Saint Joseph’s University  
Law, Student Liberties, and the Supreme Court  
Fall 2013  
Political Science 150FY  
Tuesdays and Thursdays 2-3:15p.m.  
Tuesdays and Thursdays 3:30-4:45p.m.  
Room XXX  
Dr. Susan P. Liebell  

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Course Description

Students have liberties – freedom of speech, religion, press, privacy – but courts often restrict student freedom when schools claim the need to restrict students in order to maintain an environment for learning. This course analyzes the evolving opinions and doctrines of the United States Supreme Court concerning the civil liberties of students. We will look at the right of students to wear arm bands to protest a war, wear long hair, hang signs that say BONG HiTS 4 JESUS, stay at school pregnant, receive corporal (physical) punishment, etc. We will also look at classic cases of race (e.g. racial segregation of elementary children), gender (e.g. Title 9), and discrimination against gays and lesbians (e.g. banning gays and lesbians from leading Boy Scout troops).

In each case, the Supreme Court must explain why and how the Constitution protects (or does not protect) the right of the individual or the power of the state. Justices who disagree with the majority of the Court may dissent – arguing for their interpretation. We will carefully read Supreme Court opinions and learn to brief (write summaries of the logic of) cases in order to explore how the Court reasons and argues for a particular interpretation of the Constitution. Once we have established the fundamentals of reading cases, I will ask you to assess the Court’s reasoning? Do you agree, for example, that students should be forced to salute the American flag even if their religion forbids it?

The highlight of the course will be a moot court. We will argue two cases that are currently before the Supreme Court. Students will research and present the issues as justices and attorneys. We will use the moot courts to practice research, writing, and argument skills as well as to deepen our understanding of the law.

On Tuesday, October 29th, there will be a mandatory event. For Constitution Day, we will help recreate a famous case, Tinker v. Des Moines from 11:15-1:00.

Learning Goals and Means of Achievement

● Students master the reading and interpreting of Supreme Court opinions. Students learn to read shortened and full texts of the Supreme Court opinions. Students master important areas of civil liberties law involving students. Students demonstrate their command of the material by writing multiple legal briefs and responding to questioning in class. In addition, exams test their basic knowledge of case studies, basic concepts, and comparisons of paradigms by using hypothetical cases as well as short essays.
• **Students develop writing skills.** Students write frequent legal briefs of cases learning 1) how to efficiently and clearly summarize the complicated logic of Supreme Court opinions and 2) how to place such reasoning in the contest of developing Supreme Court doctrines. Students write (based on their assignments) a full legal brief (10 pages) or a Supreme Court opinion (10 pages) as well as a reflection on the moot court as a whole.

• **Students learn to read scholarly review articles and do basic legal research.** Through an extensive moot court exercise, students gather information on one case currently before the Supreme Court. Students must read the original documents, create a brief, and argue the case orally before a group of student and faculty justices. In order to prepare for the Moot Court, students learn to use major legal databases and do basic legal citation.

• **Students develop oral presentation skills.** Students will present a ten-minute overview of the *New York Times* articles addressing civil liberties (each student will do this once). Students will present the logical steps for each case *every class*. They will be asked to present the views of a particular justice – reading a full-length case – and will take questions from their colleagues. The Moot Court is a four-day event in which students will role-play attorneys and justices (see Moot Court handout on Blackboard).

• **Students develop their own understanding of the Constitution.** Students are pushed to develop their own understanding of what is an appropriate approach to the Constitution (originalism, textualism, deference to elected branches, representation reinforcing, active liberty, etc.). The comments section of each brief allows students to explore the logic of the justices. Students are exposed to different approaches and begin to understand the dis/advantages of each.

• **Students assess the ethical and moral implications of civil liberties law.** By carefully considering majority and dissenting view, writing briefs with “comment sections,” and presenting material in the moot court, students enrich and/or revise their stands on major ethical issues in the law.

*Texts and Internet Resources*

**BOOKS AND DOCUMENTS:**


• Course toolkit (a collection of articles, interviews, websites, and other resources). From the SJU Library Homepage → Research Guides → “By SJU courses” → Political Science → Course title.

• *The Constitution*, [http://www.usconstitution.net/const.pdf](http://www.usconstitution.net/const.pdf)

  Justice Hugo Black always carried a copy of the Constitution with him and he reread it often. Please have ONE copy of the Constitution that you have marked up. (There is a copy in your textbook – but you may prefer to have a Word document or a printout).
• **How to Brief a Case**, Blackboard. (Do **not** use the briefing guide on the Political Science website or the one in the book).

