COURSE OBJECTIVES
This course focuses on those Supreme Court rulings that have given meaning to the broad guarantees contained in the Fourth, Fifth, Sixth, and Eighth Amendments to the Constitution. That nearly half of the Bill of Rights would be devoted to protecting the rights of those involved in the criminal justice system is a clear indication of their importance to the Framers. In our day, the significance of these rights cannot escape even the most casual observer since one can hardly get past the front page of the newspaper or the first few minutes of a television newscast without seeing some reference to the guarantees of these Amendments.

REQUIREMENTS

(1) Attendance and Participation (10% of final grade): Students are required to attend each class prepared to discuss the assigned readings listed below. More than three unexcused absences will result in the complete loss of these points which constitutes a full letter grade drop. Because the success of this class turns on your preparation and participation, students should read the scheduled assignment before they come to class. Students are required to turn off all electronic gizmos.

(2) Moot Court (30% of final grade): Students are required to write a paper for and participate in a moot court on a case currently pending before the Supreme Court of the United States. (Further details will be provided in the next few weeks). The moot court paper (20%) and participation (10%) will count for 30% of your final grade. Late papers are penalized five points for each day they are late.

(3) Exams (60% of final grade): Students will take a two-day midterm and a final examination (cumulative) which will test your understanding of all of the cases listed on this syllabus as well as material presented in class. Each exam counts for 30% of your final grade.

Grading Scale: A = 90-100, B = 80-89, C = 70-79, D = 60-69, F = 0-59%.

Students needing accommodations should arrange a meeting the first week of class. Come during office hours or email for an alternate time. Bring the Accommodation Memo and Instructor Verification Form to the meeting. Discuss items needed in this class. If you do not have an Accommodation Memo but need special accommodations, make an appointment with The Program for Students with Disabilities, 1244 Haley Center, 844-2096 (V/TT)

Academic Honesty: Students are expected to behave with integrity. Academic dishonesty will not be tolerated and will be dealt with in the manner specified in the Tiger Cub.

Students may withdraw (although with a W on their transcript) until midsemester.

Make-ups for all missed and late work are allowed with proper University approved excuses within one week of the original due date.

Student emails will be answered within 48 hours of receipt.

The final exam will be given at the University set time and date.

Class attendance is required.

All readings are to be completed before coming to class.

There are no unannounced quizzes.
REQUIRED TEXTS

*United State Constitution (pocket edition)

COURSE SCHEDULE

WEEK 1
Introduction to the Course

Establishing and Contesting the Power of Judicial Review
READ: The Constitution with special attention to the 4th, 5th, 6th, and 8th Amendments of the Bill of Rights.

WEEK 2
Theories of Constitutional Interpretation; What does the Constitution Mean Today?

Theories of Incorporation: The Selective Nationalization of the Bill of Rights

WEEK 3
GUARANTEES OF THE FOURTH AMENDMENT - “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

Requirements for Issuing Warrants and Conducting Reasonable Searches and Seizures

WEEK 4
Exceptions to the Warrant Requirement

WEEK 5
The Unique Fourth Amendment Problems of a Mobile Society
WEEK 6

Administrative Searches

Wiretapping and Police Surveillance

The Exclusionary Rule

WEEK 7

GUARANTEES OF THE FIFTH AMENDMENT - “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.”

Coerced Confessions and Police Interrogations

WEEK 8

Real versus Testimonial Evidence

WEEK 9

GUARANTEES OF THE SIXTH AMENDMENT - “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.”

The Right to Counsel

WEEK 10

The Right to Effective Counsel

Plea-Bargaining
WEEK 11
*Impartial Jury Trial*

*Right to a Speedy and Public Trial*
READ: *Barker v. Wingo* (1972), 931-940.

WEEK 13
*To be Informed of Charges and Confront Accusers*

GUARANTEES OF THE EIGHTH AMENDMENT - “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

*Excessive Bails and Fines*

WEEK 14
MOOT COURT WEEK (exact dates to be determined)

WEEK 15
*Victim Impact Statements*

*Non-capital Punishment*

Final Exam: at the appointed University time and date
Additional Resources

Because some of the cases considered in this class are not yet available in book form, you will need to access these rulings either online or in the stacks at the library (where slip opinions are available). Moot court will also require that you access some legal briefs not available in printed form.

