

Syllabus

Professor Ken Nuger
Pols 121b Civil Liberties
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HGH 116

Office: Clark Hall, 453
Phone: 924-5346
Email: ken.nuger@sjsu.edu
Office Hours: 7:30-9, 1-1:30 M/W, 5-6, M and by
appointment

Website: Website: <http://www.sjsu.edu/people/ken.nuger/>

This course introduces the student to the institutional, political and legal bases that determine how the U.S. political system and especially the U.S. Supreme Court resolve civil liberties issues. This is a fascinating subject. We will explore many of the contours of the first amendment, including limits of both free speech and press, as well as the religious clauses. We shall examine the constitutional framework of the criminal justice system. This are includes the fourth, fifth, sixth and eighth amendments. Finally, we'll survey the evolving concept of substantive due process as it is applied to decisional privacy, including abortion, human euthanasia and sexual autonomy. While the workload is typically demanding of an upper division course, those who take their responsibilities seriously will find this course a rewarding, enlightening and fun experience. Therefore, I encourage you to pursue this course vigorously; for if you do, the rewards will be abundant.

Required Readings

Please purchase the following:

Epstein, Lee and Walker, Thomas, *Constitutional Law for a Changing America: Rights, Liberties and Justice*, 7th ed.

Grading

Inherently a vulgar subject but one with which we must all contend. You will have two 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 liberties or civil rights. This paper will be due no later than Monday, April 30th for both a grade and complete comments or by Monday, May 7th for a grade without complete comments. The paper is worth 30 points. If the paper is turned in after our class on May 7th, it is late and will receive a 6 point penalty. The last moment to turn in a paper for any credit is at the conclusion of our last regularly scheduled class on May 14th. Students will also occasionally turn in their legal briefs, which will be worth 10 points per brief. To have a chance to earn full credit, briefs must be typed, not handwritten. They must be turned in during class on the day a brief is asked for, not through email. This requirement will encourage all students to be present for class and not rely on email to turn in a brief. If you cannot attend class and you submit a brief via email prior to the class and If I decide to collect that brief in class, I will be willing to accept the brief but with a one point penalty. If you turn in a handwritten brief, it will be docked 3 points before I grade it. Any brief turned in late will earn a maximum of half credit. I will not count 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.

Attendance

Attendance will be recorded each day but you get 2 ½ weeks (five class days) of paid vacation (what a great deal!). For each day of class you miss after five absences, you will lose two points. If you use less than five absences in the semester, you will receive two extra points toward your final grade up to a total

of ten extra points. For example, if you miss five days of class, you neither gain nor lose points. If you miss six classes, you lose two points, seven classes, four points, etc. If you miss only four classes, you earn two points; three class, four points and perfect attendance earns you ten extra points. Not only is this a good way to encourage you to attend the greatest show on earth and earn points, but just being in class regularly will help you better master the material.

COMMITMENT TO CORRECT WRITING AND ACADEMIC INTEGRITY

Students should develop the ability to write in clear, grammatical English. Spelling, grammar, paragraph and thematic development as well as appropriate attribution count. Direct quotations must be indicated with quotation marks and a specific reference to the page in the source from which it was taken. Even if you do not directly quote a source, ideas from other sources must also be referenced although quotation marks are not appropriate for paraphrased material. Failure to cite your sources constitutes plagiarism and this form of academic misconduct carries serious sanctions. Any student caught plagiarizing in this course will fail the class and be reported to the university which could lead to your expulsion from San Jose State with a permanent record on your transcripts indicating the reason for your expulsion. The university takes a very strong stance on academic dishonesty as evidenced by the following university policy:

“Your own commitment to learning, as evidenced by your enrollment at San José State University, and the University’s Academic Integrity Policy requires you to be honest in all your academic course work. Faculty are required to report all infractions to the Office of Judicial Affairs. The policy on academic integrity can be found at (<http://info.sjsu.edu/static/catalog/integrity.html>).

If you need further assistance on how to appropriately cite the sources you use, a tutorial on citations is available on the library website at http://www.sjlibrary.org/services/literacy/info_comp/citing.htm. If you believe your writing could benefit from some assistance, you may want to visit the SJSU writing center. The center is staffed with professional instructors and graduate and undergraduate writing specialists who can help you improve your writing skills. The peer mentor center is also staffed with highly trained undergraduate students who similarly can help you with your writing. Finally, the Learning Assistance Resource Center will similarly offer you guidance to help you improve the quality of your written work.

Misc. Grahdoos

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.