• **Black’s Law Dictionary** (available through the library @ [http://librarytoolkits.sju.edu/law](http://librarytoolkits.sju.edu/law))
  The language of the Court requires both an understanding of Constitutional doctrines and a good command of the English language. You must look up all unfamiliar words in a dictionary. For legal terms, do **not** do a Google search or use a regular dictionary.

• **The New York Times**
  You will read the newspaper every day – carefully looking at articles regarding the law, courts, students rights, etc. **Every class, ONE student will be responsible for a “weekly round up” and will give a 5-minute oral presentation.** Carefully read *The New York Times* Monday-Saturday for articles regarding the Supreme Court, the federal and district courts, Congressional confirmation of other Federal judges, discussions of possible Supreme Court appointments, and the topics covered in the class. **READ ALL THESE ARTICLES IN FULL.** Pay attention to all civil rights controversies EVEN if they are at the local, state, or international arena. You must WRITE OUT your talk and time it at home. You may use Powerpoint if you like. Do NOT summarize each story. Your job is to give an overview of the stories, trends, etc. The presentations will change as the semester progresses – because you will be responsible for understanding trends. *The New York Times* is in the library and students can read it for free. The online edition only allows you to read about four articles in full. This is NOT adequate for the assignment but can be used as a search engine.

Print copies: $0.60 each weekday, and at $4.00 on Sunday may be purchased at the SJU bookstore. If you are living at home, order a discounted home delivered print copy at [www.NYTimes.com/CollegeRate](http://www.NYTimes.com/CollegeRate). You must use your SJU email for discount.

Digital subscriptions: [www.NYTimes.com/CollegeDS](http://www.NYTimes.com/CollegeDS). All options start at $0.99 for the first 4 weeks and then are billed every 4 weeks at either $7.50; $10.00 or $15.00 based on the number of devices (cell, iPad, etc.)

**INTERNET DATABASES, BLOGS, and WRITING RESOURCES:**

• **supct.law.cornell.edu/supct/** (the is the nation’s best collection of cases and background information for all Supreme Court cases; it should be used when you need a full-length case for moot court or you are writing a brief and want to check the full-length version of a case).

• **oyez.nwu.edu** (a sound archive of the oral arguments of the Supreme Court. You will be required to listen to some famous cases (please note that every case also has a transcript and it is recommended that you have the transcript as you listen since the justices do not identify themselves! You should use this website for researching your justice during Moot Court.)

• **supremecourts.gov** (this is the Supreme Court’s official site and can be used for looking at the docket and reading biographies of the justices)

• **Scotusblog** (Supreme Court Blog), [http://www.scotusblog.com/](http://www.scotusblog.com/)

• **Westlaw’s Campus Research (available through SJU library, Research Toolkits by subject, law)**
  Generally, you should be able to get the case by entering the case name (e.g. Lochner v. New York). In rare cases, you may need to find the case number (e.g., 198 U.S. 45) by referring to your casebook. Within the
text of the case, bracketed numbers [198 U.S. 45, 124] indicate the case number followed by the page number. You must be logged onto SJU to use Westlaw. Learning to use Westlaw is an important skill for academics, attorneys, and judges.

The Founders’ Constitution is a collection of historical documents arranged by clause of the Constitution. The five volumes are available in the reference section of the library and online (Press-pubs.uchicago.edu/founders/). This is a great resource for moot court.

• The Elements of Style by William Strunk and E.B. White

The book is SHORT but it can help you work on writing more clearly (thus, more effectively).

Requirements and Grading

Grades will be assigned based upon the briefs (40%); moot court exercise (20%); exams (20%); and general participation (20%). All grading is posted on Blackboard. It is your responsibility to check and see that your grades are posted and correspond to paper versions.

● Briefs

Briefs are an analytical outline of a Supreme Court decision. A brief includes only the facts and issues of law relevant to the final resolution of the case. A brief shows what lines of legal argument are being used. Briefing helps us understand and remember cases. More importantly, writing a brief helps us critically evaluate the persuasiveness of the arguments of the justices. While I do not expect you to prepare a formal brief for every case, you should have notes on the legal question and reasoning BEFORE each class. These will serve as your notes for discussion and they will give you the opportunity to develop ideas about the cases being discussed. I will indicate particular briefs that will be collected and graded. A guide to briefing is available on Blackboard.

● Attendance, Reading Materials Before Class and Class Participation

You must attend all classes and you must do all reading for the class before coming to class. Our discussions will be impoverished if you have not already read the cases.

● Exams

The midterm (one class period) and comprehensive final exam (2 hours) test your knowledge of important terms, logic of opinions, precedents, and understanding of schools of interpretation. Tests will not emphasize memorizing the facts of cases but the precedents and how they contribute to the lines of argument. The final exam will include an essay in which you are given a set of fictional facts and must write an opinion using existing Court precedents. The final exam is cumulative.

● Moot Court Exercise

Students will be divided into teams to examine a case currently before the Supreme Court. Students will read ALL relevant material to prepare the case for the appellants or appellees or hear the case as justice. Detailed instructions are available on Blackboard. You will be required to meet with your groups inside and outside of class. There is an extra credit option to visit the US Supreme Court and hear a case.

● Academic Honesty Policy: You must write the following on the back of each assignment or test:

“I have read the SJU Academic Honesty Policy and abided by its requirements.” You must sign your name. The Academic Honesty Policy is available on Blackboard under Course Documents. It is a complicated
document. If you have any questions regarding the Policy, please see me in office hours. Writing and test taking are part of the learning experience. Your learning is compromised if you steal the ideas or words of other students or other authors. **If you violate the Academic Honesty Policy, you will fail the assignment and the course.**

University policies concerning plagiarism apply to copying materials from the internet. If you block copy text into a document, remember to put that material in quotation marks and copy the source into your document.

- **Communication:** All announcements, assignments, documents, and exam dates for this class will be listed on our Blackboard website. **YOU ARE RESPONSIBLE FOR CHECKING YOUR SJU E-MAIL ACCOUNT DAILY.**

- **Accommodation for Disabilities:** In accordance with state and federal laws, the University will make reasonable accommodations for students with documented disabilities. For those who have or think that you may have a disability requiring an accommodation (learning, physical, psychological) should contact Services for Students with Disabilities, Room G10, Bellarmine, 610-660-1774 (voice) or 610-660-1620 (TTY) as early as possible in the semester for additional information and so that an accommodation, if appropriate, can be made in a timely manner. [www.sju.edu/studentlife/studentresources/sess/ssl](http://www.sju.edu/studentlife/studentresources/sess/ssl).

- **EXTRA CREDIT:** I will frequently announce talks that are taking place on the campus. If you attend a talk (an any subject) and write a one-page reaction (summary of main point and your comments), I will give you extra credit. This form of extra credit helps you when you are between grades at the end of the semester. You may get the extra half grade if you have attended a talk or two. You may also attend the hearing of a case at the Supreme Court in D.C. This requires getting up very early and waiting online. I will add 10 points to one exam if you attend and write a three-page summary of the event.

  **ALL POINTS OF VIEW THAT ARE ARGUED CAREFULLY, RESPECTFULLY, AND PERSUASIVELY ARE ENCOURAGED IN YOUR PAPERS AND CLASS COMMENTS**

**Course Outline and Assignments**

In 2012, the study of civil liberties changes every day as the Supreme Court hands down new opinions that change legal precedents. In order to give us an opportunity to look at these developments, we will have to make occasional changes to the syllabus.

**I. Introduction to Civil Liberties and the Supreme Court**

8/28: Introduction

**Read:** the Bill of Rights from the U.S. Constitution (see book list for access)

A. What is liberty? What is a right? Where do rights come from? How have civil liberties changed in the past 5 years?

B. How does the Court decide? Legalism and Interpretation v. Realism

C. Flags, Arm bands, and BONG HiTS 4 JESUS

**Please bring your copy of the Constitution to the first class. ALWAYS bring your texts to class.**
8/30  **Read:** *We the Students*, Chapter 1, pp 1-10.
**Listen:** Round-up of issues covered by the 2012 Court session:
*To be updated for Fall 2013 course, do not listen! Consult the up-to-day syllabus on Blackboard.*

Spend 20 minutes looking at the following website:

C. Judicial Review and the Origins of Court Power
D. The debate over rights

9/4: **Read:** Rights Packet (Blackboard)

**II. Dangerous Speech**

**Assignment:** Read *Schenck*. Review the briefing guide on Blackboard. Reread *Schenck*. Write a draft brief (using the categories on the guide). The brief will be no more than two pages. Even if you cannot figure out some of the sections, fill out everything you can. *Everyone* must fill out the comments session (is the case decided correctly? Do you agree with the assumptions of the Court? The steps of the argument?). After you have written the *Schenck* brief, read *Abrams*. Think about how you might brief *Abrams*.

**Format for Assignment:** 2 pages, typed and single-spaced, sections with titles (facts, question, holding, etc). Pages must be stapled. Write name on the BACK of the last page. Write out the honesty statement (see above) and sign your name.

In class, we will brief *Schenck* then *Abrams* together. You will write revise and hand in your finished *Schenck* brief on 9/11.

**III. The Right Not to Speak: Flag Salutes in and out of wartime**

9/11: **Read:** *We the Students*, pp.13-22; *Gobitus* (Blackboard).
Brief *West Virginia State Board of Education v. Barnette*. This brief will NOT be collected but it is important to have written one for our discussion.

