

H/PS 148b The Supreme Court in U.S. History

Spring, 2003, Tuesday, 7:30 P.M., Baxter 210

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Course Requirements

This course is open *only* to students who have taken 148a or an equivalent course at another university. Each student must make two oral presentations and submit papers on topics related to each of the oral presentations. There will be no mid-term, but the 3-hour **closed-book, closed notes** final will cover all the material assigned from the O'Brien casebook, plus anything said by me or your fellow students in class. Supreme Court opinions are not easy going, and we're going to read a lot of them in a short time. Note, please, that anyone who takes this course will receive a letter grade. It is not available on a Pass/Fail basis.

The only book assigned to everyone is David M. O'Brien's *Constitutional Law & Politics*, 5th ed., vol. 2. In addition, you should listen to audiotapes of selected oral arguments available at [<HTTP://Oyez.NWU.Edu>](http://Oyez.NWU.Edu) Material from them will appear on the final exam.

Week of	Topic	Assignment	Recording
April 1	Organization	None	<i>Griswold v. CT</i> (part 1)
April 8	Nationalization Bill of Rights	306-369	<i>Griswold</i> (part 2)
April 15	Free Speech, Obscenity	370-505	<i>Miller v. CA</i>
April 22	Libel, Press	506-588	<i>NYT v. Sullivan</i>
April 29	Confessions, Counsel, Death	999-1062, 1071-85, 1142-1209	<i>Gideon v.</i> <i>Wainwright</i>
May 6	Privacy, Abortion	1210-1307	<i>Roe v. Wade</i>
May 13	Broadcast, Symbols, Association	589-662	<i>Tinker v. Des</i> <i>Moines</i>
May 20	Religion: Establishment	663-784	<i>Lemon v.</i> <i>Kurtzman</i>
May 27	Religion: Free Exercise; Searches	785-880	<i>Wisc. v. Yoder</i>
June 3	Wiretaps, Exclusionary Rule	935-98	<i>Mapp v. Ohio</i>

Students learn best actively. The “book reports” will give you the chance to make two topics your own and to inform us all about them. Each student is to read one book basically about doctrines or issues and one that is more biographical or popular. In each instance, pick something from the book – it may be the whole book – that interests you and that you can tell the class about in 15 minutes. As in 148a, please supply a handout for the oral presentation. A week after the oral report, you should hand in to me a written report of about 8-10 pages in length on a topic explored or touched on in your oral report.

I’d like to have more time for discussion this term, so be prepared for questions and interchange from classmates, which may extend the time of the reports. I hope all students will try to keep up with the O’Brien reading a bit better. I expect to call on people to comment on cases, and I hope that we’ll have more general discussions of the difficult issues that we have to consider this quarter.

Issue Books

Date	Author/Title	pages	call number
Ap. 8	1. Robert Cottrol, ed., <i>Gun Control and the Constitution</i> (state and federal court cases)	216	KF394.A7.G86. 1993
	2. Joyce Lee Malcolm, <i>To Keep and Bear Arms</i>	232	KF4558.M35.1994
	3. Michael Curtis, <i>No State Shall Abridge: The Fourteenth Amendment and the Bill of Rights</i> (paired with) Raoul Berger, <i>The Fourteenth Amendment and the Bill of Rights</i>	220	KF4757.C87.1986
		150	KF4757.B42.1989
	4. Akhil Amar, <i>The Bill of Rights: Creation and Reconstruction</i>	300	KF4750.A436. 1998
Ap. 15	1. Edward J. Cleary, <i>Beyond the Burning Cross: The First Amendment and the Landmark R.A.V. Case</i> (free speech)	222	KF228.S23.C54. 1994
	2. Cass Sunstein, <i>Democracy and the Problem of Free Speech</i>	300	JC591.S86.1993
	3. Richard Polenberg, <i>Fighting Faiths: The Abrams Case, The Supreme Court, and Free Speech</i>	370	KF224.A34.P65. 1987
	4. David Rabban, <i>Free Speech in Its Forgotten Years</i>	400	KF4772.R33.1997
Ap. 22	Anthony Lewis, <i>Make No Law: The Sullivan Case and the First Amendment</i>	350	KF1266.L48.1991