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 legal issue 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

Readings and cases will be assigned each class. We shall present and analyze the cases the day(s) following their assignment. We shall select cases primarily from the following chapters listed below. Please note that I will place a few selected cases on reserve for our class to analyze in addition to those listed below. Also, I may ask you to retrieve a few cases to analyze that will not be placed on reserve.

Unit One: Concepts of Constitutional Interpretation

Part 1, The Living Constitution

pp. 3-9 (recommended)

Ch. 3, The Incorporation of the Bill of Rights

pp. 67-71, 75-77, Table 3-1 on p. 80, Box 5-3 on p. 209, 579 (right column)

Unit Two: Freedom of Speech and Press

Ch. 5, Freedom of Speech, Assembly and Association

Read the textual material and skim the cases, except for *Brandenburg*, which you must read, from pp. 193-219. Get a sense of the different tests that governed speech critical of the government and its policies. Also, Table 5-1 on p. 224.

Brandenburg v. Ohio (1969) pp. 219-221

pp. 223-227

U.S. v. O'Brien, (1968) 227-230

Texas v. Johnson, (1989) 230-234

Hill v. Colorado (2000) pp. 243-248

pp. 248-250 on hate speech, including Box 5-7

R.A.V. v. City of St. Paul (1992) pp. 251-254

Read pp. 254 and consider whether intimidation should be protected speech.

Ch. 7: The Boundaries of Free Expression: Obscenity and Libel

Obscenity

pp. 319-320, 323, bottom right-327

Miller v. California (1973) pp. 327-330

pp. 330-333

New York v. Ferber (1982) pp. 333-335

pp. 335-339, reframing the obscenity debate

Libel

pp. 338-339

New York Times v. Sullivan (1964) pp. 339-343

pp. 343-347, 351-352

Hustler Magazine v. Falwell (1988) pp. 352-355

pp. 355-356, Libel and the Internet

Ch. 8: The First Amendment and New Media

pp. 358-359, 310-312, 363-357

U.S. v. Williams (2008) pp. 367-371

pp. 371-373

Talk about emerging issues, and completely different from the internet and porn, is this conundrum. Are only people persons or are corporations persons too, when it comes to granting persons the first amendment right to free speech. Read and brief Citizens United v. F.C.C., 2010

Unit Three: The Religious Clauses

Ch 4: Religion: Exercise and Establishment

Free Exercise Clause

pp. 95-100, 102-106

Sherbert v. Verner (1963) pp. 106-109

p. 109-110

Wisconsin v. Yoder, (1972) pp. 110-113

pp. 113-116

Employment Division, DHS of Oregon v. Smith (1990) pp. 117-122

pp. 122-124, 128-129

Establishment Clause

pp. 129-130, 135-139

Lemon v. Kurtzman, (1971) pp. 139-143

143-149, 153-154, 160-165

Edwards v. Aguillard (1987) pp. 165-169

169-171, 174-178, 183-186, 191-192

Midterm Examination

Unit Four: The Second Amendment and the right to bear arms

Ch. 9: pp. 374-377

D. C. v. Heller (2008) 377-382

p. 382-383

Unit Five: Constitutional Criminal Procedure

pp. 443-448

Ch 11: Investigations and Evidence

Fourth Amendment

pp. 449-451

Katz v. U.S. (1967) pp. 451-455

pp. 455-457, 460-463, 464, 467, 477

The Exclusionary Rule, pp. 477-478

Mapp v. Ohio (1961) pp. 478-484

pp. 484-485

U.S. v. Leon (1984) pp. 485-489

pp. 489

Hudson v. Michigan (2006) pp. 490-493

pp. 493

Herring v. U.S. (2009) pp. 494-497

Fifth Amendment

pp. 497-499

Escobedo v. Illinois (1964) pp. 499-501

pp. 501-502

Miranda v. Arizona (1966) pp. 502-508
508-513, 517

Ch 12: Attorneys, Trials and Punishments

Sixth Amendment

pp. 519-520

Powell v. Alabama (1932) pp. 520-523

pp. 523-524

Gideon v. Wainwright (1963), pp. 524-526

pp. 527-529

Eighth Amendment

pp. 550-553, 591-593

Gregg v. Georgia (1976) pp. 553-559

pp. 559-562, 568-570

Unit Four: The Right to Privacy

Read all of chapter 10, pp. 385-440 and brief all the cases included, as well as Bowers v. Hardwick (1986) and Washington v. Glucksberg (1997), found on my webpage