

Constitutional Law I (Law 121-003)
Autumn 2007
CLASS INFORMATION AND TENTATIVE SYLLABUS
(August 17, 2007)

Instructor: Nelson Lund
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Office Hours: Room 433-I, by appointment

Required Text: Brest, Levinson, Balkin, Amar, & Siegel *Processes of Constitutional Decisionmaking: Cases and Materials*, Aspen 5th ed. (2006) & 2007 Supplement

Assignments: The syllabus below will be posted on the law school's web site (see <http://www.law.gmu.edu/academics/assign.php?sem=Fall07>). Regular attendance and class preparation are mandatory.

Evaluation: There will be an examination at the end of the semester. You will be responsible for all of the readings, including those that are not discussed in class. Final grades may be raised or lowered to reflect the quality of class participation.

- The casebook we're going to use is somewhat unconventional. It covers some historical material in greater depth than most casebooks, and correspondingly provides relatively superficial coverage of some important areas of modern doctrine. In partial compensation for this neglect, I will ask you to read the full text of some judicial opinions. In addition to plugging a few of the gaps in the casebook's coverage, this exercise should give you a better sense of the Court's approach to the law than you can acquire by reading only the edited snippets that appear in case books.
- You may find the material in this course more confusing than the material in most of your first year courses. To some extent, you will be able to reduce this confusion by reading the assignments carefully and paying attention in class. In many respects, however, the law itself is not clear. One of your goals during the semester should be to figure out where the law is clear, and why it is often unclear. This will not be easy.

I recommend that you postpone the use of study aids such as commercial outlines and nutshells until the end of the semester, when you are reviewing the course materials for the exam. These study aids can be useful in helping you to organize and synthesize the readings, but they can be highly misleading if you don't struggle seriously with the underlying cases first.

- Academic Regulation 4 has strict and specific rules about attendance, which I do not have the authority to waive (see <http://www.law.gmu.edu/academics/regulations#Anchor62>). If you have questions or concerns about these rules, please contact the director of student academic affairs.
- I do not believe that it is either immoral or insulting to me personally when students fail to prepare for class, and I recognize that evening students who have obligations outside school sometimes find it impossible to keep up with the assignments. Class participation, however, is educationally important, and it requires coming to class prepared.

In recent years, I and others have noticed an increase in the number of students who are not paying attention to what's going on in the classroom. It seems that portable computers, especially with internet access, are more efficient sources of distraction than old-fashioned daydreaming. I don't find this offensive, but I do think it undermines the purpose of having class discussions.

In order to encourage regular preparation for class, and attentiveness during class, the following policies will apply:

- When employing the Socratic method, I will call on students at random. That means that in any given class, you will have the same chance of being called on as anyone else, no matter how frequently or recently you've been called on before.
- Portable computers may be used only for taking notes and for displaying class-related material such as notes you've taken about the readings. No solitaire, no surfing the web, no emailing or IMing, etc.
- Everyone is expected to pay attention in class, *not just to me but also to what other students are saying*, and to be ready to join the discussion. This is more important than taking notes, and much more important than other things you can do with your computer. Anyone who, when called on, seems not to have been paying attention will be marked down as unprepared.

Assignments

Class 1 - August 23, 2007

The Constitution of the United States (Casebook, pp. 1-15)

Casebook, pp. 19-51

Class 2 - August 28, 2007

Casebook, pp. 51-95

Class 3 August 30, 2007

Casebook, pp. 97-140

Class 4 - September 4, 2007

Casebook, pp. 140-86

Class 5 - September 6, 2007

Casebook, pp. 187-212

Class 6 - September 11, 2007

Casebook, pp. 212-60

Class 7 - September 13, 2007

Casebook, pp. 261-99

Class 8 - September 18, 2007

Casebook, pp. 301-51

Class 9 - September 20, 2007

Casebook, pp. 351-85

Class 10 - September 25, 2007

Casebook, pp. 412-60

Class 11 - September 27, 2007

Casebook, pp. 499-527

Class 12 - October 2, 2007

Casebook, pp. 527-48

Eastern Enterprises v. Apfel, 524 U.S. 498 (1998)

**[for all cases that are assigned outside the casebook, you must
read all the opinions, including any concurrences and/or dissents]**

Class 13 - October 4, 2007

Casebook, pp. 549-600

[Autumn Recess]

Class 14 - October 11, 2007

Casebook, pp. 600-24

Gonzales v. Raich, 545 U.S. 1 (2005)

Class 15 - October 16, 2007

South Dakota v. Dole, 483 U.S. 203 (1987)

Casebook, pp. 629-49

Class 16 - October 18, 2007

Casebook, pp. 649-53

Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528 (1985)

Casebook, pp. 661-63

Class 17 - October 23, 2007

Casebook, pp. 663-711

Class 18 - October 25, 2007

U.S. Term Limits v. Thornton, 514 U.S. 779 (1995)

Casebook, pp. 727-29

Class 19 - October 30, 2007

Casebook, pp. 729-34

C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994)

Class 20 - November 1, 2007

Casebook, pp. 734-36

United Building & Constr. Trades Council v. Mayor and Council of Camden, 465 U.S. 208 (1984)

Class 21 - November 6, 2007

Casebook, pp. 749-61; 881-85

In re Sealed Case, 121 F.3d 729 (D.C. Cir. 1997)

Class 22 - November 8, 2007

Casebook, pp. 761-95

Class 23 - November 13, 2007

Casebook, pp. 795-817

Clinton v. City of New York, 524 U.S. 417 (1998)

Class 24 - November 15, 2007

Casebook, pp. 819-41

Class 25 - November 20, 2007

Casebook, 841-71

[Thanksgiving Recess]

Class 26 - November 27, 2007

Casebook, pp. 871-78

Casebook Supplement, pp. 1-48

Class 27 - November 29, 2007

Casebook, pp. 878-81

Casebook Supplement, pp. 48-57

Casebook, pp. 79-81

ABA Task Force Report on Presidential Signing Statements and the Separation of Powers Doctrine, available at <http://www.abanet.org/op/signingstatements/> (click on the link styled “Task Force Report with Recommendations”)

Nelson Lund, *Presidential Signing Statements in Perspective*, William & Mary Bill of Rights Journal (forthcoming), available at <http://ssrn.com/abstract=995930>

Class 28 - December 4, 2007

Casebook, pp. 887-92

(Walter) Nixon v. United States, 506 U.S. 224 (1993)

Bush v. Gore, 531 U.S. 98 (2000)