This course will examine the protections given to civil rights and civil liberties by the United States Constitution. The course has three related objectives: the first is to provide students with a solid grounding in the subject matter under examination: the legal protections afforded civil liberties by the federal constitution. The second objective is to give you experience in formulating and writing a systematic argument in support of a position on a current case before the Supreme Court. It is this aspect of the course that allows it to fulfill the departmental and university writing requirement. The final objective of the course is to provide training in logical analysis and precision in thinking, speaking and writing. This objective will be fulfilled more or less automatically as we fulfill the first and second. As students prepare for class, however, and when examinations and the paper are written, this objective should be borne in mind; I expect you to exercise care in thinking through the issues raised in the class, in preparing for class sessions, and in your written and oral communication. Be warned: I will be picky in evaluating your written and oral communications!

The reading materials for the course will be U.S. Supreme Court opinions. Class sessions will consist of structured discussion of assigned cases. Students will be called upon at random with questions regarding the material assigned for that date. The point of this teaching method is not to intimidate students but rather to encourage daily preparation, to hone analytical skills, and to involve students in an active analysis of course material rather than a passive absorption of my assessment of it.

We will be examining a number of controversial questions in which there is no "right" (i.e. correct) answer. You will be expected to understand the issues raised and form your own conclusions. This endeavor places a number of demands on both student and instructor. It requires the instructor to be flexible in the conduct of class, to allow, within limits, for discussion to move in uncharted directions; it requires something different than a recitation of last year's lectures. For the student, it requires the very real grind of class preparations. I will expect you to have read and thought about the materials assigned for each class session before class. I will present points of view; I will argue with you; I will NOT offer you a predigested series of facts and judgments for you to memorize.

1. **Books to be purchased:**
   Sullivan & Gunther, Constitutional Law, 15th or 16th ed. (Page numbers are indicated on the course outline for both editions; if you use the 15th, which you can probably find used at a considerable discount, you’ll have to read some of the cases in eres.)
   additional cases, available through the library’s “ereserves” website, listed under reference materials for RPOS 427; this material can be downloaded and printed at home or at school.

2. **Course requirements:**
   a. daily preparation: as indicated above, each class session will consist of discussion of cases assigned for that day on the course outline. Students will be called upon a random to answer questions concerning the assigned
material. It is essential that students come to class fully prepared. Full preparation includes making a written brief of each case assigned and reviewing the relationship of the cases to previously covered cases. (A description of how to brief cases is attached to this syllabus.) You will probably need to spend an average of two hours preparing for each class, probably more at the beginning. If you cannot make this kind of commitment on a regular basis, please do not remain in the class.

b. unannounced quizzes: as an added inducement to encourage regular class attendance and careful preparation, (and to give me an idea of how well the class is understanding the cases) there will be seven unannounced quizzes held on the assigned cases throughout the semester. To encourage you to prepare carefully written briefs, you will be able to use briefs -- but not casebooks -- in the quizzes. Because the essence of a “pop” quiz is the fact that it is unannounced, quizzes cannot be made up under any circumstances. (For the same reason, I obviously cannot tell students prior to class whether a quiz will be held on any particular day, regardless of how compelling the reason for a proposed absence. Please don’t ask me.) However, only the best five of the seven will count in your course grade. You will thus have the opportunity to drop your lowest two quiz grades, whether these grades are zeros because you missed class for some reason -- good or bad -- or are simply grades that are lower than the others you earned. Again, the presence of these quizzes strongly argues against your staying in the class if you expect to miss many classes throughout the semester or have a schedule that will not allow you to prepare regularly.

c. mid-term examination: the mid-term examination will be held in class on the date indicated in the course outline.

d. final examination: students will take a comprehensive final exam on the date set out in the university final exam schedule. All exams will consist exclusively of essay-type questions.

e. paper: the paper assignment for the class will consist of an “opinion of the court” in a case that is currently pending before the U.S. Supreme Court. I will give information regarding this case in February – how you can locate briefs, the lower court decisions, any record of oral arguments, etc. This is not a typical term paper in that you will be required not only to do research, but also to make a clear argument in support of the decision you believe the Supreme Court should make in this case. This paper will require substantial thought, planning, and work on line and in the library; I expect the final product will probably be in the neighborhood of 15-20 pages in length. More on this later in the semester.

