

**The Supreme Court in United States History:  
PSC 212  
Joel Seligman**

**SYLLABUS**

In this syllabus, Ronald D. Rotunda, *Modern Constitutional Law: Cases and Notes* (9<sup>th</sup> ed. 2009) is termed Casebook; materials in this packet are termed Handout.

**Jan. 25** READING A CASE: *Brown v. Board of Education*, Casebook 673-676; Handout 1-7.

WRITING ASSIGNMENT ONE: Pass/Fail – Due Jan. 25, beginning of class. Maximum length two pages.

Write a brief for the *Brown* case, using the format given in the Handout at page 7.

**Feb. 1** THE CONSTITUTION AND THE SUPREME COURT. Articles of Confederation, Handout 8-11; United States Constitution, Casebook 1i-1xi; *Marbury v. Madison*, Casebook 1-9; Excerpt from Federalist Paper No. 78, Casebook 10-11; Using the Parts of a Judicial Decision, Handout 12-13.

WRITING ASSIGNMENT TWO: Pass/Fail: Due February 1, beginning of class

Read the material in the Packet entitled, Using the Parts of a Judicial Opinion, Handout 12-13, before preparing your response to the following problem.

You are Counsel to President Jefferson. The President is unsure of the significance of a recent U.S. Supreme Court decision, *Marbury v. Madison*, and seeks your advice. You are to brief the case in 1-2 pages, and prepare a one page memorandum advising the President on two concerns he has raised (3 pages for the total assignment).

First, the President wants to know if he can publicly dismiss what the Court said about his and Madison's actions as mere *dicta*. Please clarify

what is holding and what is *dicta* in the opinion, and advise the President whether the language about the Jefferson Administration's actions is *dicta*. Second, while the President feels that he "won" this time, he is concerned about the possibility that the Supreme Court might declare unconstitutional the Repeal Act of 1802, which abolished the jobs of the new circuit judges appointed by the outgoing Federalists. Please formulate the rule applicable to future cases on judicial constitutional review of legislation that you formulate from *Marbury v. Madison*. Finally, briefly advise the President on whether in your opinion *Marbury* would support the Court ruling that it had the power to declare the Repeal Act of 1802 unconstitutional, or is too narrow a holding to justify such a ruling.

**Feb. 8** The Supreme Court Before the Civil War. Casebook 70-77, 82-89, Handout 14-23.

**Feb. 15** Presidential War Powers. Casebook 304-306; *Boumediene v. Bush*, Casebook 324-343; Handout 24-50.

WRITING ASSIGNMENT THREE: Graded; due on February 15, beginning of class.

Write in no more than 3 pages a closing argument to the Senate grounded on Lincoln's suspension of the writ of habeas corpus. Although other legal issues are raised, this is the only issue you are to address.

As sources use: *Marbury* and *Merryman* as your only case precedents; the text of the Constitution before the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> amendments; and the relevant facts you gleaned from the transcript of "The Impeachment Trial of President Abraham Lincoln." Include in your discussion of *Ex Parte Merryman*: 1) whether the legal issues are the same or analogous in *Merryman* and the impeachment trial; 2) any relevant *Merryman* facts and those from the impeachment trial transcript; and the general classifications under which you determine the facts are or are not relevant; and 3) whether the reasoning in *Merryman* is likely to lead to a similar result in the Senate trial of President Lincoln.

Unlike Writing Assignment Two, you are writing not to report the law to a member of your team, but to *persuade* an outside decisionmaker that your client's position is sound and should be adopted. In persuasive legal argumentation, the conclusion urged should appear in the first paragraph. The argument should be as simple and easy to follow as possible, with a clear organization evident in the topic sentences of the paragraphs. The best arguments should be first, and should be the most fully developed. Emphasize the favorable law and facts; deal with the unfavorable, but in affirmative ways if possible.

To be a complete legal argument, this assignment should include both statement and explanation of the law and also an application of the law to the facts. Statement and explanation of the governing rules of law precedes its application in legal writing. In this portion, one would specify the textual provisions of the Constitution that are relevant, the rule to formulate from the precedent of *Ex Parte Merryman*, and other principles that may or should determine the outcome.

Application of these rules to the facts of the Lincoln impeachment case should follow discussion of the law. Here one would state what Lincoln did and why/why not that violated the governing constitutional rules on suspension of the writ of habeas corpus. For this portion of the argument, read the material in the Handout at 51-53, Using the Parts of a Judicial Opinion, III-IV, about reasoning by analogy and applying precedent to a new fact problem.

