

## Criminal Rights and Equal Protection

Mark Hall  
Center Street House, Room 12  
Class time: 10:20-11:35, TTH  
(O) (503) 554-2674, (H) (503) 554-0324, foxmail: mhall  
Office Hours: MWF: 8:15-8:50, 11:00-12:00; TTH: 2:00-4:30, or by appointment.

PSC 360  
Fall 2003  
Hoover 218

This course examines the constitutional issues surrounding criminal rights and equal protection. Special emphasis is placed on the analysis of cases decided by the Supreme Court. The politics of the Court and the historical context of the cases/issues are also considered in detail.

### Grading and Requirements:

This course will be run as a seminar. I will occasionally lecture, but the bulk of the course will consist of discussion of Supreme Court cases. This discussion is impossible if students have not read the cases. To reinforce your natural desire to keep up with the reading assignments, I will give 14 quizzes throughout the semester. I will drop the 4 lowest scores on the assumption that students will miss or do poorly on 4 quizzes because of illness, sporting events, travel, job interviews, family emergencies, tardiness, etc. **I will not give make up quizzes for any reason.** If you think you will miss more than four quizzes this semester, let me know immediately. Combined quiz scores are worth 10% of your final grade. You will also be expected to turn in 12 case briefs/article summaries throughout the semester (worth 5% of your final grade). There will be four exams, each of which is worth 15% of your final grade.

Finally, each student will predict the outcome of United States v. Patane, a case to be decided by the Supreme Court this year. Each student will write a series of opinions (including majority, concurring, and dissenting opinions) making it clear where each Justice will fall and (a) the Court's decision regarding the specific case at hand and, (b) more broadly, whether or not Miranda will be overturned. Although I am interested in your predictions, I am even more interested in the legal reasoning that will be offered by the Justices. Papers should be between 12-20 pages long and should be fully documented. You may discuss your topic with other students, and they may proofread your essay, but all of your research and writing must be done by you alone. I encourage you to take your essay to George Fox's new writing center for assistance. I will be available to discuss the paper with you, and to give research assistance, but I will not read drafts of the paper. I will give out more detailed information about the paper as the semester progresses. Papers are due on December 4, and are worth 25% of your final grade. Late papers will automatically be assessed a penalty of three points for every day they are late (excluding weekends). Absolutely no extensions will be granted for computer/printer problems.

#### A. Required Texts:

(1) David M. O'Brien, Constitutional Law and Politics, vol. two, **Fifth edition** (New York: W.W. Norton and Co., 2003).

(2) Rather than assign another book or photocopied packet, I have provided several internet assignments where I will expect you to print articles/studies for your reference. Save some of your book money to buy additional ink and paper for your printer or to pay to have pages printed/duplicated.

#### B. Recommended reading:

(1) A. P. Melone, Researching Constitutional Law (New York: Harper Collins, 1990) (On reserve). A more recent edition was published by Waveland Press in 2000. Virtually all of the information in this book remains valid, but much of it is less useful in light of free internet law sites like (<http://www.findlaw.com/casecode/supreme.html>). See also O'Brien, 1559-1564.

(2) William Strunk and E.B. White, The Elements of Style, 3rd. ed., (New York: MacMillan Publishing Co., 1979). The Bible of writing. Everyone should read this.

### ASSIGNMENTS

Unless otherwise noted, all page numbers refer to O'Brien's casebook. Because of the seminar format of this course, it is difficult to predict exactly where our course discussion will be in relation to the reading assignments. However, you are responsible for doing the reading assignments on the day for which they are assigned. If any changes must be made, I will announce them clearly and unambiguously in class. I may supplement these readings with handouts/web assignments.

#### September

2. Introduction, review of the basics.

4. Review of the basics, part II. 12-16, 23-38, 67-98, 301-315 [This reading is a little heavier than usual because it is for the entire week].

