Constitution will benefit from this class. Specific topics discussed include the First Amendment rights of speech, press, association and religion, the Second Amendment, the right to privacy, criminal due process, and equal protection of the law for racial minorities, women, gays and lesbians, and the poor.

Required Texts:

Epstein, Lee and T. Walker. (2013) *Constitutional Law for A Changing America: Rights, Liberties, and Justice*. 8th Edition. Washington, D.C.: Congressional Quarterly Press.

Hacker, Diana, and Nancy Sommers. (2012) *A Pocket Style Manual*. Sixth Edition. Boston: Bedford/St. Martin's.

Exams: There will be two regular exams plus a final exam. Dates are provided in the Course Outline below. The exams will consist of multiple choice and essay questions. The final exam only includes material covered from the midterm through the last day of class. My standards for grading the essays are explained below. You should read them carefully so that we can avoid problems later. A list of study questions will be handed out before each exam. Study questions are not a substitute for attending class and completing the reading assignments. It is highly recommended that students brief all the cases as they are assigned. Case briefs make useful study guides. Also, I encourage you to form or join a study group if you think it will help you understand the material.

If there is a problem with an exam date, it should be discussed with me *prior* to the date of the exam. Makeup exams will be granted only for absences that are recognized as valid by the University. *Written documentation is required*. Students who do not have a valid excuse or who fail to take the makeup exam will receive a grade of "zero". You are expected to abide by the rules governing academic integrity and conduct as defined by the K-State Honor Code (See University Policies).

Simulation Project: Two Supreme Court simulations are scheduled for the semester. Depending on the number of students enrolled in the class, there may be as many as four Courts for each simulation. For this project you will write a 6-10 page paper, the format of which will depend upon the particular role that you play in the simulation. For example, students playing the role of a justice will submit an opinion deciding a case (See Appendix C). Papers must be typed, double-spaced with one-inch margins. The paper assignment will be discussed in more detail in class and a separate handout describing the cases will be made available at a later date.

Analysis Paper: Each student will write a paper analyzing the judicial philosophy and method of interpretation of a Supreme Court justice. Role assignments will be made during the first two weeks of the semester. Using primary (judicial opinions) and secondary sources (journal articles, biographies), each student will summarize and critique the jurisprudence of a particular justice in several areas: church-state issues, free speech, abortion/privacy rights, criminal law, and discrimination. Papers are due April 6. This assignment is designed to prepare you for the second court simulation. The project is described in more detail in Appendix B and I have provided a list of secondary sources on current Supreme Court justices in Appendix D to help you get started.

Participation: Participation is an important component of student performance – it is worth 70 points toward your final grade. Participation means regular class attendance, contribution to class discussion on a regular basis with effective comments, and participation in the simulations, including a willingness to volunteer to play the role of counsel. Students who satisfy these requirements can expect to receive high marks for participation at the end of the semester.

Graduate Students: Graduate students are required to do a little extra work. Select one of the book titles at the end of any chapter in Epstein and Walker. Read the book and write a critical review of the text. Please check with me first to get approval of the title you have selected. Guidelines for the review are found in Appendix F. You may hand in your review at any time during the semester but the deadline is May 13.

Case Briefs: Each student is encouraged to brief the major cases covered in class. You will not be required to hand them in, but briefs make good study guides for the exams. Your briefs should follow the eight-point format found in Appendix A of the syllabus.

Evaluation: Your grade will be based on the following criteria:

Exam #1	100 points	630-700 = A
Exam #2	100 points	560-629 = B
Final Exam	130 points	490-559 = C
Analysis Paper	100 points	420-489 = D
Judicial Opinions/Briefs	200 points	419-0 = F
Participation	70 points	
Book Review	100 points (graduate students only)	

Total	700 points (undergraduates)	
	800 points (graduates)	

Grading Criteria: Your final grade will be based on the following point system: 100-90=A; 89-80=B; 79-70=C; 69-60=D; 59 and below=F. Because you have numerous opportunities to influence your grade, I will not consider extra credit work. Some students feel that the grading of essay exams is a mysterious and inherently biased process. As your instructor, I will make every effort to demystify my grading criteria and to be as objective as possible. It is your responsibility to prepare for the exams. If you have a problem or question about any of the material it is your responsibility to see me before the exam. Grading essay exams cannot be reduced to a science. The process involves more than searching for "key" words. Here are some of the things that I look for:

An "A" answer covers all the points asked within the question and then some. It provides clear, detailed explanations and uses examples to support the essay. It incorporates both reading and lecture materials into the essay demonstrating a solid grasp of key terms, cases, and arguments. Above all, the answer shows a conceptual understanding of the material. A "B" answer covers all the points asked within the question. It provides clear explanations and examples and displays knowledge of the reading and lecture material.

A "C" answer generally covers all the points asked for in the question. It is basically a rehash of the lecture notes with little detail or explanation. A "D" answer fails to cover all the points required by the question. It does not demonstrate understanding of the reading or lecture material. Arguments are made with little or no supporting evidence. An "F" answer fails to cover any of the points required by the question. It is evident that the student has made no effort to prepare for the exam, read the text, or attend class.

University Policies:

Statement Regarding Academic Honesty

Kansas State University has an Honor System based on personal integrity, which is presumed to be sufficient assurance in academic matters one's work is performed honestly and without unauthorized assistance. Undergraduate and graduate students, by registration, acknowledge the jurisdiction of the Honor System. The policies and procedures of the Honor System apply to all full and part-time

students enrolled in undergraduate and graduate courses on-campus, off-campus, and via distance learning. The honor system website can be reach via the following URL: www.ksu.edu/honor.

A component vital to the Honor System is the inclusion of the Honor Pledge which applies to all assignments, examinations, or other course work undertaken by students. The Honor Pledge is implied, whether or not it is stated: “On my honor, as a student, I have neither given nor received unauthorized aid on this academic work.” A grade of XF can result from a breach of academic honesty. The F indicates failure in the course; the X indicates the reason is an Honor Pledge violation.

Statements for Academic Accommodations for Students with Disabilities

Any student with a disability that needs a classroom accommodation, access to technology or other assistance in this course should contact Disability Support Services and/or their instructor as early as possible.

Statement Defining Expectations for Classroom Conduct

All student activities in the University, including this course, are governed by the Student Judicial Conduct Code as outlined in the Student Government Association By Laws, Article VI, Section 3, number 2. Students that engage in behavior that disrupts the learning environment may be asked to leave the class.

Academic Freedom Statement

Kansas State University is a community of students, faculty, and staff who work together to discover new knowledge, create new ideas, and share the results of their scholarly inquiry with the wider public. Although new ideas or research results may be controversial or challenge established views, the health and growth of any society requires frank intellectual exchange. Academic freedom protects this type of free exchange and is thus essential to any university's mission.

Moreover, academic freedom supports collaborative work in the pursuit of truth and the dissemination of knowledge in an environment of inquiry, respectful debate, and professionalism. Academic freedom is not limited to the classroom or to scientific and scholarly research, but extends to the life of the university as well as to larger social and political questions. It is the right and responsibility of the university community to engage with such issues.

Important Dates:

February 16 Exam #1
February 18, 20 No Class Meeting
March 4, 6, 11 Supreme Court Simulation #1
March 16-20 Spring Break
March 30 Judicial Opinions Due: Simulation #1
April 6 Analysis Paper Due
April 10 Exam #2
April 15, 20, 27..... Supreme Court Simulation #2
May 8 Judicial Opinions Due: Simulation #2
May 13 Final Exam (11:50-1:40)

Course Outline:

- Jan. 21** **INTRODUCTION AND COURSE SYLLABUS**
- Jan. 23** **THE LIVING CONSTITUTION**
Bill of Rights: Origins and Ratification
Reading: Epstein and Walker, pp. 3-9
- Jan. 26-
Jan. 30** **APPROACHES TO SUPREME COURT DECISION MAKING**
Reading: Epstein and Walker, pp. 10-44
- Feb. 2** **INCORPORATION OF THE BILL OF RIGHTS**
Applying the Bill of Rights to the States
Epstein and Walker, pp. 66-86
Barron v. Baltimore 32 U.S. (7 PET.) 243 (1833)
Hurtado v. California 110 U.S. 516 (1884)
Palko v. Connecticut 302 U.S. 319 (1937)
Duncan v. Louisiana 391 U.S. 145 (1968)
- Feb. 4-6** **RELIGIOUS EXERCISE AND ESTABLISHMENT**
Free Exercise of Religion
Epstein and Walker, pp. 89-128
Reynolds v. U.S., 98 U.S. 145 (1879)
Cantwell v. Connecticut 310 U.S. 296 (1940)
Sherbert v. Verner 374 U.S. 398 (1963)
Wisconsin v. Yoder 406 U.S. 205 (1972)
Employment Division of Oregon v. Smith 494 U.S. 872 (1990)
Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520 (1993)
City of Boerne v. Flores 521 U.S. 507 (1997)
Cutter v. Wilkinson, 544 U.S. 709 (2005)
Burwell v. Hobby Lobby, 573 U.S. ____ (2014)
- Feb. 9-13** **Religious Establishment**
Epstein and Walker, pp. 128-196
Everson v. Board of Education 330 U.S. 1 (1947)
Lemon v. Kurtzman 403 U.S. 602 (1971)
Agostini v. Felton 521 U.S. 203 (1997)
Zelman v. Simmons-Harris 536 U.S. 639 (2002)
Lamb's Chapel v. Center Moriches Union Free School Dist., 508 U.S. 384 (1993)
Rosenberger v. University of Virginia, 515 U.S. 819 (1995)
Town of Greece v. Galloway, 572 U.S. ____ (2014)
Teaching Religious Principles in Schools
Edwards v. Aguillard 482 U.S. 578 (1987)
Prayer in Public Schools
Engel v. Vitale, 370 U.S. 421 (1962)
School District of Abington Township v. Schempp 374 U.S. 203 (1963)
Wallace v. Jaffree, 472 U.S. 38 (1985)
Lee v. Weisman 505 U.S. 577 (1992)
Santa Fe Independent School District v. Doe, 530 U.S. 290 (2000)
Religious Displays on Public Property
County of Allegheny v. ACLU, 492 U.S. 573 (1989)
Van Orden v. Perry and *McCreary v. ACLU Kentucky*, 545 U.S. 677 (2005)
Hosanna-Tabor Evangelical Lutheran School v. EEOC, 565 U.S. ____ (2012)