**Feb. 22** Economic Regulation After the Civil War. *Lochner v. New York*; *Muller v. Oregon*; *Bunting v. Oregon*; *Adkins v. Children's Hospital*; *Nebbia v. New York*, Casebook 491-501; *Carolene Products*, Casebook 234-236; *United States v. Danby*, *Wickard v. Fillburn*, Casebook 200-206; *Gonzales v. Raich*, Casebook 253-254; *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, Casebook 138-143.

**March 1 (This class will be held from 6:30pm – 8:30pm in Wallis 278)**  
The 13<sup>th</sup>-14<sup>th</sup> Amendments. The Slaughter-House Cases, Casebook 483-488; The Civil Rights Cases, Casebook 594-600; *Brown v. Board of Education II*, Casebook 678-680; *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, Handout 54-60; *Freeman v. Pitts*, Handout 61-66.

**March 15** Race and Gender Classifications. *Adarand Constructors, Inc. v. Peña*, Casebook 735-740; *Parents Involved in Community Schools v. Seattle School District*, Casebook 725-733; *Craig v. Boren*, Casebook 765-768; *Ricci v. DeStafano*, Handout 67-74; *Mississippi Univ. for Women v. Hogan*, Casebook 775-779; *United States v. Virginia*, Casebook 779-780; Levels and Standards of Judicial Review, Handout 75.

WRITING ASSIGNMENT FOUR: Graded, due beginning of class, March 22.

Maria Jones has been asked to serve on the Board of Directors of a private liberal arts college for women, and is seriously considering doing so, although she has little free time and must be selective in making such commitments. Although the 14<sup>th</sup> amendment does not apply because the school is private, she nevertheless has reservations based on her respect for equal protection values and her understanding of Supreme Court cases on gender discrimination. One concern is whether any justification for single sex education is outdated. She is aware that women are substantially more likely to graduate from high school and to attend college than their male counterparts and that they comprise approximately 55 percent of the nation's college students.

Jones asked the President of the College, Leigh Hunt Greenhaw, why in the 21<sup>st</sup> Century the school restricts its enrollment to women. Greenhaw responded that single sex education conveys unique educational benefits and should be available to both women and men. She is convinced that it is part of a wide array of educational options crucial to the future strength of this Nation. In addition, she believes single gender education at the college level serves real needs of the young women of today and is important to the preparation and formation of women leaders for our society. This latter point she links in part due to past legal discrimination – not only in access to higher education, but in property and contract rights, voting, access and participation in the legal system, and guardianship of children. This discrimination reflected deep seated beliefs that persist and inhibit the development of women, even if barriers today are more informal than in previous eras. She also links service to young women's needs to the fact that women differ from men in developmental needs; biological functions, such as pregnancy and childbirth; and social roles, such as child-raising.

President Greenhaw says attending a women's college has been shown to be positively associated with numerous factors, including baccalaureate completion, satisfaction with faculty and overall quality of instruction, leadership measures, writing skills, analytical and problem-solving skills and critical thinking ability. Indeed, women's colleges are more effective than coeducational colleges in improving their students' academic ability and social self-confidence. Greenhaw agrees with scholars who suggest that "a partial reason for the positive impact of women-only colleges is that their women students are surrounded by peers having high intellectual self-esteem." She thinks women only colleges appear to provide students better opportunities to be actively involved in student organizations, to exercise leadership, and thus to improve their social self-confidence.

In addition, Greenhaw says a diverse body of literature suggests that women attending single sex schools may be more likely than their peers at coeducational schools to pursue male dominated careers, such as college professor, lawyer, physician, accountant, business executive, business owner, engineer, scientific researcher, and religious professional.

Maria Jones asks your advice: Can an "exceedingly persuasive justification" for single sex colleges be made after *Mississippi Univ. for Women v. Hogan* and *United States v. Virginia*?

Before answering, please review, Using Several Judicial Opinions, Handout 76-78.

**March 22** Freedom of Expression. *Schenck v. United States*, Casebook 971-972; *Abrams v. United States*, Casebook 972-973; *Gitlow v. New York*, Casebook 973-975; *Whitney v. California*, Casebook 975-978; *Brandenburg v. Ohio*, Casebook 980-982; *Shuttlesworth v. City of Birmingham*, Casebook 1005-1009; *International Society for Krishna Consciousness, Inc. v. Lee*, Casebook 1026-1032; *Texas v. Johnson*, Casebook 1231-1237.

**March 29** Freedom of Expression II. *R.A.V. v. City of St. Paul*, Casebook 1065-1074; *Morse v. Frederick*, Casebook 1224-1230; *New York Times Co. v. Sullivan*, Casebook 1137-1143; *Boy Scouts of Am. v. Dale*, Casebook 1204-1210; *Rumsfeld v. Forum for Academic & Inst. Rights*, Casebook 1210-1217.