9. Fourth Amendment: 835-68. Brief: Arizona v. Hicks (1987)

11. Fourth, cont.: 868-910.

16. Other searches: 910-935.

18. Wiretapping: 935-965.

23. Exclusionary Rule: 965-998, Brief: Mapp v. Ohio (1961).

25. Test #1

30. Taking the Fifth, 999-1043, Brief: Miranda v. Arizona (1966).

October

2. Fifth, cont.: 1043-1070

7. Right to Counsel, and other guarantees: 1071-1111, Brief: Gideon v. Wainwright (1963).

9. Ibid., 1111-1142.

14. Death Penalty: 1142-1188; Brief McCleskey v. Kemp (1987).

16. 1189-1209; Bring a physical copy and be prepared to discuss a law review article at least 25 pages long written **after** 2000 on the subject of Miranda v. Arizona. Please do your own research for this (in other words, don't simply copy an article a classmate finds). Write a one paragraph summary and a one paragraph critique of the article and turn it in to me. I will count this as a case brief. PLEASE NOTE: YOU MAY BE ABLE TO FIND A LAW REVIEW ARTICLE ON-LINE, BUT YOUR BEST STRATEGY TO GET A GOOD ONE WILL BE TO USE INTERLIBRARY LOAN. TO INSURE THE ARTICLE ARRIVES ON TIME YOU WILL WANT TO ORDER THE ARTICLE IN SEPTEMBER.

21. Many of the death penalty cases we have considered utilize old data. Is the death penalty still applied in a racist manner, as that Baldus study claimed? Are innocent people being executed? For this class period I want you to spend two hours researching these and other questions, and thinking about the policy arguments for and against the death penalty IN LIGHT OF CONSTITUTIONAL ARGUMENTS THAT WE HAVE READ. Come prepared to discuss your findings in class. Print material from the web, or photocopy it, so that you can refer to statistics, arguments, etc. Below I list several possible places to begin. As always, be careful gathering information from the internet. Consider whether the site sponsored by a reputable organization (even one you might disagree with), whether sources are given for claims, etc.

A few anti-death penalty sites:

(1) <http://www.aclu.org/DeathPenalty/DeathPenaltyMain.cfm>

(2) [http://web.amnesty.org/pages/deathpenalty\\_index\\_eng?openview](http://web.amnesty.org/pages/deathpenalty_index_eng?openview)

(3) <http://www.deathpenaltyinfo.org/article.php?did=105&scid=5> [Everyone should go here and read race and DP data.]

A few pro-death penalty sites/articles:

- (1) <http://www.prodeathpenalty.com/>
- (2) [http://www.thenewamerican.com/tna/2002/06-03-2002/vo18no11\\_fallacies.htm](http://www.thenewamerican.com/tna/2002/06-03-2002/vo18no11_fallacies.htm)
- (3) <http://usconservatives.about.com/library/weekly/aa062101a.htm> [an article considering the claim that there is a contradiction between being pro-life and pro-death penalty]

23. Test #2.

28. Equal Protection: state action, 1308-1363.

30. Racial Discrimination in Education, 1363-1391, Brief: Brown v. Board of Education (1954).

November

4. Busing, etc. 1391-1416.

6. Affirmative Action, 1416-1459.

11. 1459-1474. Go to <http://www.findlaw.com/casecode/supreme.html> and retrieve, read, and brief the full opinion for the case Grutter v. Bollinger (2003).

13. Handout: "Harrison Bergeron." Find one post 1999 academic or law journal article at least 20 pages long arguing for or against affirmative action. Write a one-paragraph summary and a one-paragraph critique of the article and turn it in to me (I will count this as a case brief). Be prepared to discuss the argument of your article in class.

18. Test #3

20. Nonracial Classification and Equal Protection, Gender, 1474-1507.

25. Homosexuality: 1507-1525. Go to <http://www.findlaw.com/casecode/supreme.html> and retrieve, read, and brief the full opinion for the case Lawrence v. Texas (2003).

December

2. Other Equal Protection Cases, 1525-1557.

4. Privacy: 333-343; 1210-1239, Brief Roe v. Wade (1973)

9. 1240-70, Brief Planned Parenthood v. Casey (1992).

11. Cont.: 1270-1307.

Test #4 (Wed. December 20, 8:00 a.m.)

