

POL-301-B
CIVIL LIBERTIES
Fall 2016 TR 2-3:20 PM

Instructor: Whitney Manzo

Office Hours: MW 10-11 AM, TR 1-2 PM, or by appointment

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Course Description

The law and practice of constitutional interpretation with a focus on civil liberties and the bill of rights. The case method and intensive discussion are used to introduce the process of legal reasoning and disciplined analytic thinking.

Course Goals

This course will explore what the US Constitution says and how it has been interpreted by the courts. We will discuss how to read and analyze legal opinions, how to trace the development of civil liberties law, and how to apply this knowledge to fictional cases, which is very useful practice for those students who wish to attend law school. The course learning outcomes are for you to:

1. Study the Bill of Rights and its implications for American citizens in some detail. (Social Science learning outcome #1)
2. Develop your capacity for detailed analysis of complex materials and the construction of logical arguments in written form. (Social Science learning outcome #3)
3. Learn the principles of legal reasoning by reading & analyzing Supreme Court cases.
4. Improve your writing skills by writing and revising case briefs. (Social Science learning outcome #2)
5. Take tests (open notes) which measure your ability to apply known principles to novel situations and reach logically defensible conclusions. (Social Science learning outcome #3)
6. Learn about legal careers and how to prepare for law school.

Texts

Constitutional Law for a Changing America: Rights, Liberties, and Justice (9th ed) by Epstein and Walker. ISBN-13: 978-1-5063-3348-9.

Additional material may be placed on Blackboard.

Other Required Materials

Access to the internet, a word processing program, and Meredith gmail (you should check this every morning)
3 blue books for written exams

Grades and Assignments

10%	Attendance
15%	Class Participation
15%	Prediction Paper
30%	Written Exams (3)
<u>30%</u>	Case Briefs
100%	Total

Attendance: Attendance is expected at all class meetings, and I will be taking attendance each class period. If you miss class, you will miss important material that may be on an exam and you can't participate in class discussion. The attendance portion of your grade will be allocated as follows:

Perfect attendance: Full 10/10

1 unexcused absence: 9/10

2-3 unexcused absences: 8/10

More than 3 unexcused absences: 0/10

To possibly have an absence excused, you must email me a note with the date and reason for absence by the beginning of the next class (I will not accept paper notes).

Class Participation: This grade includes but is not limited to contribution to class discussion, active participation in group work/group assignments, in-class presentations, and short papers.

Prediction Paper: On **November 29**, you will turn in a paper which will predict how a current civil liberty case that is before the Supreme Court will be decided. You must pick ONE of the listed cases (no others). There will be three major components of your paper:

1. A discussion of the three theories of judicial decision making we outlined at the beginning of the semester: what does each theory say is important in judicial decision making, what are the pros and cons of each theory, and critique each theory's practical implications. These are important to understand and outline well because you will be using one of the theories to predict a judicial decision.
2. A brief outline of the case you've chosen: describe the civil liberty the case addresses, each side's argument, and the evidence for each side's argument. In this section you should also include important precedents that the justices might use when justifying their decision, and how they relate to the case you've chosen.
3. Your best guess as to how FOUR of the nine justices would decide the case, using one of the three judicial decision making approaches outlined in the first section of your paper. This requires a defense both of the theory you choose to use (why do you like that theory best?) and of your predictions for the four justices you have chosen (why do you think they will decide that way?).

Cases you may choose from:

1. *Pena-Rodriguez v. Colorado*, docket no. 15-606, set to be argued October 11, 2016: Impartial jury case (Do Colorado's rules about juror testimony bar evidence that could be presented to prove violation of an impartial jury?)
2. *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, docket no. 15-577, argument date not yet set: Freedom of religion case (Does the exclusion of a church from receiving state money for a secular program violate the 1st amendment's freedom of religion clause and the 14th amendment's equal protection clause?)
3. *Moore v. Texas*, docket no. 15-797, argument date not yet set: 8th amendment case (Does it violate the 8th amendment's prohibition on cruel and unusual punishment and the previous ruling of *Atkins v. Virginia* to prohibit usage of current medical standards regarding measurement of intellectual disability?)

