

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

**SYLLABUS**

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

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

**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 schoooe18restre18itse18enroolmen toe18woen Greenaw responded that singo sex education coneys unque educatinalbense18and shoud be avaioot both wmenand men Shi convic ed th i is part

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

**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.

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





