

POLITICAL SCIENCE 4351
CONSTITUTIONAL LAW: CIVIL LIBERTIES
Spring 2009

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Required textbook: Lee Epstein and Thomas G. Walker, Constitutional Law for a Changing America: Rights, Liberties, and Justice, 6th Edition (2007).

Tentative Dates:

January 12-14: Preview of course (study the syllabus).

January 15-22: Understanding SCOTUS. Read pages 10-47; 49-52; 55-69.

January 23-February 19: The First Amendment. Read pages 210-313.

February 20-28: Freedom of the Press. Read pages 314-345.

March 1-9: Obscenity. Read pages 347-380.

March 10-16: Libel. Read pages 380-401.

March 17-April 7: Racial Discrimination. Read pages 617-660.

April 8-17: Affirmative Action: Read pages 708-735.

April 18-May 4: Sex Discrimination. Read pages 660-686

Course Work:

January 23: Test over SCOTUS (10%).

February 20: First assignment due (30%).

March 31: Second assignment due (30%).

May 4: Third assignment due (30%).

University Dates:

January 12: Classes begin

January 16: Last day to register, add/drop classes

January 19: Martin Luther King holiday

March 23-28: Spring Break

April 10: Last day to drop a class and receive a final grade of “W.”

May 4: Last day to withdraw from the semester and receive final grades of “W” in classes.

Students with disabilities: It is the policy and practice of *the University of Arkansas at Little Rock* to create inclusive learning environments. If there are aspects of the instruction or design of this course that result in barriers to your inclusion or to accurate assessment of achievement such as time-limited exams, inaccessible web content, or the use of non-captioned videos—please notify the instructor as soon as possible. Students are also welcome to contact the Disability Resource Center, telephone 501-569-3143 (v/tty). For more information, visit the DRC website at www.ualr.edu/disability.

COURSE GRADING STANDARDS:

Each Grade Level description refers to a level of understanding appropriate for junior and senior college students.

Grade Level A: Students demonstrate an excellent understanding of all the basic facts, concepts, and theories of the course and are able to grasp and anticipate many of the subtle inferences associated with Supreme Court cases.

Grade Level B: Students demonstrate a solid understanding of most of the basic facts, concepts, and theories of the course and are able to perceive some of the subtleties associated with Supreme Court cases.

Grade Level C: Students demonstrate an adequate working knowledge of most of the basic facts, concepts, and theories of the course.

Grade Level D: Students lack an adequate working knowledge of most of the basic facts, concepts, and theories of the course.

Grade Level F: Students display gross deficiencies in knowledge or fail to complete course requirements.

The numeric grading scale:

90-100=A; 80-89 = B; 70-79 = C; 60-69 = D; zero-59 = F.

Learning Objectives by Topic:

Learning Objectives for SCOTUS:

To be able to explain:

- How cases are appealed to the Supreme Court.
- How the Supreme Court selects cases to hear.
- The role of briefs, oral arguments, and opinion assignment.
- Original intent, literalism, Textualism II (what words meant when written), logical reasoning, polls or other jurisdictions, stare decisis, balancing, and cost-benefit analysis.
- Judicial Review: Marbury v. Madison (1803).
- Original and appellate jurisdiction.
- Justiciability.
- Why no advisory opinions?
- Why no collusive suits?
- Ripeness, mootness, political questions, and standing to sue.

Learning Objectives for the First Amendment

To be able to explain:

- How the rise and fall of foreign and domestic threats and emergencies influenced the Supreme Court in deciding cases involving radical or dangerous speech.
- How the Supreme Court developed and applied the Bad Tendency doctrine and the Clear and Present Danger test for World War I anti-draft and anti-war speech cases in Schenck v. United States (1919) and Abrams v. United States (1919).
- How the Court dealt with speech advocating the overthrow the government in Gitlow v. New York (1925).