**April 5** The Religion Clauses. School District of Abington Township v. Schempp, Casebook 1353-1357; Gobitis and West Va. State Bd. of Educ. v. Barnette, Casebook 1357-1358; Eppenson v. Arkansas, Casebook 1363-1367; Wisconsin v. Yoder, Casebook 1408-1412; Employee Div. v. Smith, Casebook 1422-1427.

WRITING ASSIGNMENT FIVE: Graded; due April 5, beginning of class.

Shortly after the terrorist attacks on New York City and Washington, D.C., the Missouri legislature passed a law requiring a daily display of patriotism in public schools using the flag and either the Pledge of Allegiance, as set forth in 4 U.S.C. §4 (2001), or the national anthem. Immediately thereafter, the Clayton Missouri School Board passed a policy prohibiting schools in the Clayton School District from using daily recitations of the Pledge of Allegiance to comply with the statute. Supporters of the policy argued that the religious words in the pledge did not belong in public schools.

The District received more than 200 phone calls and e-mail messages over the matter, most of them critical of the policy. The first day that the instrumental version of the national anthem was played over the loudspeaker to begin the school day at Clayton High School, many students spontaneously began reciting the Pledge immediately afterward, with the majority standing as some scattered boos were heard. After finishing the oath, the students broke into applause and waved American flags.

At the next meeting, the Board amended the policy to allow student volunteers to lead a voluntary recitation of the Pledge of Allegiance over the loudspeaker. “For a few minutes every morning, everyone stands and joins in an exercise that I believe binds us together,” said one board member.

The High School now begins each school day with students and teachers assembled in their home room class, standing to recite the Pledge of Allegiance in unison as the student volunteers lead them over the loudspeaker. Before the exercise begins, the principal states over the loudspeaker that any student who does not want to join in the Pledge may remain silent and seated.

The Pledge used is the version in Section 4 of Title 4 of the United States Code, which provides in relevant part: “I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

The words, “under God,” were added by an amendment in 1954. President Dwight D. Eisenhower said: “in this way we are reaffirming the transcendence of religious faith in America’s heritage and future; in this way we shall constantly strengthen those spiritual weapons which forever will be our country’s most powerful resource in peace and war.”

The Nastiks, taxpayers and residents of the School District and parents of two minor students enrolled in Clayton High School, have sued to enjoin the recitation of the Pledge of Allegiance on the ground that it violates: 1) the Establishment Clause and 2) the Free Speech Clause.

As law clerk to a Federal District Court (trial court) judge, your task is to assess the likelihood of success or failure of each claim. In no more than 5 pages, use relevant cases assigned for the classes scheduled March 22, March 29 and April 5 to state and explain the constitutional doctrine relevant to each claim, and to apply that law to these facts, indicating the basis on which the claims may fail or succeed.

This assignment asks both for the synthesis and explanation of the constitutional law and the application of that law to the facts of the problem. Before writing, brief the relevant cases and use them to formulate a general conclusion about the current law. Organize the essay in deductive format: first state the synthesis of the law, then use the cases to explain and demonstrate that your synthesis is correct, and finally apply the synthesis to the facts of the problem, drawing analogies between the problem facts and the facts of the cases that are similar.

The task is to objectively predict the law that is likely to be applied by a court and the probable holding, rather than to persuade someone of your view of what the law should be. You may and should use constitutional norms and policies in your essay, but make sure to ground them in constitutional text or in case precedent. You do not need to restate the facts.

**April 12** Implied Rights. *Griswold v. Connecticut*, Casebook 853-859; *Eisenstadt v. Baird*, Casebook 859-861; *Roe v. Wade*, Casebook 861-868; *Planned Parenthood of Southeastern Pa. v. Casey*, Casebook 872-886; *Gonzales v. Carhart*, Casebook 892-896; *Lawrence v. Texas*, Casebook 904-911.

**April 19 & 26** Constitutional Convention. (Class Location on April 26: Witmer House – 630 Mt. Hope Ave.)

WRITING ASSIGNMENT SIX. Graded; due April 19, beginning of class.

Based solely on the readings in this course, propose an amendment to the United States Constitution and write an argument explaining why your amendment should be adopted. Each student will present her or his amendment to the class, assembled as a Constitutional Convention which ultimately will vote on whether to adopt each amendment.

A good amendment may be brief. For example, in the United Nations Declaration of Human Rights, there are 30 Articles. See Handout 79-87. You may propose one of these articles or part of one of these articles.

The essence of this assignment is to explain why adopting your proposal is wise. In doing so, you will want to compare the United States Constitution and discuss relevant cases.

Page limit: 7 pages.



## **CONTACT INFORMATION FOR JOHN FIELD**

Feel free to ask John Field questions about course content in general and/or about writing assignments by sending an email to:  
[johnfield3@rochester.rr.com](mailto:johnfield3@rochester.rr.com).