SYLLABUS

U.S. CONSTITUTIONAL LAW – CIVIL LIBERTIES (BLHS 275 01)
Fall Semester, 2014
Mondays: 5:20 PM – 7:50 PM

INSTRUCTOR:
Dr. Steven L. Snell

OFFICE HOURS:
Wednesdays: 2:00 PM – 3:30 PM

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COURSE DESCRIPTION:
The course is designed to introduce students to the study of civil liberties as protected by the Constitution of the United States. The emphasis will be upon those rights incorporated into the Bill of Rights and made applicable to the states through the Fourteenth Amendment. Specifically, the course will examine freedom of speech and freedom of the press – as well as the freedoms of thought, belief, and association. In addition, the course will address the right to privacy, the rights of those accused of crimes, and the rights and protections secured under the two clauses of the First Amendment relating to religious liberty – the Establishment Clause and the Free Exercise Clause.

TEXTS:

RECOMMENDED: CIVIL RIGHTS STORIES (Myriam E. Gilles & Risa L. Goluboff eds., New York: Foundation Press/Thomson-West, 2008) [ISBN 978-1-59941-081-4] (Publisher’s price: $40). This book offers historical background for several of the cases discussed in class, and may provide information useful for some paper-topics. I will request ask the Reserve Department at the Lauinger Library order two copies to place on reserve.

Most of the cases discussed in class are reprinted (in excerpts) in the required casebook. (The casebook contains a “Table of Cases” on pages xxxi-xxxv, arranged in alphabetical order, in which you can locate cases listed in the syllabus.) Those cases that are not included in the casebook are marked with an asterisk and are available online through either Lexis or Westlaw – or in the casebook CONSTITUTIONAL LAW: PRINCIPLES AND POLICY, CASES AND MATERIALS (Jerome A. Barron, C. Thomas Dienes, Wayne McCormack & Martin Redish eds., New York: Lexis/Nexis, 2006) [ISBN 0-8205-7033-8] – a copy of which will be on reserve in the Lauinger Library. Those “Supplemental Readings” that are listed in the syllabus and are not contained in CIVIL RIGHTS STORIES or MODERN CONSTITUTIONAL THEORY may be found on reserve in the Lauinger Library, via “Electronic Reserves” on Blackboard or through the on-line service Hein Online. Supplemental readings are recommended to enhance understanding of the cases and legal concepts discussed in class. The materials listed as “Additional Readings” will not be assigned for class, but may be useful for students’ research projects.

LEARNING OUTCOMES:
The purpose of the course is:
1) to give students an understanding of the manner in which the Constitution of the United States protects civil liberties;
2) to introduce students to the common-law system of adjudication and to the methods by which judges interpret case-law, statutory law, and the text of the Constitution;
3) to allow students to hone their skills in research, analytical reasoning, and writing both through reading case-law, the text of the U.S. Constitution, and secondary sources in the field of legal theory and by completing an original research paper on a Constitutional-Law topic in the field of civil liberties.

GRADING:
The grade for the course will be based upon a take-home final examination and a research paper – both of which are due at the end of the semester. The examination and the paper will each count 50% toward the grade for the class. Deductions in grade will be made for work that is not completed on time – unless the reason for the delay is documented and deemed valid by University or Departmental policies.

Students will have five days in which to complete the take-home final examination; the maximum page-limit for the examination is 20 double-spaced typed pages. The examination will be available on the first day of the exam period. A grade of “A” for the examination should display insightful analysis through the process of “analogy and distinction” as is employed for briefing cases in class. Arguments should be based on cases that constitute the assigned readings for the course. Letter grades will correspond to the following numerical percentages: A: 100%-94%; A-: 93%-90%; B+: 89%-87%; B:
With regard to the research paper, students are free to select their own topics in the field of Constitutional Law/civil liberties. The paper can be in the form of a traditional term paper – or written as a “case note” or “comment” of the type that law students submit to law reviews. (I will describe both formats in class.) To receive a grade of “A” for the paper, students must present a clear thesis, display insightful legal analysis, and make effective use of both primary and secondary sources gleaned from their research – properly cited in footnotes or endnotes. The deadlines are as follows: A one-paragraph description of the paper topic is due by Week/Session 6 (October 6). An outline of the research paper is due by Week/Session 10 (November 10). Completing these two assignments on time will count toward the final grade on the paper, though both the paper-topic and outline will be graded individually on a pass/fail basis. The paper is due on December 8 - which is the Monday after the last Monday on which the class meets. Any student is free to change topics after submitting her/his paper topics in Week 6 (October 6) – so long as she/he notifies me and submits a new one-paragraph summary.