- The bad tendency doctrine and Justice Oliver Wendell Holmes' clear and present danger test.
- Justice Harlan F. Stone's preferred freedoms doctrine.
- Justice Felix Frankfurter's ad hoc balancing approach.
- How the start of the Cold War resulted in a Supreme Court that was more favorable to restrictions on free expression by Communists and fellow-travelers.
- Chief Justice Fredrick Vinson's use of the clear and probable danger test in *Dennis v. United States* (1951).
- The factors leading the Supreme Court to turn away from its Cold War rulings and adopt approaches more protective of speech.
- The very speech-protective test used in *Brandenburg v. Ohio* (1969).
- The difference the Supreme Court draws between speech and conduct.
- The concepts of (1) restrictions of the time, place and manner of speech; (2) symbolic speech; (3) narrow construction/overbreadth; (4) vagueness/void for vagueness; (5) chilling effect; and (6) prior restraint.
- The symbolic speech cases of *United States v. O'Brien* (1968), *Tinker v. Des Moines Independent Community School Dist.* (1969), and *Texas v. Johnson* (1989).
- The differences between *Tinker v. Des Moines* and *Morse v. Frederick* (2007), the "Bong Hits 4 Jesus" case at: <http://www.supremecourtus.gov/opinions/06pdf/06-278.pdf>
- How *Chaplinsky v. New Hampshire* (1942) defines fighting words.
- Why Paul Cohen's offensive expression did not disturb the peace or otherwise violate the law in *Cohen v. California* (1971).
- Why St. Paul's hate speech ordinance could not be used to punish Robert A. Viktora's cross-burning in *R.A.V. v. City of St. Paul* (1992).
- Why *Wisconsin v. Mitchell* (1993) allowed sentence enhancements for crimes motivated by hate and how that Wisconsin law differed from R.A.V.'s ordinance.
- The meaning of the right not to speak, the right to be free of government compelled speech.

- The reasoning of Justice Robert Jackson in *West Virginia State Board of Education v. Barnette* (1943).
- The reasoning in *Rumsfeld v. Forum for Academic and Institutional Rights* (2006).
- The First Amendment protection of commercial speech versus political speech.
- The Central Hudson test for commercial speech (*Central Hudson Gas and Electric Corporation v. Public Service Commission of New York* (1980)).

Learning objectives for Freedom of the Press

To be able to explain:

- Why the Court majority in *Near v. Minnesota* (1931) determined that the Minnesota law was a prior or previous restraint on publication that violated the First Amendment.
- Why the government lost its case in *New York Times v. United States* (1971) despite its argument that continued publication of the classified Pentagon Papers would damage national security, one of the prior restraint exceptions allowed in *Near*.
- Why the Supreme Court accepted the idea that the high school principal could censor the school paper as decided in *Hazelwood School District v. Kuhlmeier* (1988).
- Why the Court said that the government could not force a newspaper to give column-inches to a political candidate for a reply to newspaper criticism as decided in *Miami Herald v. Tornillo* (1974).
- Why the Court said that the FCC could force a broadcaster to give reply airtime to a person who has been personally attacked as decided in *Red Lion Broadcasting v. FCC* (1969).
- Why the Court said that journalists have no First Amendment right to refuse to give testimony to a grand jury as decided in *Branzburg v. Hayes* (1972).

Learning Objectives for Obscenity:

To be able to explain

- How the Court defined obscenity in *Roth v. United States* (1957), and how that definition differed from the much older *Hicklin* test.

- The problems the Court experienced in defining obscenity after Roth that led to its “count-the-votes” approach to obscenity started by *Redrup v. New York* (1967).
- How Chief Justice Warren Burger used a 5-4 majority in *Miller v. California* (1973) to settle many of the unanswered questions in obscenity law.
- The First Amendment limits on obscenity laws defined in *Miller v. California*. (How does Miller define obscenity?)
- How the Court in *New York v. Ferber* (1982) justified banning materials depicting children engaged in sexual activities even if the images were not obscene as defined by *Miller v. California*.
- The definition of child pornography in *Ferber*.
- The reasoning for creating child pornography as a new category of unprotected speech.
- How the Court’s definitions of obscenity in *Miller* and child pornography in *Ferber* led the Court to strike down the Child Pornography Prevention Act of 1996 in *Ashcroft v. Free Speech Coalition* (2002).
- Why the Court struck down the indecent transmission and patently offensive portions of the Communications Decency Act of 1996 in *Reno v. American Civil Liberties Union* (1997).