f. class participation: 50 points will be assigned to students based on class preparation, attendance, and class participation. I will circulate an attendance/preparation sheet each day; students should sign the sheet ONLY if they are fully prepared for class and if they are in their seat when the sheet is circulated; students who are late – whatever the reason – may not sign the sheet. I will call on students randomly if they have signed the sheet. If a student signed the attendance/preparation sheet but is not prepared, 10 percent (5 points) will be deducted from their class participation grade.
3. Grades:

Grades will be based on the following:

<table>
<thead>
<tr>
<th>Component</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-term exam</td>
<td>50</td>
</tr>
<tr>
<td>Quizzes</td>
<td>50</td>
</tr>
<tr>
<td>Final examination</td>
<td>75</td>
</tr>
<tr>
<td>Paper</td>
<td>75</td>
</tr>
<tr>
<td>Class participation</td>
<td>50</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>300</strong></td>
</tr>
</tbody>
</table>

In the past, the median grade in this class has been between C+ and B-.

4. Academic dishonesty:

Cheating on examinations will result in a grade of zero for the relevant exam. Plagiarism on papers -- that is, submitting a paper that is either all or in part someone else's work that is not specifically attributed to that person -- will similarly result in a grade of zero. Under these circumstances, a passing grade in the course will be highly unlikely. Students should be especially careful to footnote all sources from which quotations and/or ideas come. Obviously, "cutting and pasting" from the internet is plagiarism; it is also easy to detect. Paraphrasing someone else's writing does not relieve you of the necessity of attributing the ideas to their source. *When in doubt, footnote.* As a matter of policy, the instructor will refer all cases of academic dishonesty to the relevant university bodies.

The paper assignment for the course will be submitted both in writing and to the “TurnItIn” website. This website is a protection to students who do their own work, as it identifies papers that have been plagiarized from a huge database of past student papers, internet sources, and databases of scholarly books and journals. *This is a requirement of the course; if you do not wish to submit your paper to TurnitIn, please do not stay in the course, as I will not grade a paper that has not been submitted electronically.* Instructions on how to submit the papers will be distributed later in the semester, along with the paper assignment.

5. Policy on makeup exams, late papers, and incomplete grades:

Because of the inherent unfairness of allowing unequal requirements for students in the same course, the instructor will grant special treatment regarding examinations and late papers only in the most extreme circumstances. *Makeup examinations and incomplete grades will thus be allowed only upon evidence of a serious health or family emergency, submitted to and approved by the Dean of Undergraduate Studies.* Late papers will be penalized without such evidence. In addition, incomplete grades will only be assigned if all work prior to the request has been complete and has received a passing grade.

6. A Note on “Academic Courtesy”:

This is a large, sometimes impersonal, university. But both professors and students need to exhibit common courtesy toward each other if the academic enterprise is to be successful. I hesitate to put this in a syllabus because it seems so obvious; the elements of courtesy in an academic setting are certainly not complex. But they have been degenerating of late and it is perhaps time that they be reinvigorated.

Students have a right to expect that their teachers will conduct their classes in a professional manner, will treat them as adults, will respect (though not necessarily agree with, or fail to challenge) their opinions.

Faculty have a right to expect that students will exhibit the same level of mutual respect. At a minimum, students should not engage in behavior that disrupts the class. *I therefore expect students to arrive at class on time, and to refrain from behavior (such as talking, eating, or wandering in and out of the classroom) that disrupts the class. Cell phones are particularly disruptive; please turn them off prior to class.* College classrooms are not movie theaters. The conduct of a university class takes concentration -- from both faculty and students -- and...
activities that disrupt that concentration show little respect either for the professor or for fellow students.

---

COURSE OUTLINE AND ASSIGNMENTS

All cases are to be found on the pages indicated in parentheses in Sullivan & Gunther; the first number is for the 15th edition, the second number the 16th. An asterisk (*) indicates the case is on the eres website and not in the particular casebook. Note: page numbers are for your convenience; if the location information is incorrect, it is your responsibility to find the case either in the casebook, in eres, or on the web.

I. What Rights Are Protected? Where Do They Come From?
   A. Origins of substantive due process
      1/29 Munn v. Illinois (*,*)
          Lochner v. New York (492, 366)
          Atkins v. Childrens Hospital (*,*)
          Meyer v. Nebraska (*,*)
      B. The first “death” of economic substantive due process
          1/31 Nebbia v. NY (503, 375)
          West Coast Hotel v. Parrish (*,*)
          US v. Carolene Products (507, *)
          Williamson v. Lee Optical (509, 379)
      C. Rebirth: the right to privacy and its limits
          2/5 Griswold v. Connecticut (546, 415)
          Bowers v. Hardwick (600, *)
          Lawrence v. Texas (602, 458)
   D. Abortion
      2/7 Roe v. Wade (558, 424)
          Planned Parenthood v. Casey (574, 434)
          Gonzales v. Carhart (*, 445)
   E. The right to die
      2/12 Washington v. Glucksburg (618, 472)

II. Freedom of Speech - Selected problems
   A. Seditious Speech
      2/14 Schenck v. U.S. (998, 754)
      Whitney v. California (1016, 772)
      Dennis v. U.S. (1023, 778)
      Brandenberg v. U.S. (1033, 785)
   B. Libel and Offensive Speech
      2/21 NY Times v. Sullivan (1056, 807)
      Cohen v. California (1043, 795)
   C. Symbolic Speech
      2/26 Tinker v. Des Moines (*,*)
      US v. O’Brien (1203, 947)
      Texas v. Johnson (1212, 956)
   D. Hate Speech + Chaplinskti(?)
      2/28 Chaplinsky v. New Hampshire (*,*)
      RAV v. St. Paul (1079, 827)
      3/4 Virginia v. Black (1090, 837)

3/6 MID-TERM EXAMINATION
IV. Equal Protection of the Laws

A. Introduction
3/11 Plessy v. Ferguson (*, *)
   Railroad Express v. NY (647, 625)
   Goesssaert v. Cleary (*, *)
3/13 San Antonio v. Rodriguez (873, 664)
   Cleburne v. Cleburne Living Center (818, 609)
3/18 Romer v. Evans (825, 615)
3/20 No class; work on term paper

B. Racial Discrimination
4/1 Brown v. Board of Education (673, 491)
   Loving v. Virginia (681)
   Washington v. Davis (688)

C. Affirmative Action
4/3 Regents, Univ. of California v. Bakke (708)
   Adarand v. Pena (750, 529)
   Grantz v. Bollinger (718, 534)
4/8 Grutter v. Bollinger (727, 542)

D. Gender-Based Discrimination
4/10 Craig v. Boren (775, 577)
   U.S. v. Virginia (781, 583)

4/15 *** TERM PAPER DUE IN CLASS ***

IV. Freedom of Religion
A. Establishment
4/17 Everson v. Board of Education (1581, 1334)
   Lemon v. Kurtzman (*, *)
   Mueller v. Allen (1584, 1341)
   Zellman v. Simmons-Harris (1599, 1356)
4/22 Lee v. Weisman (1553, 1297)
   Edwards v. Aguillard (1564, 1307)
4/24 Lynch v. Donnelly (1570, 1313)
   Allegheny v. ACLU (1575, *)
   McCrory County v. ACLU of Kentucky (*, 1324)
   Van Orden v. Perry (*, 1380)

B. Free Exercise
4/29 Braunfeld v. Brown (*, *)
   Sherbert v. Verner (*, 1266)
5/1 Employment Division v. Smith (1489, 1276)
   Church of Lukumi Babalu Aye v. Hialeah (1472, 1257)
   Locke v. Davey (1519, 1262)

5/6 REVIEW/CATCHUP
5/15 FINAL EXAMINATION 1-3 pm
BRIEFING JUDICIAL OPINIONS

Because Supreme Court cases comprise the major material covered in this course, and because reading judicial opinions requires a special kind of expertise that you should develop as you progress through the course, it is a course requirement that you prepare a brief outline of each case prior to the class session in which it is assigned. (One possible system is to set down your brief on half a folded sheet of paper, leaving the other half free for class notes. A similar result can be obtained by putting briefs on only one side of the page in a spiral notebook, leaving the side facing the brief for class notes.)