The Final Examination will be available online on Wednesday, December 10. This is an open-book take-home exam. Please e-mail the completed exam to me by the end of business (5:00 PM) on Monday, December 15.

My office hours are from 2:00 PM to 3:30 PM on Wednesdays. If you are not available to meet with me then, please let me know before or after class (or by e-mail), and we can arrange a mutually convenient time to talk about paper-topics or the class-readings.

While the grade for the class will be determined by the examination and the paper, I will take participation in class discussion into consideration in raising students’ grades.

CLASS POLICIES:

Students are expected to attend class. Please notify me in writing or by e-mail in the event of illness or family emergency – either prior to class or at the earliest opportunity practical after the class has met for the week. Students also should notify me in the event that they need to be absent from class for religious observances. If absence from class for religious observances occurs one of the days on which a written assignment is due, the student should notify me in advance so that we can arrange another time for delivering the written assignment. I am free to talk with students in during my office hours (or by telephone at a pre-arranged time for a teleconference) regarding a lecture missed during an absence for religious observances, illness, or family emergency.

Students requiring an accommodation for a disability pursuant to the Americans with Disabilities Act of 1990, the Federal Rehabilitation Act of 1973, applicable local law, or standing University policy must contact the Academic Resource Center at (202) 687-8354 before the start of classes to establish eligibility and to coordinate reasonable
accommodations. The Academic Resource Center is located in Leavey Center, Suite 335.

Please note that pursuant to B.A.L.S. program policy, students who miss three classes will receive failing grades for the course.

**GEOGETOWN HONOR SYSTEM:**
As with all course-work at this institution, the Georgetown University Honor Code and Honor System apply. The Honor Code Pledge is as follows:

“In pursuit of the high ideals and rigorous standards of academic life, I commit myself to respect and uphold the Georgetown University Honor System: To be honest in any academic endeavor, and To conduct myself honorably, as a responsible member of the Georgetown community, as we live and work together.”

Students agree that by taking this course all required papers may be subject to Safe-Assign – which is available through Blackboard – for detection of plagiarism. The penalty for plagiarism is failure of the assignment.

**MAKE-UP CLASS**
In the event of the cancellation of a class due to weather conditions, the make-up class will be held on Friday, November 21 at 5:20 PM. For those students who are unable to attend, it will be recorded and made available online.

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**WEEK 1**

**INTRODUCTION**
While much scholarly attention has focused upon the “Great Compromise” – under which the small states received equal representation in the Senate while representation in the House of Representatives was to be in proportion to population – the most hotly contested issue at the Constitutional Convention of 1787 was the structure of the federal judiciary. Unable to reach agreement on the composition and jurisdiction of the federal courts, the delegates deferred the decision, vesting the power to do so in Congress. Anti-federalists feared the concentration of power in the national government, and in particular that a system of national courts would displace the state-court systems – and with them the cherished protections of rights provided by the common law. In particular, the Anti-federalists contended that federal courts would not be geographically convenient – and more importantly that there were insufficient guarantees in the text of the Constitution to protect the right of trial by jury and to prevent appellate courts from reviewing a jury’s findings of fact de novo. When the Constitution was placed before the various states’ ratifying conventions, the, many skeptical delegates insisted upon a Bill of Rights as a precondition for their votes in favor of ratification.
The first session will also address a number of practical issues that will be helpful in approaching the reading of case-law, such as the common law’s doctrine of stare decisis, the scope of appellate review, the importance of procedural posture, and the significance of concurring and dissenting opinions. This session will also include a lesson in how to brief a case.

Readings:

WEEK 2
THE CONSTITUTION AND JUDICIAL REVIEW
Inspired by the states’ ratifying conventions, the first Congress set about drafting the Bill of Rights in an effort to provide protection for civil liberties for which no explicit provisions had been made in the Constitution as originally drafted and adopted. Even with the adoption of the first ten amendments – the Bill of Rights – the Constitution did not expressly provide for judicial review. Moreover, the Constitution did not make the rights enumerated in the first ten amendments expressly binding on the states as well as on the federal government. This session will examine Chief Justice John Marshall’s opinion in Marbury v. Madison – establishing the Supreme Court’s power of judicial review – as well as the drafting of the Fourteenth Amendment, which provides that no state may “deprive any person of life liberty or property, without due process of law; nor deny any person within its jurisdiction of the equal protection of the laws”.