- Feb. 16** **EXAM #1**
- Feb. 18-20** **NO CLASS MEETING (work on analysis paper)**
- Feb. 23** **FREEDOM OF SPEECH, ASSEMBLY, AND ASSOCIATION**
The Development of Legal Standards
 Epstein and Walker, pp. 197-228
Schenck v. United States 249 U.S. 47 (1919)
Abrams v. United States 250 U.S. 616 (1919)
Gitlow v. New York 216 U.S. 652 (1925)
Dennis v. United States 341 U.S. 494 (1951)
Brandenburg v. Ohio 395 U.S. 444 (1969)
- Feb. 25** **Student Speech**
 Epstein and Walker, pp. 264-281
Tinker v. Des Moines 393 U.S. 503 (1969)
Morse v. Frederick, 551 U.S. 393 (2007)
West Virginia Board of Education v. Barnette 319 U.S. 624 (1943)
Board of Regents of University of Wisconsin v. Southworth, 529 U.S. 217 (2000)
Rumsfeld v. Forum for Academic and Institutional Rights 547 U.S. 47 (2006)
- Feb. 27-
March 2** **Public Forums and the Preservation of Order**
 Epstein and Walker, pp. 238-263
Chaplinsky v. New Hampshire 315 U.S. 568 (1942)
Cohen v. California 403 U.S. 15 (1971)
Public Forums and the Preservation of Order
Madsen v. Women's Health Center, 512 U.S. (1994)
National Organization for Women v. Scheidler, 510 U.S. 249 (1994)
Hill v. Colorado 530 U.S. 703 (2000)
McCullen v. Coakley, 573 U.S. ____ (2014)
Snyder v. Phelps, 562 U.S. ____ (2011)
Commercial Speech
 Epstein and Walker, pp. 281-291
- March 4** **SUPREME COURT SIMULATION #1, Case #1**
March 6 **SUPREME COURT SIMULATION #1, Case #2**
- March 9** **Regulating Expression: Content and Contexts**
Symbolic Speech
 Epstein and Walker, pp. 228-238
United States v. O'Brien 391 U.S. 367 (1968)
Texas v. Johnson 491 U.S. 397 (1989)
- March 11** **SUPREME COURT SIMULATION #1, Case #3**
- March 13** **Freedom of Association**
 Epstein and Walker, pp. 291-298
Roberts v. United States Jaycee, 468 U.S. 609 (1984)
Boy Scouts of America v. Dale 530 U.S. 640 (2000)
Christian Legal Society v. Martinez, 561 U.S. ____ (2010)
- March 16-20** **SPRING BREAK**

- March 23** **FREEDOM OF THE PRESS**
Prior Restraint
 Epstein and Walker, pp. 299-326
Near v. Minnesota 283 U.S. 697 (1931)
New York Times v. United States 403 U.S. 713 (1971)
Hazelwood School District v. Kulmeier 484 U.S. 260 (1988)
FCC v. Pacifica Foundation, 438 U.S. 726 (1978)
- March 25** **THE BOUNDARIES OF FREE EXPRESSION: OBSCENITY AND LIBEL**
Libel
 Epstein and Walker, pp. 327-343
New York Times v. Sullivan 376 U.S. 254 (1964)
Gertz v. Welch 418 U.S. 323 (1974)
Hustler Magazine v. Falwell 485 U.S. 46 (1988)
Masson v. New Yorker Magazine, 501 U.S. 496 (1991)
- March 27** **Obscenity**
 Epstein and Walker, pp. 343-370
Roth v. United States 354 U.S. 456 (1957)
Miller v. California 413 U.S. 15 (1973)
Child Pornography
 Epstein and Walker, pp. 331-338
New York v. Ferber 458 U.S. 747 (1982)
Cruelty and Violence
Brown v. Entertainment Merchants Association, 564 U.S. ____ (2011)
First Amendment and Access to Internet Sites
 Epstein and Walker, pp. 371-387
Reno v. American Civil Liberties Union 521 U.S. 844 (1997)
Ashcroft v. Free Speech Coalition, 535 U.S. 234 (2002)
U.S. v. American Library Association, 539 U.S. 194 (2003)
Ashcroft v. ACLU II, 535 U.S. 564 (2004)
United States v. Williams 553 U.S. 285 (2008)
- March 30** **THE RIGHT TO KEEP AND BEAR ARMS**
 Epstein and Walker, pp. 387-396
United States v. Miller 307 U.S. 174 (1939)
U.S. v. Emerson, (1999)
District of Columbia v. Heller, 554 U.S. 570 (2008)
McDonald v. City of Chicago, 561 U.S. ____ (2010)
- March 30** **JUDICIAL OPINIONS DUE, Simulation #1**
- April 1** **THE RIGHT TO PRIVACY**
Foundations and Application
 Epstein and Walker, pp. 397-407
Griswold v. Connecticut 381 U.S. 479 (1965)
- April 3** **Reproductive Freedom and the Right to Privacy**
 Epstein and Walker, pp. 407-433
Roe v. Wade 410 U.S. 113 (1973)
Akron v. Akron Center for Reproductive Health, 462 U.S. 416 (1983)
Webster v. Reproductive Health Services, 492 U.S. 490 (1989)
Planned Parenthood v. Casey 505 U.S. 833 (1992)