Briefs should be just what their name implies -- they should be brief abstracts of the cases in outline form. Read the case one or more times, brief it, and then make further notes during class and afterwards so that your completed brief is accurate and useful for further study. You will find your collection of annotated briefs essential as you prepare for examinations. Do not be surprised if this exercise takes you a good deal of time, especially at first. I usually read a case two or three times in the process of briefing it.

This is the standard briefing system:

(1) **Citation:** Title, page references from the U.S. Reports and your casebook, year of decision.

(2) **Relevant facts:** Events and situations that were essential to the Court in reaching its decision in the case and to the logic of its argument. Distinguish from background facts which may be discussed in class because of their interest, and from judicial interpretation of facts which should be included under "opinion." You generally do not need what happened to the case in lower court in this section. What is needed is a succinct description of the critical facts that led to the case and were critical to the court in reaching its decision. (See examples below).

(3) **The question(s):** The precise legal issue or issues which the Court addressed. The question should refer to the aspects of the factual situation which gave rise to the constitutional issue and to the specific constitutional clause being interpreted. Make sure you include in the question both the specific factual element of the case that gave rise to the constitutional challenge and the specific clause or clauses of the Constitution alleged to be violated. Formulation of the question is probably the most difficult and most important aspect of preparing the brief.

Two examples of facts and questions:

**Example 1:**

FACTS: A public high school forbade students from wearing black armbands to protest the war in Vietnam. Students who wore armbands in spite of the prohibition were suspended from school until they agreed to refrain from wearing the bands. A suspended student challenged his suspension in federal court, arguing that wearing an armband was "symbolic speech", and that his suspension was a violation of the freedom of speech protected by the First Amendment.

BAD QUESTION: "Was the school's action unconstitutional?" (This question doesn't specify the precise action being challenged or the constitutional provision being examined).

BAD QUESTION: "Does the First Amendment protect 'symbolic speech'?" (This is one of the broad questions of constitutional doctrine the court discussed in reaching its decision, it is not the precise legal question for purposes of the brief).
GOOD QUESTION: "Does a public high school's prohibition of students wearing armbands protesting the Vietnam war violate their freedom of speech as protected by the First Amendment?" (Note the inclusion of the fact that the school was public, was a high school, that the armbands were worn as a political protest, that the precise constitutional provision was the freedom of speech provision of the First Amendment.)

Example 2:

FACTS: A defendant charged with burglary in a state court did not have the funds to hire an attorney. He asked the court to supply him an attorney but the court refused. After attempting to defend himself at trial, he was convicted and sentenced to a prison term. He challenged his conviction, alleging that it violated his right to counsel protected by the Fourth Amendment.

BAD QUESTION: "Should the defendant get a new trial?" (This question doesn't indicate either the factual elements challenged or the applicable constitutional provision.)

BAD QUESTION: "Does the due process clause of the Fourteenth Amendment apply to state criminal proceedings?" (This question is a question of constitutional doctrine the court addressed in order to answer the ultimate question in the case. It is not the question itself.)

GOOD QUESTION: "Does a state trial court's refusal to provide counsel to an indigent defendant charged with a serious criminal offense violate his right to counsel as guaranteed by the Fourth and Fourteenth Amendments?"

(4) The Decision or Holding: The answer to the question -- usually simply a reformulation of the question in the affirmative or negative.

Example 1, above: "A public high school's prohibition of students wearing armbands protesting the Vietnam war violates their freedom of speech as protected by the First Amendment."

Example 2, above: "A state trial court's refusal to provide counsel for an indigent defendant charged with a serious criminal offense violates his right to counsel as guaranteed by the Fourth and Fourteenth Amendments."

(5) The Opinion: A brief outline of the reasoning of the justice who wrote the opinion of the court. This outline should be designed so that you can restate the argument clearly in class. In essence, it should provide the key points in an answer to the query: "What reasons did the Court give for answering the question as it did?" I strongly suggest that you use outline form, with the major sections of the opinion and points in the argument clearly identified.

(6) Concurring Opinions: Same as (5) for each concurrence, distinguishing the arguments.

(7) Dissenting Opinions: Same as (5) for each dissent, distinguishing the arguments.

It is essential that you learn to look at the cases from an analytical and critical point of view. You should constantly ask yourself "Does this argument make sense?", "What is the relationship of the facts and holding in this case to prior cases?" The key question you should ask of each case is, "Was this case decided correctly?"