Readings:
Casebook: Chapter 1 (pages 1-18)
*Marbury v. Madison, 5 U.S. 137 (1803)
Casebook: Chapter 2 (pages 19-22)
United States v. Carolene Products, 304 U.S. 144 (1938) [Footnote 4 at pp. 152-153]

Supplemental Readings:

Additional Readings:
Modern Constitutional Theory: A Reader (John H. Garvey, T. Alexandra Aleinikoff, & Daniel A. Farber (New York: Thomson/West, 2004), pages 195-268

WEEK 3
FREEDOM OF THOUGHT, BELIEF, AND ASSOCIATION – AND THE RIGHT TO SILENCE
While the First Amendment provides for the right of free speech, the right to one’s religious practices, and the “right of the people to peaceably assemble”, there is no express guarantee of the rights of thought, belief, and association. Nonetheless, these rights are necessary in order for one to exercise one’s enumerated First-Amendment rights – and thus are penumbral to the Bill of Rights and the Fourteenth Amendment. This session examines these penumbral rights.

Readings:
Casebook: Chapter 2 (pages 22-43); Chapter 3 (pages 43-50); Chapter 15 (pages 535-566); Chapter 16 (pages 573-581)

American Communications Association v. Doud, 339 U.S. 382 (1950)
Minersville School District v. Gobitis, 310 U.S. 1010 (1940)
N.A.A.C.P. v. Alabama, 357 U.S. 449 (1968)
Gibson v. Florida Legislative Investigation Committee, 372 U.S. 83 (1963)

Supplemental Readings:

Additional Readings:

WEEK 4
FREEDOM OF SPEECH
In this introduction to the First Amendment’s Free Speech Clause, the readings examine the concepts of “public forum”, “symbolic speech”, and obscenity.

Readings:
Casebook Chapter 6 (pages 131-167; 183-201); Chapter 8 (pages 273-309), Chapter 11 (pages 359-366; 369-372; 375-377; 385-401)
Public forum

Symbolic speech
Stromberg v. California, 283 U.S. 359 (1931)

Obscenity
Miller v. California, 413 U.S. 15 (1973)

Supplemental Readings:

Additional Readings:
Karl N. Llewellyn, Some Realism about Realism – Responding to Dean Pound, 44 Harvard Law Review 1222 (1930-31)

WEEK 5
FREEDOM OF SPEECH
Despite the First Amendment’s guarantee of the right of free speech, that right is not without limits. This session probes the boundaries of free speech, examining the degree to which speech is constitutionally protected in several controversial contexts, including advocacy of violation of law, incitement of violence and threats to public order, “fighting words”, and “offensive speech”.

Readings:
Casebook: Chapter 5 (pages 79-130); Chapter 6 (pages 201-209); Chapter 12 (pages 413-451)
Masses Publishing Co. v. Patten, 244 Fed. 535 (S.D.N.Y., 1917)
Schenk v. United States, 249 U.S. 47 (1919)
Abrams v. United States, 250 U.S. 616 (1919)
Gitlow v. People of New York, 268 U.S. 662 (1925)
Whitney v. California, 234 U.S. 357 (1927)
Dennis v. United States, 341 U.S. 494 (1951)
Feiner v. New York, 340 U.S. 315 (1951) [Casebook pages 201-209]
Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

Supplemental Readings:

Additional Readings:
Karl N. Llewellyn, On Reading and Using the New Jurisprudence, 26 A.B.A. Journal 418 (1940)

WEEK 6
FREEDOM OF THE PRESS
In 1735, a colonial New York jury acquitted journalist John Peter Zenger, who had been arrested on a charge of seditious libel for publishing pamphlets critical of the colonial governor. The First Amendment provides that “Congress shall make no law…abridging the freedom…of the press”. This session explores the freedom of the press in relation to prior restraint, defamation, privacy, and compulsory disclosure of news sources. [Paper topics are due.]

Readings:
Casebook: Chapter 6 (pages 173-177); Chapter 13 (pages 452-498); Chapter 16 (pages 581-592)
Beauharnais v. Illinois, 343 U.S. 250 (1952)
Near v. Minnesota, 283 U.S. 697 (1931)
Branzberg v. Hayes, 408 U.S. 665 (1972)

Additional Readings:
Ronald Dworkin, Law as Interpretation, 60 Texas Law Review 527 (1981-82)

WEEK 7
RESEARCH TECHNIQUES FOR CONSTITUTIONAL-LAW TOPICS
This 150-minute session will be available by online conference. It will address techniques for conducting research for students’ required paper, which is due at the end of the semester. Topics covered include use of Westlaw, Hein Online, and Lexis/Nexis. The accompanying lecture will include instructions on how to structure a case-note or law review comment, and proper citation forms for legal materials contained in the “Bluebook”.
Readings:

WEEK 8

RELIGION: THE FREE EXERCISE CLAUSE
Two clauses of the First Amendment address religion. The first of these provides that “Congress shall make no law respecting an establishment of religion”; the second provides that Congress shall not prohibit the “free exercise” of religion. Both clauses are binding on the states via the Fourteenth Amendment. In this first session on religious liberties, the readings address scope of the Free Exercise Clause, including accommodation of religious practice in the workplace, in education, and in prisons.