**VI. Expressive Conduct and Political Speech**

9/13: **Read:** *We the Students*, pp. 22-34
Brief *Tinker v. Des Moines*. **Brief will be collected.**

**Monday, September 17**th **is Constitution Day.** Please watch for announcements regarding the Political Science Department event.

9/18: **Mandatory Library session** → meet by the circulation desk of the library five minutes before the start of class.
V. Lewd Speech
9/20 Read: We the Students, pp. 36-62.
Brief: Morse v. Frederick, Good News Club v. Milford Central School

VI. Student Press
9/25: Read: We the Students, pp. 63-77.

9/27 No new material, discussion and catch-up.

VII. Separation of Church and State
10/2: Read: We the Students, pp. 78-106
Brief: Sante Fe Independent School District, Everson.

Monday, October 1st is the first Monday in October: the day the Supreme Court begins hearing arguments. Listen to NPR (All Things Considered) and read the New York Times carefully today for overviews of the docket and predictions regarding important cases. Extra-Credit: Consider THREE media sources’ coverage of the first Monday in October (they must include one of the following: New York Times, Wall Street Journal, Washington Post, NPR, Slate, Jim Lehrer News Hour). You may choose any other CREDIBLE news sources for the other two (or use 3 of those named). You must have one print, one radio/TV., and one internet. Write a two-page paper making a claim about the coverage. The extra credit counts for 5 points applied to your midterm or final exam.

10/4: Read: We the Students, pp. 106-130
Brief: Yoder (brief will be collected)

10/9: Read: Edwards v. Aguillard (on BLACKBOARD – not just the textbook)

Please review your notes and come prepared with questions regarding material for the mid-term. I will leave 20 minutes to answer any questions you pose. If there are no questions, there will be no review.

10/11: Midterm Examination
Midterm exam covers all material up to and including Edwards. For the essay, you will be able to use your textbook, printed cases, the Constitution, and your notes. No laptops or cell phones.

10/16: No classes for Fall break.

10/18: 2nd Mandatory Legal Research Workshop at the Library → meet at circulation desk of the library five minutes before the start of class. We will cover resources necessary for moot court research. Take notes and be prepared to ask if you do not understand how to do the research yourself.

***The highlight of the second half of the course is the moot court exercise. After you receive your group assignment, you will meet with your group. Please see the Moot Court instructions on
Blackboard. Your goal is to become an expert on your case’s issues/facts. ALL students must read the District (lower) court opinions. The group will divide the other briefs and documents.***

VIII. Privacy, Birth Control, and Abortion
10/23: Read: Griswold v. Connecticut; Roe v. Wade (Blackboard)

Brief due at the start of today’s class: You are reading the full-length version of Griswold. Write a brief in which you summarize the logic for Douglas (the majority opinion), Goldberg (concurrence), Harlan (concurrence), and Black (the dissent). For the majority, be careful to figure out how each of the three is using ANOTHER PART of the Constitution as the main source of a right for married people to use birth control. This brief will be graded and weighed more heavily than previous briefs.

10/25: We the Students, pp. 260-283
Brief: Pfeiffer, Curtis, Casey

IX. Race and Discrimination

10/30: Read: We the Students, pp. 176-197; Full version of Brown v. Board of Education and Chief Justice Warren’s original draft of the opinion at http://www.npr.org/templates/story/story.php?storyId=1537409 (you should look at the handwritten version – see how he edits his own writing – as well as the typed draft). The NPR story on the case is also available on the site and is highly recommended.
Brief: Brown v. Board of Education

11/1: Read: We the Students, pp. 197-214.
Brief: Bollinger (both cases)

11/6: Moot court prep session.

X. Moot Court and case readings/lectures relevant to Moot Court cases

11/8: Readings to be announced.
11/13: Readings to be announced.

11/15 and 11/20: Moot Court #1 – Room to be announced.
11/27 and 11/29: Moot Court #2 – Room to be announced.

Please note: Rooms to be announced. You must be in the room 5 minutes before the start of class.

XI. Summary and Conclusions

12/4 Discussion of Case (TBA)
12/6 Summary and Conclusions

12/11 Reading Day
Final Exam: The final exam will cover all the material in the course with an emphasis on the cases in the second half. You will be responsible for BOTH cases heard during the Moot Court exercise. For your case, I will expect a detailed knowledge of the case. For the other case, I will expect knowledge of the legal question and reasoning.

PLEASE DO NOT MAKE TRAVEL PLANS BEFORE THE FINAL EXAM DATE HAS BEEN SET BY THE REGISTRAR. PURCHASE OF A TICKET WILL NOT BE ACCEPTED AS A REASON TO TAKE THE FINAL EXAM EARLY.

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