Learning objectives for libel

To be able to explain:

- The civil rights struggle behind the case of *New York Times v. Sullivan* (1964) and what Sullivan’s Alabama libel judgment against the New York Times would have done to the ability of citizens to criticize the conduct of public officials and newspapers to carry reports critical of public officials.
- The legal elements and meaning of the “actual malice” standard for libel cases brought by public officials as established by *New York Times v. Sullivan*.
- The Supreme Court’s assumption in the *New York Times* case that democracy requires “uninhibited, robust, and wide-open debate” on public issues that should not be chilled by libel suits brought by public officials.
- Why the Times standard for libel cases was expanded to apply to “public figures” in *Curtis Publishing Company v. Butts* and *Associated Press v. Walker* (1967).

- Why the Court expanded the Times standard for libel cases to include press coverage of private individuals who are involved in matters of public or general interest in *Time, Inc. v. Hill* (1967) and *Rosenbloom v. Metromedia* (1971).
- Why the Court retreated from the *Time v. Hill* and *Rosenbloom* “matters of public interest” test in the cases of *Gertz v. Welch* (1974) and *Time, Inc. v. Firestone* (1976).
- Why the Court thinks private individuals deserve more legal protection from libel than public officials or public figures, as explained in *Gertz*.
- The standard the Court used in *Gertz* to explain how one becomes a “public figure” for libel suits (generally famous and limited purpose or vortex public figures) and how it applied that test to claims that *Gertz* and *Firestone* were public figures.
- How the Court applied the New York Times standard to public figures seeking tort damages for intentional infliction of emotional distress in *Hustler Magazine v. Falwell* (1988).

Learning Objectives for Racial Discrimination.

To be able to explain:

- The events that led to the Thirteenth, Fourteenth, and Fifteenth Amendments.
- The Thirteenth, Fourteenth, and Fifteenth Amendments.
- The Equal Protection Clause of the Fourteenth Amendment.
- The difference between “invidious discrimination” and acceptable or legitimate discrimination.
- The rational basis test, the intermediate (heightened) scrutiny test, and the strict scrutiny (suspect class) test for cases involving the Equal Protection Clause of the Fourteenth Amendment.
- The Civil Rights Cases (1883) and the “state action” requirement to enforce the Equal Protection Clause. (Private actors are not covered by the Clause.)
- The difference between de jure and de facto segregation.
- Why the Supreme Court found state action in *Burton v. Wilmington Parking Authority* (1961) but not in *Moose Lodge No. 107 v. Irvis* (1972).

- The Court's "separate but equal" interpretation of the Equal Protection Clause announced in Plessy v. Ferguson (1896)
- The reasoning of the Court that led to the enforcement of "equal" in separate but equal in Sweatt v. Painter (1950).
- The reasoning of the Court that ended separate but equal in Brown v. Board of Education (1954)
- How the Court defined the power of federal district courts to end de jure segregation in Brown II (1955) and Swann v. Charlotte-Mecklenburg Board of Education (1971).

Learning Objectives for Affirmative Action

To be able to explain:

- The use of race in university admissions without a finding of racial discrimination by the university as decided in Regents of the University of California v. Bakke (1978) and the companion cases of Gratz v. Bollinger (2003) and Grutter v. Bollinger (2003).
- The voluntary use of race in school assignments to reduce the effects of de facto residential segregation in Parents Involved in Community Schools v. Seattle School District No. 1 (2007):
<http://www.supremecourtus.gov/opinions/06pdf/05-908.pdf>

Learning Objective for Sex Discrimination

To be able to explain

- How the judicial standard for judging sex discrimination claims under the Fourteenth Amendment changed from rational basis review to the heightened scrutiny test in Reed v. Reed (1971), Frontiero v. Richardson (1973), and Craig v. Boren (1976).

