

Professor Brendon Swedlow
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Office: 107 Zulauf Hall
Hours: MW 1:00-1:50 and 4:50-5:30

Political Science (POLS) 412
Constitutional Law III
DU 459 MW 2:00-3:15
NIU Spring 2014

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. These cases are part of what has been called a revolution in constitutional criminal procedure. 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. Many of these cases arose during wartime or as a result of the civil rights movement.

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 using the cases we are 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-book, 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

February 10	Midterm #1 (15%)	Take-home, can be jointly authored; six pages; <i>due following Monday, February 17th</i> , at beginning of class
March 17	Midterm #2 (20%)	Take-home; must be your own work; six pages; <i>due following Monday, March 24th</i> , at beginning of class
May 5	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 the cases and other assigned materials 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 our seating chart to answer questions about our 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, some of you will have the opportunity to act as lawyers, arguing constitutional cases before a judicial appellate panel composed of your fellow students.

Counsel will consist of opposing teams of two to three lawyers each. Judges will have the opportunity to question counsel before voting on the case. Counsel and judges may use majority, concurring, and dissenting opinions as well as briefs filed by the parties and recordings of their oral arguments in the cases to re-create the arguments and questions that occurred before the U.S. Supreme Court. Each attorney will have 3-5 minutes to make his or her argument.

Lawyers will receive extra credit for participating in oral arguments; judicial questioning will contribute significantly to your participation grade.

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 Receive Extra Credit

At various points during the semester, I may announce other opportunities to receive extra credit. These opportunities may include participating in and writing about various law-related activities organized by the Pre-law Society and/or law school.

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

Statement Concerning Students with Disabilities

Northern Illinois University is committed to providing an accessible educational environment in collaboration with the Disability Resource Center. Any student requiring an academic accommodation due to a disability should let his or her faculty member know as soon as possible. Students who need academic accommodations based on the impact of a disability will be encouraged to contact the Disability Resource Center if they have not done so already. The Disability Resource Center is located in the 4th floor of the Health Services Building, and can be reached at 815-753-1303 [v], 815-753-3000 [TTY] or email at drc@niu.edu

Undergraduate Writing Awards

The Department of Political Science recognizes, on an annual basis, outstanding undergraduate papers written in conjunction with 300-400 level political science courses or directed studies, such as independent studies or honors theses. Winners are expected to attend the Department’s spring graduation ceremony where they will receive a certificate and a check for \$100.00. No more than two papers may be submitted by a student. There is no requirement as to the length of papers submitted for the award. Often the Department awards prizes for both an outstanding short paper and an outstanding long paper. The number and types of award is dependent upon the papers submitted for consideration in any given year. Authors do not have to be political science majors or have a particular class standing. Only papers written in the previous calendar year are 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. Papers can be submitted by students or faculty and must be supplied in triplicate to the undergraduate secretary. All copies must have two cover pages – one with the student's name and one without the student's name. Papers are not to be stapled or bound. Instead, please use paper clips. Papers are generally due in March and notice of call for papers and submission deadlines will be published on the Department's Facebook page. You may also contact the department for information at 753-1015.

Department of Political Science Web Site

Undergraduates are 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>. For the most up-to-date information on scholarships, internships, and other department news, I encourage you to “like” the department on Facebook (<https://www.facebook.com/NIU.PoliticalScience>) or follow us on Twitter (@niupols).

Plus/Minus Grading System

Grading symbols that may be used from Fall 2013 onwards for undergraduates are these: A, A-, B+, B, B-, C+, C, D, and F. No other grade options were endorsed by the University Council.

Frequently Asked Questions information from the NIU Registration and Records website is available at: <http://www.niu.edu/regrec/grading/gradingfaqs.shtml>

Departmental Classroom Decorum Statement Adapted for this Course

Students are to arrive at class on time. Students are to remain for the entire session unless excused by the professor beforehand or confronted with a serious personal emergency. For instance, it is not acceptable for students to walk in and out of class to answer cell phones, take casual bathroom and smoking breaks, or attend to other personal matters. Cell phones, pagers, or any electronic devices that make noise must be *turned off* during class unless the instructor has been notified beforehand of a special circumstance (e.g., sick family member, pregnant wife, special childcare situation, etc.). No one should talk while someone else is talking; this includes comments meant for a classmate rather than the entire group. What may seem like a whisper or a harmless remark to one person can be a distraction to someone else, particularly in a small room. Overall, classroom dialogue and behavior should always be courteous, respectful of others, and consistent with the expectations set forth by the university.

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

Fourth Amendment Searches and Seizures

POLICE POWER, CRIME CONTROL, AND CIVIL LIBERTIES

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

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.

WEEK 2 THE EXCLUSIONARY RULE

NOTE: NO CLASS MONDAY, JAN. 20th, MARTIN LUTHER KING DAY

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

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, FEBRUARY 10TH

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")

Minnesota v. Dickerson (1993) ("stop and frisk" must be a "strictly circumscribed" search) **(ON E-RESERVES)**

Florida v. J.L. (2000) ("stop and frisk" on anonymous tips)
(ON E-RESERVES)

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

Arizona v. Johnson (2009) (search of auto passenger—guns)
(ON E-RESERVES)

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

**WEEK 6 MIDTERM #1 DUE AT BEGINNING OF CLASS ON
MONDAY, February 17th**

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)

Kentucky v. King (2012) (exigent circumstance for warrantless searches—destruction of evidence) **(ON E-RESERVES)**

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)

United States v. Davis (2009) (DNA on clothes left at hospital)
(ON E-RESERVES) Extra Credit Opportunity

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

U.S. v. Quon (2010) (reasonable expectation of government employer viewing messages sent on government issued pager)
(ON E-RESERVES)

Guest v. Leis (2001) (email) **(ON E-RESERVES)**
Extra Credit Opportunity

United States v. Perrine (2008) (internet) **(ON E-RESERVES)**
Extra Credit Opportunity

U.S. v. Jones (2012) (GPS tracking of government suspect's vehicle)
(ON E-RESERVES)

WEEK 9 NO CLASS MARCH 9-16TH, SPRING BREAK

WEEK 10 SEARCHES IN THE ADMINISTRATIVE STATE

NOTE: MIDTERM #2 HANDED OUT AT END OF CLASS ON MONDAY, MARCH 17TH

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 11 DRUG TESTING AND STRIP SEARCHES

NOTE: MIDTERM #2 DUE AT BEGINNING OF CLASS ON MONDAY, MARCH 24TH

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* (Aspen Publishers, 2009), 1017-28.

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 12 ADVOCACY OF REVOLUTION

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 13 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 14 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, “Speech on Public Property: The Public Forum” and
“Regulating the Public Forum,” *Constitutional Law*, 1266-74.

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)
(ON E-RESERVES)

WEEK 15 *City of Ladue v. Gilleo* (1994) (residential signs)

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

WEEK 16 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 17 FINALS

NOTE: FINAL EXAM, MONDAY, May 5TH, 2:00-3:50 P.M.; GOOD LUCK!