Lexis-Nexis Academic Universe
This is the best site for all things legal (and lots of other good stuff). You can access it by linking to the homepage of the Ralph Brown Draughon library at Auburn under “Articles and Databases.” Students are encouraged to use this resource wherever possible. All cases, briefs, law reviews, etc. are available here, all from the comfort of your computer.

WESTLAW (Campus Research)
Auburn’s library also provides access to WESTLAW (or Campus Research as it is known at Auburn), a database that puts all types of legal information at your disposal. You can access it by linking to the homepage of the Ralph Brown Draughon library at Auburn under “Find Databases-Databases by Title.” Future law students would do well to become good friends with one or both of these databases, as you will be using them frequently in law school.

Other Acceptable Websites

www.supremecourtus.gov -- Supreme Court's official site. Accessible cases are currently limited to those decisions handed down in the last few years.

www.findlaw.com -- Good site overall. Provides complete access to Supreme Court cases as well as good but not complete access to lower federal court decisions.

http://supct.law.cornell.edu/supct --Lists historic decisions of the Court. Good overall site but not comprehensive as far as Supreme Court decisions are concerned.
**BRIEFING CASES**

You will understand the cases and constitutional issues contained therein and do much better on your exams if you have access to a brief synopsis and analysis of the assigned case law. This is best done by following a set pattern when briefing cases. While there is no single, accepted way for briefing a case, the following seven-step example is one way it might be done. You should ALWAYS read the case in its entirety first before beginning your brief.

1. **Title and Citation**: *Marbury v. Madison*, 1 Cranch (5 U.S.) 137 (1803).

2. **Facts**: A brief statement identifying the parties and/or circumstances that led to the controversy and the lower court holding.

   Outgoing President John Adams commissioned fellow Federalist party member William Marbury to serve as a Justice of the Peace for the District of Columbia. His nomination was confirmed by the Senate, but the commission appointing him was never delivered by Adams’ Secretary of State, John Marshall. When President Jefferson came into office, he directed his new Secretary of State, James Madison, not to deliver Marbury’s commission. Marbury petitioned the Court (and its new Chief Justice, John Marshall) to issue a writ of mandamus ordering Madison to deliver the commission, consistent with the provisions of Section 13 of the Judiciary Act of 1789 which empowered the Court to issue such writs.

3. **Legal Question(s) Presented**: What is the nature of the conflict the Court must resolve? The legal question(s) is (are) often stated by the Court at the beginning of its opinion. You should answer each question presented with a “yes” or “no,” reflecting the Court's consideration of that question.

   A). Has Marbury a right to his commission? Yes; B) If a right has been violated do the laws afford a remedy? Yes.

   C). Is the Court the legal body to afford such a remedy? No; D) Can the Court declare a law unconstitutional? Yes.

4. **Opinion of the Court**: The opinion refers to the legal reasoning which the Court offers as a justification for its holding.

   A). Completion of the appointment process establishes that Marbury has a clear legal right to his commission.

   B). Authorities such as Blackstone’s Commentaries show that where there is a legal right there must be a legal remedy. B1) Madison violated Marbury’s right and thus a remedy is due Marbury.

   C). The Court, however, cannot provide the remedy requested since that would require an expansion of its original jurisdiction as detailed in Article III of the Constitution; C1) Congress cannot expand or add to the Court’s original jurisdiction in violation of Article III. Section 13 of the Judiciary Act of 1789 appears to have enlarged the Court’s power by giving it the power to issue writs of mandamus.

   D) The Court has the power to declare a law unconstitutional because 1) of the Supremacy Clause of Article VI; and 2) the Congress cannot enlarge the Court’s original jurisdiction; D1) It is the duty of the Courts to say what “the law is” since 1) judges take an oath to uphold the Constitution; 2) the Constitution specifies that a law repugnant to the Constitution is void; and 3) the Court’s power extends to ALL cases and controversies under the Constitution.

5. **Holding**: The Supreme Court’s ruling and whether it affirms or reverses the lower court’s decision.

   Section 13 of the Judiciary Act of 1789 (giving the Court the authority to grant writs of mandamus) is unconstitutional.

6. **Separate Opinions**: Both concurring (those that agree with the Court’s holding) and dissenting (those that disagree) opinions should be noted and their major points emphasized.

   There were no separate opinions filed in Marbury.

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 obviously should have disqualified himself from participating in this case. 2) The case should have been remanded to a lower court since the Court had no original jurisdiction in this area. 3) Marshall’s reading of Section 13 is open to criticism. 4) The case asserts the power of judicial review but not judicial supremacy as some Court critics have claimed.