Ap. 29	1. Ronald Dworkin, <i>Life's Dominion</i>	240	KF9315.D85.1993
	2. Alan Bigel, <i>Justices Brennan and Marshall on Capital Punishment</i>	160	KF9227.C2.B54. 1997
	3. Carole McCann, <i>Birth Control Politics in the U.S., 1916-45</i>	210	HQ766.5.U5.M43. 1994
	4. R.H. Helmholz et al., <i>The Privilege Against Self-Incrimination: Its Origins and Development</i>	200	KD8386.P75.1997
	5. Melvin Urofsky, <i>Lethal Judgments: Assisted Suicide and American Law</i>	150	KF3827.E87.U755. 2000
May 6	1. William Eskridge, <i>Gaylaw</i>	325	KF4754.5.E84. 2002
	2. Bernard Schwartz, <i>Decision: How the Supreme Court Decides Cases (on Webster v. Reproductive Health Services)</i>	270	KF8742.S323.1996
	3. Eva R. Rubin, ed., <i>The Abortion Controversy: A Documentary History</i>	300	KF3771.A7.A26. 1994
	4. Leon Friedman, ed., <i>Supreme Court Confronts Abortion: The Briefs, Argument, and Decision in Planned Parenthood v. Casey</i>	484	KF228.P5.P5.1993
	5. Stephen Schulhofer, <i>Unwanted Sex: The Culture of Intimidation and the Failure of Law</i>	282	KF9325.S38.1998
	6. David Richards, <i>Women, Gays, and the Constitution</i>	460	KF4754.5.R53. 1998
May 13	Calvin Massey, <i>Silent Rights: The Ninth Amendment and the Constitution's Unenumerated Rights</i>	219	KF4558.9th.M37. 1995
May 20	1. Leonard Levy, <i>The Establishment Clause</i>	256	KF4783.L48.1994
	2. Rodney K. Smith, <i>Public Prayer and the Constitution</i>	300	KF4162.S63.1987
May 27	Bette Evans, <i>Interpreting the Free Exercise of Religion</i>	250	BR516.E9.1997
June 3	1. David Bodenhamer, <i>Fair Trial: Rights of the Accused in American History</i> (paired with) John F. Decker, <i>Revolution to the Right: Criminal Procedure Jurisprudence During the Burger-Rehnquist Court Era</i>	138	KF4765.B63.1992
		116	KF9619.D43.1992
	2. Akhil Amar, <i>The Constitution and Criminal Procedure: First Principles</i>	180	KF9619.A43.1997

Biographies, Popular

Date	Author/Title	pages	call number
Ap. 8	Tinsley Yarbrough, <i>Mr. Justice Black and His Critics</i>	260	KF4770.Y37.1988
Ap. 15	1. Donald Downs, <i>The New Politics of Pornography</i> (paired with) Catharine MacKinnon, <i>Only Words</i> 2. <i>Jerry Falwell v. Larry Flynt</i> 3. Charles Martin, <i>The Angelo Herndon Case and Southern Justice</i> 4. Philippa Strum, <i>When the Nazis Came to Skokie: Freedom for Speech We Hate</i> 5. Robert J. Goldstein, <i>Flag Bruning and Free Speech: The Case of Texas v. Johnson</i>	200 150 330 200 150 250	KF9444.D69.1989 KF4772.M33.1993 KF228.F35.S65. 1990 KF224.H47.M3 See me. See me.
Ap. 22	1. Fred Friendly, <i>Minnesota Rag</i> 2. Richard Cortner, <i>The Kingfish and the Constitution</i> 3. David Rudenstine, <i>The Day the Presses Stopped: A History of the Pentagon Papers Case</i>	230 190 350	KF228.N35.F73 E748.L86.C67. 1996 KF228.N52.R84. 1996
Ap. 29	1. Francis Russell, <i>Sacco and Vanzetti: The Case Resolved</i> 2. Herbert Haines, <i>Against Capital Punishment</i> 3. Anthony Lewis, <i>Gideon's Trumpet</i>	220 200 250	KF224.S2.R84. 1986 HV8699.U5.H35. 1996 KF8742.L4.1964a

May 6	1. Marian Faux, <i>Roe v. Wade</i> 2. Eileen McDonagh, <i>Breaking the Abortion Deadlock</i> 3. Mark Graber, <i>Rethinking Abortion</i> 4. Barbara Craig & David O'Brien, <i>Abortion and American Politics</i>	350 200 160 360	KF228.R59.F38. 1989 HQ767.5.U5.M373 .1996 HQ767.5.U5.G734. 1996 HQ767.5.U5.C73. 1993
May 13	1. Donald Critchlow, <i>Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America</i> 2. Leslie Reagan, <i>When Abortion Was a Crime: Women, Medicine, and Law in the U.S., 1867-1973</i> 3. Janet Brodie, <i>Contraception & Abortion in 19th Century America</i> 4. Joyce Murdoch and Deb Price, <i>Courting Justice: Gay Men and Lesbians v. the Supreme Court</i> 5. Clara Bingham, <i>Class Action: The Story of Lois Jenson and the Landmark Case That Changed Sexual Harassment Law</i> 6. John Johnson, <i>The Struggle for Student Rights: Tinker v. Des Moines</i>	240 250 375 525 380 215	HQ763.6.U5.C75. 1999 HQ767.5.U5.R378. 1997 HQ767.5.U5.B76 HQ76.8.U5.M97. 2002 KF228.J464.B56. 2002 see me
May 20	1. Gerald Gunther, <i>Learned Hand</i> (ch. 9-14) 2. Nicholas Von Hoffman, <i>Citizen Cohn</i> (Joe McCarthy's brains)	220 469	KF373.H29.G76. 1994 KF373.C62.V66. 1988
May 27	1. Edward Larson, <i>Trial & Error: The American Controversy over Creation and Evolution</i> 2. Howard Ball, <i>Of Power and Right: Hugo Black, William O. Douglas, & America's Constitutional Revolution</i>	200 322	KF4208.5.S34.L37. 1989 KF8744.B275.1992
June 3	1. David Schultz & Christopher Smith, <i>The Jurisprudential Vision of Justice Antonin Scalia</i> 2. Walter Murphy, <i>Wiretapping on Trial</i>	210 150	KF8745.S33.S38. 1996 KF9670.M8