

Spring 2009     **POLITICAL SCIENCE 104I**  
**LAW AND POLITICS -- Courts and Political Controversy**  
Visiting Professor Glenn Smith  
Wednesdays, 5 P.M. to 7:50 P.M. # Ledden Auditorium

## **BASIC COURSE INFORMATION**

[*Slightly Revised from version passed out in first class on April 1<sup>st</sup>*;  
changes are underlined and highlighted]

### **OVERALL COURSE APPROACH**

This course examines in depth several controversial and current issues going to the heart of law and politics. Specifically, the course provides a detailed examination of four legal settings in which courts have become embroiled in pitched and recurrent political controversies: (1) Constitutional protection for provocative political speech, especially during wartime; (2) Constitutional protection for provocative speech about race, gender, and religion; (3) Judicial supervision of direct democracy (as exemplified by current litigation in the California Supreme Court over Proposition 8's validity); and (4) Questions of internal security and the rights of civilians (as at issue in the Supreme Court decisions ruling on the validity of Bush Administration anti-terrorist policies). For each setting, the course will focus on both the legal doctrines and approaches employed in the cases under study AND the broader questions about judicial role and legitimacy the cases illustrate.

Although several of these issue areas are introduced in other classes (especially, P Sc 104B), this course will aim to neither bore students who have taken these classes nor disadvantage students who have not. To further the first goal I will provide deeper coverage and new slants on judicial decisions assigned in other classes, and cover related cases ignored or summarily mentioned in those classes. For example, although P Sc 104B students have studied subversive-advocacy cases from *Schenck* to *Brandenburg*, in P Sc 104I we will usually read lengthier versions of the cases summarized in P Sc 104B; and we will discuss a number of cases related to fighting words, hostile-audience reaction, "true threats," flag desecration, etc., not covered in 104B. I will pursue the second goal (not disadvantaging students who have not taken 104B or other relevant classes) by providing initial "overview lectures" on key points from those classes and by pointing students to summary discussions of relevant materials in sources available in the UCSD Library (principally, O'Brien, CONSTITUTIONAL LAW AND POLITICS, VOLUME TWO (7<sup>th</sup> Ed. 2008).)

The class is conducted "modified law school" style; sessions will usually focus on class discussion of questions based on assigned materials. At times I will lecture to provide an overview of relevant materials. At times, class members will discuss questions or hypothetical problems in small groups.

To get maximum value from the course, you will need to do the assigned reading for each session fully and actively and come to class prepared to engage in a lively discussion. We will have FUN!

## **READINGS AND SYLLABI**

For weeks 2 through 6 of the course, you will be assigned to read extensive court-opinion excerpts compiled by me and made available on the class webpage (see below). The readings for next week's class (Wednesday, April 8<sup>th</sup>) will be posted on the class website no later than Noon on Friday, April 3<sup>rd</sup>; sorry for any inconvenience resulting from this late posting.

My plan for weeks 8 through 10 (on judicial decisionmaking about Bush Administration anti-terrorist policies) is to cover materials via the most appropriate published book I can find on the subject. I will provide details on the purchase of this book in the near future.

I may also post discussion questions, hypothetical fact patterns, etc., as separate documents on the class webpage.

Please bring the appropriate text(s) to each class.

There will be several Assignment Syllabi for the course. The first Syllabus will be distributed in class on the second class day (April 8<sup>th</sup>) and probably posted on the website before that. Subsequent syllabi will be distributed separately and posted on the class webpage.

## **IN-CLASS MIDTERM & TAKEHOME FINAL EXAMINATION**

*Midterm Examination (7<sup>th</sup> Class on Wed., May 13<sup>th</sup>)*. The only in-class exam for this course will be a midterm exam administered on Wednesday, May 13<sup>th</sup>, starting at 5 P.M. The exam may take a few minutes less than the entire three hour class period. The exact time frame will be announced before the exam date.

Although I have not taught this particular class before (and therefore cannot make past 104I exams available), the midterm will be based on the 3-Part format typically used for my midterms and finals in other courses. (Selected examples from recent past exams will be made available on the class webpage...) "Part I" questions will require you to identify key course concepts, explain their significance, and illustrate them through an example drawn from course materials. "Part II" questions will test your ability to use course materials to argue for or against various positions about regulatory politics. "Part III" questions will require you to analyze key aspects of a hypothetical fact pattern, using the doctrines, facts, and policies from leading court cases studied in the course.