Readings:
Casebook Chapter 17 (pages 593-659)
Reynolds v. United States, 98 U.S. 145 (1878)
Sherbert v. Verner, 374 U.S. 83 (1963)
Wisconsin v. Yoder, 406 U.S. 205 (1972)
Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872 (1990)

Additional readings:
Stanley Fish, Working the Chain Gang: Interpretation in Law and Literature, 60 Texas Law Review 551 (1982)

WEEK 9

RELIGION: THE ESTABLISHMENT CLAUSE
In this second session on religious liberties, the focus shifts to the Establishment Clause, addressing religious speech and displays on public property, religion in public schools, and public aid to private religiously-affiliated schools.

Readings:
Casebook: Chapter 19 (pages 675-718; 754-806)
Religious displays on public property
*Lemon v. Kurtzman, 403 U.S. 602 (1971)
McCreary County, Kentucky v. American Civil Liberties Union of Kentucky, 545 U.S. 844 (2005) [Casebook page 778]
Van Orden v. Perry, 545 U.S. 677 (2005) [Casebook page 793]

Prayer in School
Engel v. Vitale, 370 U.S. 421 (1962) [Casebook page 675]
School District of Abington Township, 374 U.S. 83 (1963) [Casebook page 680]

Religion in the Public School Curriculum
Epperson v. Arkansas, 393 U.S. 97 (1968) [Casebook page 719]
Edwards v. Aguillard, 482 U.S. 578 [Casebook page 727]

Religious Speech on Public School Property
Good News Club v. Milford Central School, 533 U.S. 98 (2001) [Casebook page 737]

Aid to Church-Related Schools
Agostini v. Felton, 521 U.S. 203 (1997) [Casebook page 754]
Zelman v. Simmons-Harris, 536 U.S. 122 (2002) [Casebook page 763]

WEEK 10

PRIVACY
This session addresses the Supreme Court’s recognition of penumbral rights to privacy in the context of birth control, abortion, and sexual relations. [Outlines are due.]

Readings:
Casebook: Chapter 22 (pages 880-974)
Griswold v. Connecticut, 381 U.S. 479 (1965)
Roe v. Wade, 410 U.S. 113 (1973)

Additional Readings:

WEEK 11

RIGHTS OF THE CRIMINALLY ACCUSED
This session examines the common-law origins of the privilege against self-incrimination - and will address the prohibition of unreasonable search and seizure (including wiretapping) and the right to counsel embodied respectively in the Fourth and Fifth Amendments of the Constitution.

Readings:
Casebook: Chapter 21 (pages 808-879) including:
Olmstead v. United States, 277 U.S. 438 (1928)
Kyllo v. United States, 533 U.S. 27 (2001)
Schmerber v. California, 384 U.S. 757 (1966)
**WEEK 12**

**RACIAL EQUALITY**

This session examines equal protection in the context of state action, including education, interracial marriage, and affirmative action.

**Readings:**
- Casebook: Chapter 24 (pages 1000-1085)
- *Plessy v. Ferguson*, 163 U.S. 537 (1896)
- *Korematsu v. United States*, 323 U.S. 214 (1944)

**Supplemental Readings:**


**Additional Readings:**

**WEEK 13**

**RACIAL EQUALITY**

In this session, the focus moves beyond state action to cases involving private racial discrimination, examining the level of state activity necessary to bring private action
within the ambit of protection offered by the Constitution and the Civil Rights Act of 1964.

Readings:
- Casebook: Chapter 28 (pages 1027-1030)
  - *Civil Rights Cases*, 190 U.S. 3 (1883)

Supplemental Readings:

Additional Readings:

WEEK 14

GENDER EQUALITY

While the Equal Rights Amendment - intended to prevent discrimination on the basis of gender – was passed by Congress in 1972, the time-limit for ratification by the requisite 38 states passed with only 35 states voting to ratify it. In the absence of an explicit amendment prohibiting gender-discrimination, the session examines other Constitutional provisions – notably the Equal Protection Clause of the Fifth and Fourteenth Amendments – upon which the Supreme Court has relied in protecting the rights of those denied equal opportunities on account of gender. A portion of the final class meeting will be devoted to review in preparation for the final examination.

Readings:
- Casebook: Chapter 25 (pages 1106-1152) including:
  - Reed v. Reed, 404 U.S. 71 (1971)
  - Frontiero v. Richardson, 411 U.S. 677 (1973)

Supplemental Readings: