

Syllabus  
San Jose State University

Professor Ken Nuger  
Pols 121.c: Civil Rights  
DMH 149a  
9-10:15 T, TR  
Fall, 2009

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4:45-5:45 T, and by appt.

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### Introduction

A hallmark of democratic societies is the commitment to equal treatment under law. Unfounded and unjustified forms of unequal treatment are anathema to a society that values a limited and accountable government. The U.S. Constitution helps define the authority and limits of our government, as well as the rights citizens enjoy in our polity. This course is designed to examine the constitutional bases that ensure equal treatment under law. Its main pedagogy and focus is to analyze key cases in American constitutional law that helped define what discrimination is what limitations the constitution might place on discriminatory treatment. Public, or government sponsored discrimination, as well as private discrimination is examined on the basis of several characteristics including but not limited to race, class, sex, disability, sexual orientation, age. In addition to traditional concepts of discrimination, this course also examines issues of governmental discriminatory treatment as applied to both voting rights issues and applied in the criminal justice system, especially focusing on the application of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 8<sup>th</sup> amendments.

### Required Text

Ducat, Craig, Constitutional Interpretation, Rights of the Individual, Volume II, 8<sup>th</sup> Edition. In addition, be prepared to read additional cases relevant to our curricula that are not found in our text.

### Grading

Inherently a vulgar subject but one with which we must all contend. You will have two essay examinations, one midterm and a final, each worth 100 points. You must also write a 5 to 7 page position paper/analysis on a subject relevant to civil rights. The paper is worth 30 points and is due on Tuesday, December 1<sup>st</sup>. If the paper is turned in late, it will receive a 6 point penalty. Students will also write legal briefs on all cases, but will occasionally turn in their legal briefs, which will be worth 10 points per brief. Briefs must be typed, not handwritten. If you turn in a handwritten brief, it will be docked 3 points before I grade it. You may drop your lowest graded brief when calculating your grade. Finally, students will be called upon to present briefs of assigned cases. While not graded, the quality of your oral presentations may affect my perception of whether you should receive the benefit of the doubt if the points you earned borders between two different grades. Similarly, class participation can help tip the scales in your favor if your final grade is in doubt. The percent of your total grade for all of these assignments is based on the likelihood that I will collect for a grade, five or six briefs, with your lowest scored brief being dropped.

### Academic Integrity

Any student caught cheating on any assignment will automatically fail the course and will have an academic dishonesty report submitted to the office of Judicial Affairs. Please refer to the university policy on academic dishonesty. I hate to bring this point up but the sad reality is that some students engage in various types of dishonest behavior and while many may not be caught, please be advised that if I catch any student violating university policy on academic dishonesty, you will fail the course and be sanctioned by the Office of Judicial Affairs. Per SJSU mandate, I am required to restate the policy on this syllabus and it reads as follows:

Academic integrity is essential to the mission of San José State University. As such, students are expected to perform their own work (except when collaboration is expressly permitted by the course instructor) without the use of any outside resources. Students are not permitted to use old tests, quizzes when preparing for exams, nor may they consult with students who have already taken the exam. When practiced, academic integrity ensures that all students are fairly graded. Violations to the Academic Integrity Policy undermine the educational process and will not be tolerated. It also demonstrates a lack of respect for oneself, fellow students and the course instructor and can ruin the university's reputation and the value of the degrees it offers.

We all share the obligation to maintain an environment which practices academic integrity. Violators of the Academic Integrity Policy will be subject to failing this course and being reported to the Office of Student Conduct & Ethical Development for disciplinary action which could result in suspension or expulsion from San José State University.

**If you wish, you may view the complete policy on Academic Integrity by typing in the following URL:**

**[http://sa.sjsu.edu/download/judicial\\_affairs/Academic\\_Integrity\\_Policy\\_S07-2.pdf](http://sa.sjsu.edu/download/judicial_affairs/Academic_Integrity_Policy_S07-2.pdf)**

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All written work must be legible. If I cannot read an exam, you will have to read it to me in my office as part of an oral exam. This is not as easy as it may seem so please write legibly. Tardiness tends to be a distraction to the entire class and while an occasional tardiness cannot always be helped, excessive tardiness (more than a couple of times) will be duly noted. Finally, please turn off your electronic communication devices as they also pose a distraction to the class. For those who work with the Disability Resource Center, I will respect the accommodations the Center the three of us agree upon.

Computer use policy

Students who wish use their computers for word processing only may do so only in the front of the classroom. If I catch any student with any computer program opened that is not a word type processing program, even if a word processing program is also opened, you will earn a permanent membership to my shit list. If quantified, membership to my shit list gives you the privilege of losing at least 10 points from the total semester points you earned. Browsing, im'ing, emailing or any type of computer use for self amusement is rude to those sitting around and beside you. Serious students complain that those around them who use their computer for self amusement break their concentration. I'm really sorry to take such drastic and unpleasant action but the amount of rude computer users in class has really become a problem. WTF is up with that?

## Final Words

The nature of this course demands from you a constant reappraisal of how the Supreme Court develops constitutional issues. As a dynamic process that reflects the transient values of society, constitutional law, to be fully appreciated, must be studied as a continuum. Each case is much like a frame in a movie. Each frame gives you a picture but the succession of frames gives you a complete story. Similarly, while a case may give you some insight into a constitutional principle, analyzing the compendia of cases on a specific area of law will allow you to understand constitutional issues far beyond that which would be possible from studying a single case. Therefore, I expect from each of you, diligent preparations out of the classroom and intelligent, rigorous conduct in the classroom.

## General Course Readings.

Introduction to the theories of constitutional interpretation

Essay: The Modes of Constitutional Interpretation, pp. 1337-1364  
Ch. 14, Equal Protection of the Laws pp. 1127

## Unit One: Public forms of racial discrimination

Government Based Racial Discrimination, 1128  
Plessy v. Ferguson, 1128-1132  
Sweatt v. Painter, 1132-1134  
Brown v. Board of Education, 1135-1138  
Note, *Stell v. Savannah-Chatham County Board of Ed.*, 1138-1139  
Note, *Bolling v. Sharpe*, 1140  
The Brown II problem, "With all deliberate speed," 1141-1142  
The Scope and Duration of Desegregation, 1145  
*Swann v. Charlotte-Mecklenburg Board of Ed.*, 1146-1161  
*Milliken v. Bradley*, 1151-1156  
Post *Milliken* discussion, 1156-1158  
*Parents Involved in Community Schools v Seattle School Dist*, 1169-1165  
Proving Discriminatory Intent, 1165-1166  
*Village of Arlington Heights v. Metro Housing Development Corp.*, 1166-1168  
*Palmer v Thompson*, 1168-1170  
Note on jury discrimination, 1170-1171  
Affirmative Action (Reverse Discrimination), 1171-1172  
Note, *Regents of Univ. of Calif. v. Bakke* and beyond, 1172-1176  
*City of Richmond v. J.A. Croson Co.*, 1176-1183  
Post *Croson* Discussion, 1183-1184

## Unit Two: Private forms of racial discrimination

Private Discrimination and State Action, 1185  
The Civil Rights Cases, 1185-1189  
State Action, 1189-1190  
*Shelley v. Kraemer*, 1190-1192  
*Burton v. Wilmington Parking Authority*, 1192-1193  
Discussion, *Moose Lodge v. Iris*, 1195  
Reaching Private Conduct Through the 13th Amendment, 1199-1200

Jones v. Alfred Mayer Co., 1200-1202  
 Runyon v. McCrary, 1202-1207  
 Private Discrimination and First Amendment Issues, 1207-1208  
 Discussion, Hurley v. Irish American, Gay, Lesbian and Bisexual Group, 847  
 Discussion, Roberts v. U.S. Jaycees, 1208-1210  
 Boy Scouts of America v. Dale, 1210-1214  
 Post Boy Scouts discussion, 1214-1214

### Unit Three: Discrimination and Voting Rights

Electoral Discrimination and the Voting Rights Act, 1215-1217  
 South Carolina v. Katzenbach, 1217-1221  
 Discussion of Voting Rights representation, 1221  
 Kramer v. Union Free School District, 1222-1225  
 Note, Closed or Blanket Primaries, 1225-1228  
 Bush v. Gore, 1228-1233  
 Discussion, voting methods, 1233-1234  
 Malapportionment, 1234  
 Baker v. Carr, 1235-1241  
 Discussion, 1241-1242  
 Reynolds v. Sims, 1242-1246  
 Lucas V Forty Fourth General Assembly of Colorado, 1247-1249  
 Post Lucas discussion, 1249-1253  
 Shaw v. Reno, 1254-1258  
 Discussion, 1258-1259

### Unit Four Economic and variations of social discrimination

Economic and Social Discrimination, 1259-1261  
 Social Welfare Benefits and the Right to Travel, 1261  
 Shapiro v. Thompson, 1261-1265  
 Discussion, 1265-1266  
 Indigence, 1268  
 San Antonio School District v. Rodriguez, 1269-1278  
 Note, 1278-1279  
 Illegitimacy, 1279-1280  
 Labine v. Vincent, 1281-1283  
 Gender, 1283-1284  
 Bradwell v. Illinois, 1284-1286  
 Frontiero v. Richardson, 1286-1289  
 Craig v. Borne, 1289-1292  
 Post Craig discussion, 1292-1294  
 U.S. v. Virginia, 1294-1300  
 Age, 1306  
 Massachusetts Board of Retirement v. Murgia, 1305-1309  
 Sexual Preference, 1311-1312  
 Steffan v. Perry, 1312-1315  
 Post Steffan and Don't ask don't tell, 1315-1316  
 Romer v. Evans, 1316-1320  
 Goodridge v. Department of Public Health, 1320-1326  
 Gay Marriage discussion, 1326-1328

Alienage, 1328

Ambush v. Norwick, 1328-1331

Discussion, 1331-1332

Note, Illegal Aliens, Public Education and other benefits, 1332-1336

Final Exam is scheduled for Tuesday, December 15th, at 7:15 a.m. (Hey, don't get mad at me, I'm just the messenger)cs