The midterm exam will be open book / open note (including AS notes). (NOTE that you will not be able to use laptops during the exam, which means that it will be advisable to print online case excerpts in hard copy.) The midterm will cover the materials studied in the first six class sessions (i.e., materials on settings (1) through (3) listed on the previous page) and will contribute 65% to your course grade. (More information about the format and coverage of the examination will be provided through in-class discussion and in documents posted on the class webpage.)

*TakeHome Final Exam (Due no later than the end of the final exam period for the class, 10 PM on Friday, June 12<sup>th</sup>.)* The other graded component for the class will be a takehome exam testing the materials covered in the last three class sessions (i.e., materials on setting (4), listed on the previous page). The takehome exam will contribute 35% to your course grade; the exam will be distributed in the last class session on Wednesday, June 3<sup>rd</sup> (and will be available on the class webpage soon thereafter). Students are welcome to turn in takehome exams earlier than the designated final-exam period, and exams may be turned in personally from 7 PM to 10 PM on June 11<sup>th</sup> with no adverse consequences. (More information about the format and coverage of the examination will be provided through in-class discussion and in documents posted on the class webpage.)

### **ADDITIONAL LEARNING OPPORTUNITY**

I invite you to take on an additional practice that will significantly enhance your learning in the course: as you interact with general informational media (i.e. newspapers, magazines, newsletters, online databases, etc.) I invite you to notice media reports discussing current political controversies in which courts are or are not yet involved. (Making the connection between class materials and the “real world out there” can be an important learning opportunity.)

When you identify media reports that you believe would be interesting to the class—ideally, reports will contain enough information to understand the substance and context of the controversy and will suggest themes discussed in the class—I would very much appreciate your giving me a hard-copy version (or sending an email with the text of the media report in the body of the email) so that I can consider sharing it with the class at an appropriate time.

### **CLASS WEBPAGE ACCESS INSTRUCTIONS**

- (1) Visit the California Western Law School Website (“www.cwsl.edu”).
- (2) Click on “FACULTY” (one of the available sub-categories accessible at the top of the page).
- (3) On the alphabetical faculty list, click “Glenn C. Smith”.

- (4) On my faculty webpage – you’ll know it from the *very* handsome picture of me – Click on “Class WebPages” (to top right of page).  
(5) Click on “P Sc 104I (Courts and Political Controversy)”

### **INFORMATION ON MY AVAILABILITY**

\*\*\*For “virtual office hours,” or to arrange office hours at a mutually convenient time other than regular office hours, email me at [gsmith@cwsl.edu](mailto:gsmith@cwsl.edu). [WHEN YOU EMAIL ME, please INCLUDE A REFERENCE TO “P SC 104I” in the subject line, so that I will know your message is not spam.]

\*\*\*For UCSD office hours: *Wednesdays, 2:40 PM to 4:40 PM*, in SSB 363.

\*\*\*Additionally, you are welcome to meet with me, call me (Office Phone: (619) 525-1495), or email me ([gsmith@cwsl.edu](mailto:gsmith@cwsl.edu)) for a real-time reply, during the following law-school office hours:

–*Tuesdays, 12:30 PM to 2:30 PM*

–*Wednesdays, 9 AM to Noon*

*NOTE: It is always a good idea to verify these arrangements via email or an advance phone call to my Law School office.*

My law school office is located at 225 Cedar St., Room 314 (Directions: I-5 South; Take “Front St./Civic Center” exit; take left fork, which will exit on Cedar St. at 2<sup>nd</sup> Avenue. 225 Cedar is on the right, between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues.)

\*\*\*For law-school-planning questions and recommendations: Past experience indicates that a substantial portion of the students taking this course are planning to attend (or thinking about attending) law school. As a full-time law professor guest teaching this course, I am willing to be a resource to such students by providing general counseling about law school and legal careers, arranging visits to law school classes taught by others at my home institution, and writing letters of recommendation in appropriate cases. (Please note that I am not recruiting students to law school in general or my law school in particular. In fairness, I simply wish to make sure all potentially interested students know in advance of my policy on this. Please also note that the one area in which I am NOT a particularly useful resource is in answering specific questions about the procedures and realities of law-school *admission*).

\*\*In appropriate cases I am also willing to write recommendation letters for graduate study, UCSD internships, foreign study, or other related opportunities.

Do not hesitate to contact me if I can be of any assistance to you!