Stenberg v. Carhart, 530 U.S. 914 (2000)
Gonzales v. Carhart, 550 U.S. 124 (2007)

April 6

ANALYSIS PAPER DUE

April 6

Privacy Activities and the Application of *Griswold*

Epstein and Walker, pp. 433-455

Sexual Privacy

Stanley v. Georgia 394 U.S. 557 (1969)

Bowers v. Harwick 478 U.S. 186 (1986)

Lawrence v. Texas, 539 U.S. 558 (2003)

Right to Die

Cruzan v. Director, Missouri Dept. of Health 497 U.S. 261 (1990)

Washington v. Glucksberg, 521 U.S.702 (1997)

Gonzales v. Oregon, 546 U.S. 243 (2006)

Drug Testing

National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)

Vernonia School District 47J v. Acton, 515 U.S. 646 (1995)

Board of Education Pottawattomie County v. Earls, 536 U.S. 822 (2002)

April 8

THE RIGHTS OF THE CRIMINALLY ACCUSED

Investigations and Evidence: The Fourth Amendment

Epstein and Walker, pp. 459-497

Katz v. United States 389 U.S. 347 (1967)

U.S. v. Jones 565 U.S. ____ (2012)

Illinois v. Gates 462 U.S. 213 (1983)

Chimel v. California, 395 U.S. 752 (1969)

Cupp v. Murphy, 412 U.S. 291 (1973)

Arizona v. Gant 556 U.S. 332 (2009)

Riley v. California, 573 U.S. ____ (2014)

Safford Unified School District #1 v. Redding 557 U.S. ____ (2009)

Terry v. Ohio 392 U.S. 1 (1968)

April 10

EXAM #2

April 13

Enforcing the Fourth Amendment: The Exclusionary Rule

Epstein and Walker, pp. 497-517

Mapp v. Ohio 367 U.S. 643 (1961)

United States v. Leon 468 U.S. 897 (1984)

Nix v. Williams, 467 U.S. 431 (1984)

Hudson v. Michigan 547 U.S. 1096 (2006)

Herring v. United States 555 U.S. ____ (2009)

April 15

SUPREME COURT SIMULATION #2, Case #4

April 17

The Right to Counsel/Jury Trials

Epstein and Walker, pp. 540-569

Powell v. Alabama 287 U.S. 45 (1932)

Gideon v. Wainwright 372 U.S. 355 (1963)

Argersinger v. Hamlin, 407 U.S. 25 (1972)

Alabama v. Shelton, 535 U.S. 654 (2002)

Batson v. Kentucky 476 U.S. 79 (1986)

Sheppard v. Maxwell 384 U.S. 333 (1966)

- April 20** **SUPREME COURT SIMULATION #2, Case #5**
- April 22** **Sentencing and Punishment**
 Epstein and Walker, pp. 573-574
Defining Cruel and Unusual: Non-Capital Punishment
Harmelin v. Michigan, 501 U.S. 957 (1991)
Ewing v. California 538 U.S. 11 (2003)
Hudson v. McMillian, 503 U.S. 1 (1992)
Graham v. Florida, 560 U.S. ____ (2010)
- April 25** **Capital Punishment**
 Epstein and Walker, pp. 575-600
Gregg v. Georgia 428 U.S. 153 (1976)
McClesky v. Kemp, 481 U.S. 279 (1987)
Atkins v. Virginia 536 U.S. 304 (2002)
Roper v. Simmons, 543 U.S. 551 (2005)
Baze v. Rees, 553 U.S. ____ (2008)
Kennedy v. Louisiana, 554 U.S. 407 (2008)
- April 27** **SUPREME COURT SIMULATION #2, Case #6**
- CIVIL RIGHTS AND THE CONSTITUTION**
 Epstein and Walker, pp. 603-610
- April 29** **Sex Discrimination**
 Epstein and Walker, pp. 652-671
Bradwell v. Illinois, 16 Wall. 130 (1873)
Reed v. Reed 404 U.S. 71 (1971)
Frontiero v. Richardson 411 U.S. 677 (1973)
Craig v. Boren 429 U.S. 190 (1976)
Mississippi University for Women v. Hogan, 458 U.S. 718 (1982)
United States v. Virginia 518 U.S. 515 (1996)
Michael M. v. Sonoma County, 450 U.S. 464 (1981)
Rostker v. Goldberg 453 U.S. 57 (1981)
- May 1** **Civil Rights and the Constitution**
Discrimination Based on Sexual Orientation
 Epstein and Walker, pp. 671-677
Romer v. Evans 517 U.S. 620 (1996)
Other Forms of Discrimination
 Epstein and Walker, pp.678-689
- May 4** **Civil Rights and the Constitution**
 Epstein and Walker, pp. 611-651
Racial Discrimination
Plessy v. Ferguson 163 U.S. 537 (1896)
Sweatt v. Painter 339 U.S. 629 (1950)
McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950)
Brown v. Board of Education 347 U.S. 483 (1954)
Brown v. Board of Education II 349 U.S. 294 (1955)
Swann v. Charlotte-Mecklenberg BOE 402 U.S. 1 (1971)
United States v. Fordice 505 U.S. 717 (1992)
Freeman v. Pitts, 503 U.S. 467 (1992)

Parents Involved in Community Schools v. Seattle School Dist. #1
Meredith v. Jefferson County Board of Education 551 U.S. 701 (2007)

May 6

Expanding the Application of *Brown*

Epstein and Walker, pp. 638-642

Loving v. Virginia 388 U.S. 1 (1967)

State Action Requirement

Epstein and Walker, pp. 642-651

Palmore v. Sidoti, 466 U.S. 429 (1984)

Shelley v. Kraemer 334 U.S. 1 (1948)

Burton v. Wilmington Parking Authority 365 U.S. 715 (1961)

Moose Lodge #101 v. Irvis 407 U.S. 163 (1972)

May 8

Discrimination Remedies: Affirmative Action

Epstein and Walker, pp. 689-720

Regents of UC v. Bakke 438 U.S. 265 (1978)

Johnson v. Transportation Agency of Santa Clara, 480 U.S. 616 (1987)

City of Richmond v. J.A. Croson Co. 488 U.S. 469 (1989)

Adarand Constructors, Inc. v. Peña 515 U.S. 200 (1995)

Grutter v. Bollinger 539 U.S. 306 (2003)

Gratz v. Bollinger, 539 U.S. 244 (2003)

Ricci v. DeStefano, 557 U.S. ____ (2009)

Fisher v. Texas, 570 U.S. ____ (2013)

May 8

JUDICIAL OPINIONS DUE: SIMULATION #2

May 13

FINAL EXAM (Wednesday, 11:50am-1:40pm)

Appendix A: Notes on Briefing Cases

A student brief is an analytical outline of a Supreme Court opinion designed to pinpoint what issues of fact and law are relevant to the final resolution of the case and what arguments the justices have used. The Epstein and Walker text includes guidelines on briefing cases and they are described below.

1. Title, Citation, Year: The party listed first is seeking reversal of an unfavorable lower court decision. The second party wants the decision affirmed. The first party is called the appellant or petitioner and the second party is called the appellee or respondent.

2. Facts of a Case: Appellate courts address legal questions, not factual ones. Justices, however, may differ in interpreting the facts of a case. The majority opinion usually summarizes the facts before elaborating the decision. In addition to the facts immediately relevant to the decision, the broader social, political, and economic setting should be taken into account.

3. Law: It is important to identify the Constitutional provisions that are at issue in the case. There may also be statutes and administrative regulations that raise Constitutional issues. In addition, Supreme Court precedents may be relevant. All of these laws should be identified.

4. Legal Questions: It may take some practice to sort out the legal questions involved in a particular dispute. Sometimes the Court opinion will describe the legal issues while other cases may require a close reading of the opinion. Once you have identified the legal issue(s), try to frame them in a yes or no format. This will make it easier to summarize the majority opinion.

5. Opinion of the Court: The majority opinion announces the Court's decision and supplies justifications for the ruling. Try to trace how the Court arrived at its answers to the legal questions formulated above. A justice may have used arguments from precedent, appeals to the common sense, the "plain meaning" of the words of the law, the intent of the Framers, historical experience, logic, polls in other jurisdictions, or a combination of these and other arguments. Identify the legal doctrines announced by the Court.

6. Concurring Opinion: Members of the Court majority may write a separate opinion that agrees with the Court decision but not its justification. A Justice may wish to clarify his or her own view of the case or respond to a dissenting opinion.

7. Dissenting Opinion: Dissents are written to explain why the minority (one to four Justices) feels that the Court decision is wrong. Dissents usually identify areas of disagreement. It is important to note the arguments of dissenting opinions because those arguments may influence a Court majority in future cases.

8. Evaluation: In analyzing the decision of the Court, ask yourself the following questions: Is the opinion convincing? Is the decision consistent with previous decisions? Does the Court depart from precedent? What method(s) of interpretation was/were used to arrive at the decision? What impact did the decision have for society? For example, did the decision expand civil liberties or restrict them? Was the decision good law or good policy?

Appendix B: Analysis Paper

Substantive Requirements: Each student playing either the role of a justice or a lawyer in the Supreme Court simulation is required to write a paper analyzing the judicial philosophy and method of interpretation of their assigned justice. Using primary (opinions) and secondary (journal articles, biographies) sources, your paper should summarize and critique the constitutional jurisprudence of your justice. Refer to Appendix D in the syllabus for a list of secondary sources on current Supreme Court justices. These references are only a starting point; I strongly encourage you to consult other sources as well. *Papers that use just a few websites for information will not receive high marks.* Please take the time to get into the library and do some traditional research.

Begin the paper with a paragraph that introduces your justice to the reader. Say something interesting about your justice in this opening paragraph that grabs the reader's attention such as a personality trait, their role on the Court, or a significant event in their life that may have influenced their values. You might want to follow the introduction with several pages on the personal and professional background of your justice: What is his or her family, educational, and professional background? When was the justice appointed? Was the confirmation hearing controversial? Is the justice a Democrat or Republican? Has the justice been described as a liberal, conservative, or moderate? What is his or her Segal-Cover score? Are there any interesting character traits? Use a variety of resources here. Try to bring the justice to life for the reader. These paragraphs on personal and professional background should be followed by a discussion of the justices' role orientation and general approach to constitutional interpretation. Next, provide an analysis of the substantive areas described below. Many justices have written hundreds of opinions during their tenure on the bench. I do not expect you to research all of the opinions of your justice but try to analyze at least two or three opinions in *each* issue area. The Cornell Law School website lists all the cases where a justice has written an opinion. Your paper should conclude with a paragraph that summarizes the justice's constitutional philosophy and ideological position on the Court.

A) All papers must address the following issues: *Judicial Role Orientation and Methods of Interpretation.* Would you describe your justice as an activist or a restrained judge? For example, does your justice defer to majoritarian political institutions or is she more inclined to protect minority rights? Is your justice a strict constructionist or one that views the Constitution as a living document that must change with the times? Does your justice adhere to the original intent of the Framers? Does your justice refer to international law or practices or how does he or she view stare decisis? How does your justice approach incorporation of the Bill of Rights?

B) All papers must describe and evaluate at least two decisions in TWO of the following areas for a minimum of four opinions: *religious exercise/establishment, free speech/obscenity, privacy/abortion/drug testing, the rights of criminal defendants/prisoners, or discrimination (racial, gender, sexual orientation, or disability).* You might want to incorporate material from our text into your analysis. For example, when examining religious establishment, you could describe your justice as either an accommodationist or a separationist. Is your justice an absolutist on free speech issues? Do the opinions of your justice expand (due process) or restrict (crime control) the rights of criminal defendants and prisoners? What level of scrutiny does your justice support for discrimination cases?

Stylistic Requirements: Your paper should contain a title page with your name, class, and date. Papers must be typed, double-spaced with one-inch margins. The paper should be written with correct grammar and spelling (See the Hacker and Sommers *Style Manual*). For those of you concerned about a minimum page requirement, the topics listed above cannot be covered adequately in less than eight-ten pages.

Case citations should come from official U.S. reports [e.g., *Korematsu v. United States*, 323 U.S. 214 (1944)]. One or two sentence quotations from an opinion should be enclosed in "quotation marks" and followed by a case citation. Longer quotations should be blocked and properly cited. The official citation

only provides the page in the U.S. Reports where the opinion begins. If you take a quote from a concurring or dissenting opinion that is twenty pages into the opinion, you have to include that page in your citation. Using the example above, your citation might look something like this: *Korematsu v. United States*, 323 U.S. 214, 234 (1944) or *Korematsu v. United States*, 323 U.S. 214 (1944), at 234. For opinions that are accessed online using Lexis-Nexis, the page corresponding to the bound paper version is imbedded into the text of the opinion in brackets. Stop by during office hours if you have any questions.

Important: This is a legal research paper and you should use a footnote or endnote system for citations in order to give proper credit to your sources. See *A Pocket Style Manual*, by Hacker and Sommers, for proper citation format. On page 210 she explains how to avoid plagiarism. On pages 207-230 of the *Style Manual* there are explanations and examples for the Chicago style method of documentation and bibliographic references. The Chicago style is the citation system used for legal research and by many political science journals. If you don't know how to insert footnotes or endnotes using Word or WordPerfect, just ask me and I will show you how it is done.

Include a list of cases cited and a bibliography of secondary sources at the end of the paper. These can be combined or separate lists but they should be in alphabetical order with proper bibliographic style. This paper is due April 6. Late papers will be penalized.

Appendix C: Supreme Court Simulation (Moot Court)

Legal Counsel's Responsibilities: There are three crucial stages of advocacy before the Supreme Court: (1) obtaining review of the case; (2) composing a persuasive brief; and (3) presenting an effective oral argument. Since it is assumed that the case has already been granted review, only stages two and three are relevant for this assignment. Two students will serve as legal counsel for each case. One of these students will act as counsel for the appellant(s) (the petitioners in the case), and one will act as counsel for the appellee(s) (the respondent).

Legal counsel will have two basic responsibilities. First, you are to write legal briefs. The proper format for these briefs is explained below. In preparing your briefs, you should consult at least one law review article that concerns the basic legal questions at issue in the hypothetical or real case. See the Index to Legal Periodicals in the reference section of Hale Library or use an online database. You may cite the article(s) in the text of the brief using an abbreviated reference (e.g., Tribe, p.32). Cite complete information concerning the law review sources and case citations at the beginning of the brief following the title page. Your briefs should be photocopied. Counsel should keep one copy and turn in ten copies plus the original on the due date. Nine copies of the case brief will then be given to the justices for review before oral arguments. I will keep the original for grading purposes. Briefs are due the class period before oral arguments are scheduled.

The second responsibility of legal counsel is to prepare for oral argument. You should do this by reviewing your brief thoroughly and deciding what parts to emphasize. Each counsel will have about 17 minutes to present oral arguments before the court. **WARNING:** reading your briefs is not considered to be oral argument and the Court has rules against this practice. The best oral arguments are presented as if the attorney is having a conversation with the Court. Be prepared to answer questions that might be asked of you by the justices.

A brief is basically an argument to the Supreme Court on why the lower court's decision should be upheld or struck down. Try to cover the main points in about six pages, but you may exceed this by a few pages if necessary. Briefs must be typed, double-spaced, with one-inch margins. Both petitioners' and respondents' briefs should have the following parts (this outline represents a simplified version of real briefs, many examples of which can be found in Philip Kurland and Gerhard Casper, eds., Landmark Briefs and Arguments of the Supreme Court of the United States, 1975):

A. Authorities Cited

1. List all cases and journal articles used in the brief.

B. Questions Presented

1. Note the legal issue(s) presented by the case, citing the relevant section of the Constitution and/or statute to be interpreted.
2. Phrase the issue(s) in the form of a question and in such a way that your analysis of it leads to the conclusion that you desire.

C. Statement of Facts

1. Describe who the parties are and the facts of the dispute necessary for an understanding of the case.
2. Describe the action taken by the lower court.

D. Summary of Argument (no more than a paragraph or two)

1. Sum up the basic points of your argument "in a nutshell."

E. Argument

1. The major points of your argument will be concerned with discussion of why the decision of the lower court was correct or faulty. This is the most important section of your brief.
2. Cite some Supreme Court precedents that you believe support your side of the case; show how the lower court's opinion is consistent or inconsistent with these precedents.
3. Make other arguments based on legally-relevant criteria such as intent of the framers and extra-legal criteria such as social science statistics, moral philosophies, economic factors, and other sources.

These arguments may or may not influence the Court but it is important to include them in your brief and perhaps mention them during oral argument.

F. Conclusion (a paragraph)

1. Summarize your argument and state what action you want the Court to take (e.g. affirm or reverse).

Justice's Responsibilities: All students who are not serving as counsel for parties to a case will sit as justices to hear and decide the case. Your responsibilities are to: 1) research the background of the justice that you have chosen or the one that you have been assigned. This responsibility is fulfilled by completing the analysis paper but you may have to do a little extra research on how your justice has viewed the issues in the case under consideration; this only applies to the second simulation because you are playing yourselves in the first simulation; 2) read and study the briefs submitted by legal counsel. Prepare notes and questions for oral argument; 3) participate in oral argument. You may ask questions during oral argument by interrupting the counsel. The Court will hold a brief conference following oral arguments and the Chief Justice will record the vote on the merits; 4) write an opinion. Each justice will write a separate opinion. We are diverging here from the normal operating procedure of the Court because all nine justices usually do not write separate opinions. This requirement is necessary for grading purposes only; and 5) participate in announcing the opinion of the Court. You will bring to class your opinion and the Chief Justice will announce the opinion of the Court. The Justices will have an opportunity to summarize their opinions and the whole class will discuss the outcome of the case.

Use the following guidelines when writing your opinion:

1. Your opinion should support the claim of one of the two parties using any reasonable legal arguments, including intent of the framers, plain meaning of the text, and precedents. The opinion should have the look and style of a real Supreme Court opinion (find one or two in U.S. Reports or online as a guide). You should discuss the relevant facts, lay out the constitutional issues, discuss competing constitutional principles, and support your position with precedents, wherever possible. You should reach your decision in an analytical and reasoned manner. Remember, the most important aspect of this paper is how well you defend your position. There may be no single correct answer to any of the questions involved in the case but your job is to present the decision of the Court with the most persuasive arguments that you can muster.
2. Explain the reasons for your decision and the case precedents supporting your position. Do not simply cite cases without explaining how the decisions or the reasoning from them relates to your case.
3. Cite cases, statutes, or secondary materials like law review articles to support your argument. Case citations should come from official U.S. reports. (e.g., Korematsu v. United States, 323 U.S. 214 (1944)). Look at a couple of real Supreme Court opinions in the government documents section of the library. Real opinions cite precedents in the body of the opinion with full citations but also use a footnote system for citations and comments.
4. *Your opinion should be your own work* and you should not circulate your opinion prior to the due date. You are permitted, however, to discuss some of the issues in the case with other justices.
5. Your opinion should be at least six typed pages (double-spaced, one-inch margins). Longer opinions are fine, especially if the case involves several complex issues.

Problems and/or Questions: I will be available during office hours or by appointment to assist you with any aspect of your research or writing. If you are having trouble finding information about your justice, refer to Appendix D. I will distribute a sample brief used in a previous case before the Court. Legal counsel may want to examine this brief for style and substance.

Appendix D: Supreme Court Justices

One of the best ways to study the judicial philosophy of a particular justice is to examine the opinions (majority, concurring, and dissenting) written by the justice. Some sitting Supreme Court justices also write articles for law reviews or books on constitutional issues and these works often provide insights into their views on the Constitution. Political scientists, law professors, and law students also write articles analyzing the opinions and methods of interpretation of the justices. For general information about your justice, a good starting point is Urofsky, Melvin I. *The Supreme Court Justices: A Biographical Dictionary*. New York: Garland (1994), located in the reference section of Hale Library. For analyses of decisions and discussion of voting patterns, the *National Law Journal* publishes an annual review of Supreme Court decisions in August and the *Harvard Law Journal* publishes a similar review each year. General treatments of the Rehnquist or Roberts Courts might include discussion of individual justices as well. For example, see *A Court Divided: The Rehnquist Court and the Future of Constitutional Law*, by Mark Tushnet (2005), *The Nine*, by Jeffrey Toobin (2008), or *Uncertain Justice: The Roberts Court and the Constitution*, by Lawrence Tribe and Joshua Matz (2014).

Because our library has a current paper subscription to only a few law and political science journals, it will take some effort on your part to track down many of these books and articles. You have several options: (1) See what we have in Hale Library; (2) request material through inter-library loan. Be sure to do this well in advance of the due date of the assignment because it may take the library staff several weeks to locate the material; (3) access Lexis-Nexis in Hale Library and download the articles to a file; (4) use other electronic retrieval programs in the Library such as JSTOR and LegalTrac; or (5) take a trip to Washburn Law Library in Topeka. The librarian there has told me that K-State students are welcome to use their resources. Almost every reference listed below may be found there.

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Appendix E: Web Sites Relating to Law and Courts

Although the Internet is not a substitute for a good library search, there is plenty of information online that you might find useful for studying constitutional law and the courts. For example, the Internet is now the place to go to find the text of Supreme Court opinions on the day that they are announced. Listed below are some sites relating to law and the courts.

Site: U.S. Supreme Court

Address: <http://www.supremecourt.gov>

Content: Official page of the United States Supreme Court.

Site: Legal Information Institute, Cornell Law School

Address: <http://www.law.cornell.edu/supct>

Content: Full text decisions of the U.S. Supreme Court and some historic cases as well.

Site: U.S. Supreme Court Oral Argument Archive

Address: <http://www.oyez.org>

Content: Unedited, digitized oral arguments in landmark Supreme Court cases from October 1955 onward. The audio collection also includes FDR's famous fireside chat about packing the Supreme Court. Your computer will need RealAudio software to access and listen to the oral arguments.

Site: U.S. Federal Courts Home Page

Address: <http://www.uscourts.gov>

Content: Links to information on the federal courts.

Site: Washburn Law Library

Address: <http://www.washlaw.edu>

Content: Good links to Kansas court decisions and statutes, and lots of other legal information.

Site: American Civil Liberties Union

Address: <http://www.aclu.org>

Content: ACLU position papers, court cases, and news. The group takes a broad interpretation of civil rights and liberties.

Site: American Center for Law and Justice

Address: <http://www.aclj.org>

Content: An interest group that takes a conservative interpretation of civil rights and liberties.

Site: Library of Congress

Address: www.loc.gov

Content: Primary documents in American history, including the U.S. Constitution, Bill of Rights, and Federalist Papers.

Site: Americans United for Separation of Church and State

Address: <http://www.au.org>

Content: The leading and most active interest group in litigation advocating a strict separation between church and state.

Site: Case Briefs for Law Students

Address: <http://www.casebriefs.com>

Content: As described on the site, the only Free Law Study Aid Content written by Lawyers and Law Professors.

Appendix F: Book Review

Graduate students are responsible for writing a critical review of any book listed at the end of each chapter section. The review should conform to the following substantive and stylistic requirements:

Substantive Requirements

1. Theory/Conceptual Framework: Where does the author place the book in terms of previous work in the field? What is/are the basic research issue(s) or argument(s)? How does the author explain the phenomenon to be studied?
2. Method: What method does the author use to examine the hypothesis or proposition? For example, does the author use case studies, statistical analysis, personal observation, historical analysis, or some other method?
3. Findings: Briefly review the author's findings, analysis, and conclusions. Avoid a chapter-by-chapter summary. Focus on central arguments and topics.
4. Critique: This is the most difficult but also the most important part of your paper. What theoretical, operational, or other methodological shortcomings, if any, can be identified? Is the author persuasive? Why, or why not? How do the findings change or add to what is already known about this topic? Do the author's conclusions comport with other lecture and reading material in this class? Be sure to evaluate any reform proposals. Did you learn anything about civil rights and liberties by reading this book?

Stylistic Requirements

Your paper should be written in an essay format, not as an outline in response to the questions listed above. The paper should contain a title page with your name, class, and date. Papers must be typed, double-spaced, with one-inch margins. The paper should be 5-6 pages long with correct grammar and spelling. References to the text may be included in the body of the paper using parentheses (Smith, p. 45). One or two sentence quotations from the text should be "enclosed in quotation marks" and followed with a page reference. Longer quotations should be blocked and properly cited. The book review may be handed in at any time during the semester, but it must be in by the date of the final exam, May 13.