## How and Why to "Brief A Court Case

By David M. O'Brien

A. Why Brief Cases? Briefing cases has immediate and long-term benefits: the student will have read the case thoroughly and carefully and will have a permanent condensed record of the case. The exercise itself forces the student to come to terms with his or her understanding of the case, prepares the student for lectures and discussion, and will prove an invaluable aid in studying for the midterm and final examination.

B. How to Brief a Case: There is no one "best way" to read and analyze cases. However, an understanding of the decision and opinions may best be acquired by following the prescribed pattern or outline which points out the essential issues of each case. It is suggested that students read the case in its entirety at least once before "briefing" it along the lines suggested below.

### 1. Title and Citation

(Marbury v. Madison, 1 Cranch (5 U.S.) 137 (1803).)

2. Facts of the Case: A brief statement of the circumstances that brought about this case or controversy, identifying the parties and the holding of lower courts.

(Outgoing President Adams commissioned Marbury to serve as a justice of the peace, but the commission went undelivered by his Secretary of State, John Marshall. When President Jefferson came into office, he directed his Secretary of State, James Madison, not to deliver Marbury's commission. Marbury filed an affidavit requiring Madison to show cause why a writ of mandamus should not be issued directing him to deliver the commission. He contended that section 13 of the Judiciary Act of 1789 empowered the Court to issue writs of mandamus.)

3. Legal Question(s) Presented: The question presented is revealed by the statement of facts, which should indicate the nature of the conflict of interests the Court must resolve. The legal question presented is often concisely stated by the Court at the outset of an opinion or the sections in an opinion dealing with the specific questions presented. Your should answer each question presented "yes" or "no.")

- (1. Has Marbury a right to his commission? Yes.
2. If a right has been violated, do the laws afford a remedy? Yes.
3. Is the Court the legal body to afford such a remedy? No.
4. Does the Court have the power to declare a law unconstitutional? Yes.)

4. Holding: A statement of the Court's ruling and whether it affirmed or reversed the lower court's decision.

(Section 13 of the Judiciary Act of 1789 is unconstitutional.)

5. Opinion for the Court: The opinion refers to the legal reasoning which the Court offers as a justification for its holding. The Court's reasoning should be outlined point by point.

(1-A. Completion of the appointment established that Marbury has a legal right to his commission. 2-A. Authorities (Blackstone) show that where there is a legal right there exists a legal remedy. 2-B. Madison violated Marbury's right, and thus a remedy is due Marbury. 3-A. The Court cannot provide the remedy requested, however, since that would require an exercise of its original jurisdiction in violation of Article III of the Constitution. 3-B. Congress cannot alter the Court's original jurisdiction or expand its power by giving it the power to issue writs of mandamus in original and appellate cases. 4-A. The Court has the power to declare a law unconstitutional because (1) of the Supremacy Clause of Article VI and (2) Congress may not enlarge the Court's original jurisdiction under Article III. 4-B. It is the duty of the Court "to say what the law is "because (1) judges take an oath to uphold the Constitution and (2) "the Constitution specifies that a law repugnant to the Constitution is void, and courts as well as other departments are bound by it." (3) Since the Court's power extends to all cases and controversies under the Constitution, the Court must declare Section 13 unconstitutional.)

6. Separate Opinions: Both concurring opinions (opinions that agree with the Courts holding but disagree with some or all of its reasoning) and dissenting opinions (opinions that disagree with the Court's result and reasoning) should be noted and their major points emphasized.

(There were no separate opinions filed.)

7. Comments and Evaluation: A statement of the case's legal, historical, and political importance, as well as criticisms of the justices' opinions and reasoning.)

(1. Chief Justice Marshall should have disqualified himself from participating in the case. 2. The case did not have to be decided; it could have been remanded to a district court, since the Court had no jurisdiction. 3. Marshall's reading of Section 13 is open to criticism. 4. The case is the watershed ruling in which the Court asserted and rationalized the power of judicial review. 5. However, the Court's reasoning is not unassailable--Article III does not expressly provide for judicial review and other officials take an oath to uphold the Constitution as well; Eakin v. Raub on tripartite or "departmental theory" of constitutional interpretation. 6. Marbury v. Madison, however, does not assert "judicial supremacy" as some Court-watchers and justices subsequently claimed.)