Guidelines:

1. 6-8 pages in length, double spaced, normal margins, 12 point Times New Roman font
2. Use citations, and use them liberally. DO NOT PLAIGIARIZE- I will not hesitate to report you to the Honor Council and assign you a grade of 0 if I find that you cheated in any way on this assignment. If you need help correctly formatting a bibliography, there are several free websites that show you how to cite different sources (like the Purdue OWL). Use the Chicago Manual of Style, as it is the most commonly used citation style in the social sciences.

- a. Examples of acceptable citations: Scholarly articles from journals and law reviews, books, newspaper articles, reputable websites (ACLU.org, supremecourt.gov)
 - b. Examples of unacceptable citations: Other classmates' work, Last Week Tonight, disreputable websites (Wikipedia.org, some random guy's Supreme Court blog)
3. A grading rubric for this assignment will be made available to you on MyMeredith.

Written Exams: There will be three short answer/essay exams throughout the semester. It is your responsibility to provide the blue books for these exams, and you must write them in pen.

Case Briefs: For each class meeting, you will bring **two** paper copies of a brief of the case that is in **bold**: one to be graded, and one for you to take notes on as we discuss it. I strongly encourage you to brief every case we will discuss, as these are the only notes that you may use to assist you during exams, but only the bolded one is required. Most of the cases I ask you to brief will be found in your textbook, but some may only be found in other sources (the library or online at the Supreme Court's website, for example). Briefs that are turned in will be graded on a scale of 1 (lowest) to 10 (highest). The lowest grade of these will be dropped.

HOW TO BRIEF A CASE

Briefing cases is the key to success in this course and in learning legal reasoning. The first step is to read the case carefully, underlining things that seem to be significant and placing a question mark where you don't understand. Difficult cases will require repeated readings before you brief them. A brief is a brief summary of the important elements of a case. Brevity is important; briefs should be no longer than 2 pages. Overly long briefs will lose points.

Please use the following form as a guide for your brief and number the sections as they are numbered here. You will not necessarily be able to answer every question for each case. Do as much as you can. Issues, holdings and precedent are the most important elements of the brief and should be included for every case.

STYLE , CITE & DATE– This should be the title of your brief. For example:

- | | |
|--------------------------------|---|
| <i>Schenck v United States</i> | - Parties to the case - plaintiff v defendant (on appeal) |
| 249 US 47 | - Legal citation – volume 249 of the official US Reports at page 47 |
| 1919 | - Year the decision was handed down |

1-FACTS OF THE CASE & LAW THAT APPLIES - Summarize the key facts which are central to the dispute between the parties. Also include the relevant laws or parts of the Constitution that apply to the case. The specific language of the law, precisely what it makes illegal, generally determines what the key facts are.

2-LEGAL HISTORY OF THE CASE - In order to understand cases you need to clarify their current procedural status. This depends on actions taken by earlier (usually lower) courts. Summarize previous trial and appellate court action. The key question is usually who won in the lower court. The loser will be the plaintiff on appeal and his/her name will appear first on the case. In *Schenck v US*, Schenck lost in lower courts and is the plaintiff on appeal. This case began in District court as *US v Schenck*.

3-ISSUE(S) - The aim is to incorporate key facts and legal rules (often including particular language) into a **one sentence statement** of the conflict between the parties. This is the key step in briefing a case and other steps depend on it (particularly steps 1 & 4).

If a case involves more than one issue, answer steps 3, 4 & 5 separately for each issue. Label the first issue 3A then immediately do steps 4 and 5 as they apply to that issue. Then return to the second issue 3B and follow it with 4B and 5B, etc.

If you are having trouble understanding a case it may help you to formulate tentative questions and re-read the case closely with those questions in mind to see if it helps you pick out key facts and understand the holdings.

Tip: The issue should take the form of a question and the more specific the better. Rather than asking, “Can this speech be punished?” ask “Does it violate the 1st amendment to punish the defendant for saying/publishing ... on the grounds that ...?”

4-HOLDING(S) & VOTE - This is the court's answer to the question or issue posed by the case. Usually, this will only be yes or no, but sometimes the answer is a bit more complex.

Include the vote on Supreme Court decisions. Examples: 9-0, 5-4, etc.

5-REASONING - Identify the major reasons which the court gives for its holding. This places this case in context and helps you predict actions of the court in other cases. Identify each line of reasoning used to justify a holding and summarize it. When possible, copy and paste the court's actual language, if it's brief enough. Do not reproduce the entire decision. It can be extremely difficult to distinguish holdings from reasoning and even experts sometimes disagree. Do the best you can.

Tip: The holding resolves the issue, reasoning justifies the holding.

Be sure not to report a dictum as reasoning. Dicta are statements in decisions that look like holdings, but which are not necessary to resolve this particular case. This is another difficult distinction to make, but important because dicta are not legally binding.

6-JUDGMENT - This is the result of the case and is usually found at the end of the opinion. It is generally stated in terms of whether the lower court action is sustained or overruled.

7-CONCUR/DISSENT- These opinions have no legal force, but they can help you understand the holdings and the reasoning. Your aim is to summarize what is distinctive about each of these opinions in a sentence or two.

Tip: Always try to answer the question, “Why didn't this justice join the majority opinion?”

8-PRECEDENT - Relate the holding in this case to other cases in the same area. What new ground does it break? Does it overrule or modify previous decisions? How widely does the decision apply? This depends on the jurisdiction of the court making the decision and whether the decision is based on statute or on the Constitution.

Because briefs will be collected and graded, it is important that they be your own work. You are encouraged to discuss cases with other students, but briefs must be entirely your own work. Copied briefs are honor code violations and will be treated as such.

Included in the Case Briefs grade will be a presentation of a case in the second half of the semester. Students will choose a case from a list provided by the instructor and brief the case for the class. Your grade will consist of breadth of information covered, quality of presentation, and the quality of one in-depth question you pose for the class to discuss.

Grade Breakdown	A: 90-100%
	B: 80-89%
	C: 70-79%

D: 60-69%
F: 59% or lower

Class Policies

Makeup Work: You may make up a missed exam if you have a valid excuse and notify me (preferably in advance) that you will be absent. Late briefs and prediction papers will be accepted with a letter grade dropped for every day the paper is late.

Inclement Weather: You can expect for us to hold class unless the school closes due to unsafe conditions. You can check the Meredith inclement weather line at (919) 832-8878 and/or your Meredith email for school closure messages. I do not want you to risk your life to get to class, but I will not allow make up work for anything you miss, so final judgment on this matter rests in your hands.

Food and Drink: Food and drink will be allowed so long as they do not become distracting.

Classroom Etiquette: We will have lots of discussion in this course, and politics is by nature highly contentious. However, it is essential that every student be polite and courteous to other students, even if they are expressing views that offend or anger you. I will encourage scholarly debate of justifiable opinions, but not disparaging remarks or personal attacks. If I feel you have crossed the line, you will be asked to leave class and your participation points will be marked down.

Laptops and Cell Phones: Laptops will NOT be allowed in this class. This is a discussion-heavy course and all attention will need to be focused on our conversations and analyzing cases. Similarly, cell phone usage is banned during class time except for extreme emergencies.

Extra Credit: Any extra credit offered will be at my discretion.

Academic Dishonesty: Cheating on any assignment, quiz, or exam in this class is **absolutely forbidden** under the Meredith Code of Honor, which is printed below. If any academic dishonesty is discovered, I will not hesitate to take appropriate action. Possible punishments for this class include a failing grade on the assignment/quiz/exam, failing grade for the course, and a mark on your permanent record. There may also be additional punishments from the Meredith Honor Council. Long story short- **DON'T DO IT!**

Meredith Honor Code

We, the Meredith Community, are committed to developing and affirming in each student a sense of personal honor and responsibility. Uncompromising honesty and forthrightness are essential elements of this commitment. The Honor System is a method by which individual honors are protected and maintained. Any dishonorable action will be regarded as a violation of this commitment, and corrective action will be taken.

If I am in violation of the Honor Code, to prevent jeopardizing the Honor System or weakening our system of self-government, I have an obligation to report myself to the proper authorities. If I am aware of a violation of the Honor System by another student, I shall call this matter to the attention of that student as a violation of responsibility to the community.

In choosing Meredith College, I am accepting the Honor System as a way of life. As a Meredith student, I am responsible for insuring that the Honor System is at all times carried out.

Disability Statement

Reasonable accommodations will be made for students with documented disabilities. In order to receive accommodations, students must go through the Counseling Center/Disability Services office. Disability Services is located in Carroll Hall and can be reached at (919)760-8427 or disabilityservices@meredith.edu. For additional information see the website at http://www.meredith.edu/on_campus_services/academic_and_support_services/disability_services/

Course Drop Dates

If you decide you cannot complete this course for whatever reason, you may withdraw. You must initiate this process with the Registrar's Office, I cannot do it for you. If you fail to meet the last drop date, you will receive a grade for this course, usually an "F".

Last day to drop without a "W": August 30, 2016

Last day to drop with a "W": November 4, 2016

Course Outline

Date	Topic	Readings and/or Assignments
August 25	Introduction	
August 30	Basics of the Supreme Court; the Legal Model; the Attitudinal Model	Pg. 10-35 and Segal and Cover (1989) on MyMeredith
September 1	The Strategic Model; Powers and Constraints of the Judiciary	Pg. 35-43, Chapter 2, and Wahlbeck, Spriggs, and Maltzman (1998) on MyMeredith
September 6	Intro to civil liberties law; free exercise clause	Cantwell v. Connecticut ; Sherbert v. Verner; Wisconsin v. Yoder
September 8	Free exercise, cont.	Employment Division, Dept. of Human Resources of Oregon v. Smith ; Locke v. Davey; Goldman v. Weinberger; Burwell v. Hobby Lobby Stores, Inc.
September 13	Establishment clause	Lemon v. Kurtzman ; Agostini v. Felton; Edwards v. Aguillard
September 15	Establishment, cont.	Engel v. Vitale ; School District of Abington Township v. Schempp; Van Orden v. Perry; McCreary County v. ACLU of Kentucky
September 20	Free association	Boy Scouts of America v. Dale ; Roberts v. United States Jaycees; Rumsfeld v. Forum for Academic and Institutional Rights, Inc.
September 22	Written Exam #1	
September 27	Dangerous speech	Schenck v. United States ; Gitlow v. New York; Dennis v. United States; Brandenburg v. Ohio

September 29	Offensive speech	Chaplinsky v. New Hampshire; Cohen v. California; Morse v. Frederick ; R.A.V. v. City of St. Paul, Minnesota
October 4	Symbolic speech	Tinker v. Des Moines Independent School District ; United States v. O'Brien; Texas v. Johnson
October 6	Autumn Recess- NO CLASS	
October 11	Symbolic speech, cont.	Citizens United v. Federal Election Commission ; McCutcheon v. Federal Election Commission
October 13	Commercial speech	Bigelow v. Virginia; Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. ; Central Hudson Gas and Electric Corporation v. Public Service Commission of New York
October 18	Obscenity	Roth v. United States; Miller v. California ; New York v. Ferber
October 20	Free press	Near v. Minnesota; New York Times v. United States ; Branzburg v. Hayes
October 25	Professor gone- NO CLASS	
October 27	Libel	New York Times v. Sullivan ; Hustler Magazine v. Falwell; Time, Inc. v. Hill
November 1	Right to keep and bear arms	Ch. 9; Presser v. Illinois; District of Columbia v. Heller ; McDonald v. Chicago
November 3	Written Exam #2	
November 8	Privacy	Griswold v. Connecticut; Roe v. Wade; Planned Parenthood v. Casey
November 10	Privacy, cont.	Stanley v. Georgia; Bowers v. Hardwick ; Lawrence v. Texas; Obergefell v. Hodges
November 15	Privacy, cont.	Vernonia School District 47J v. Acton; Chandler v. Miller ; Cruzan v. Director, Missouri Department of Health; Washington v. Glucksberg
November 17	Searches and seizures	Mapp v. Ohio ; Katz v. United States; Chimel v. California; California v. Greenwood
November 22	Searches and seizures, cont.	Arizona v. Gant; Riley v. California; Maryland v. King
November 24	Thanksgiving- NO CLASS	
November 29	5 th amendment	Miranda v. Arizona ; Berkemer v. McCarty; Illinois v. Perkins Prediction Paper due
December 1	Right to counsel	Gideon v. Wainwright ; Escobedo v. Illinois; Brewer v. Williams
December 6	8 th amendment	Gregg v. Georgia; Coker v. Georgia; Atkins v. Virginia
December 13	Written Exam #3 from 1-4 PM	

The instructor reserves the right to amend this syllabus as necessary.