



HHS 373EV - U.S. Constitutional Law II: Civil Liberties & Civil Rights

College of Arts and Letters

Spring 2019

Meeting Times: Thursday, 6:30 – 9:00 P.M.
Classroom Location: Morton Complex 324
Instructor: Adam M. Elewa
Office Hours: By appointment.
Course Web Address: TBD

COURSE DESCRIPTION

The U.S. government, in its role as the enforcer of criminal law, is afforded the greatest authority to invade and disrupt the lives of U.S. citizens. It is for this reason that the U.S. Constitution places considerable restrictions on how the government can conduct itself in this area. These restrictions are colloquially referred to as civil liberties.

Technological developments in the 21st century, particularly the proliferation of personal computing devices and internet technology, has both ushered in new crimes (such as computer hacking) and granted the government unprecedented abilities to surveil and collect evidence about those suspected of criminal wrongdoing—as well as those under no criminal suspicion whatsoever. These developments have required courts to balance the needs of the government, concerned with combating new and often hard to detect crimes (or conventional crimes made more efficient through the use of new technologies), with the need to ensure that civil liberties are not being impermissibly eroded.

STUDENT LEARNING OUTCOMES

- Students will learn about certain civil liberties afforded to U.S. citizens by the U.S. Constitution.
- Students will learn about how courts are adapting civil liberties to problems posed by various 21st century technologies, such as the internet and smart phones.
- Students will learn to read and interpret legal documents.
- Students will learn to express themselves clearly and persuasively in writing.
- Students will gain a greater appreciation and understanding about how lawyers and judges ‘reason’ their way to legal conclusions.

FORMAT AND STRUCTURE

Students should come to class having read the assigned material and ready to engage in ‘Socratic debate’ about the readings. A short introduction to the Socratic Method is assigned for the first day of class. Students will also be divided into teams to debate both sides of a complex legal issue. Engagement and participation in class will count towards 20 percent of a student’s final grade. The midterm and final are each worth 40 percent of a student’s final grade. Both exams will contain two or three written essay questions, and approximately 10 multiple choice questions.

TENTATIVE COURSE SCHEDULE

Class Date	Topic(s)	Readings
January 24	<i>Introduction</i>	<ul style="list-style-type: none"> • <i>Learning how to think with The Socratic Method</i>, American Bar Association, available at https://abaforlawstudents.com/2017/11/06/learning-how-to-think-with-the-socratic-method/. • <i>U.S. Courts: Structure and Procedure</i>, available at https://courses.lumenlearning.com/americangovernment/chapter/the-dual-court-system/ (you may skip the reading with the heading “Consider The Original” contained in the green box).
<p><u>Due Process: The Rule of Lenity</u> In construing ambiguous criminal laws, courts should resolve the ambiguity in favor of the defendant.</p>		
January 31	<i>Computer Fraud and Abuse Act (CFAA): deterring computer hacking and other “anti-social” behavior</i>	<ul style="list-style-type: none"> • <i>The Computer Fraud and Abuse Act (“CFAA”)</i>, 18 U.S.C. § 1030 enacted 1986, available at https://www.law.cornell.edu/uscode/text/18/1030; Skim the law and have it available for reference in class. • <i>U.S. v. Valle</i> (Second Circuit 2015); Read pg. 1-13, 28-38. • <i>U.S. v. Drew</i> (Central District of California 2009); Read entire court decision. • <i>U.S. v. Thomas</i> (Fifth Circuit 2017); Read entire court decision.
February 7	<i>Computer Fraud and Abuse Act (CFAA): deterring computer hacking and other “anti-social” behavior</i>	<ul style="list-style-type: none"> • <i>The Hacker Crackdown: Law and Disorder on the Electronic Frontier</i>, Bruce Sterling, published 1992, available at http://www.gutenberg.org/files/101/101-h/101-h.htm; Read the Preface to the Electronic Release of The Hacker Crackdown and Part One: Crashing The System

		<ul style="list-style-type: none"> • <i>Conscience of a Hacker a/k/a “The Hacker Manifesto,”</i> by the Mentor, Phrack Magazine, published 1986; available at http://phrack.org/issues/7/3.html; Read the Hacker Manifesto, and then feel free to explore the other articles in the issue. • <i>The Troll’s Lawyer</i>, Wired Magazine, published 2015, available at https://www.wired.com/2015/01/the-trolls-lawyer/. • <i>Aaron Swartz Indictment</i> (2011); Skim and have available for reference during class. • <i>Aaron Swartz: hacker, genius... martyr?</i>, The Guardian, published 2013, available at https://www.theguardian.com/technology/2013/jun/02/aaron-swartz-hacker-genius-martyr-girlfriend-interview. • <i>Guerilla Open Access Manifesto</i>, Aaron Swartz, available at https://archive.org/stream/GuerillaOpenAccessManifesto/Goamjuly2008_djvu.txt.
<p><u>The All Writs Act - 28 U.S. Code § 1651</u> “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”</p>		
February 14	<p><i>The All Writs Act: the government’s authority to compel third parties to help execute search warrants</i></p>	<ul style="list-style-type: none"> • <i>U.S. v. New York Tel. Co.</i> (Supreme Court of the United States 1977); Read entire court decision (including dissent). • <i>In Re Order Requiring Apple, Inc. to Assist in the Execution of a Search Warrant Issue by this Court</i> (Eastern District of New York 2016); Read entire court decision. • <i>Meet Marc Zwillinger: Apple’s secret weapon in its battle against the FBI</i>, The Guardian, available at https://www.theguardian.com/technology/2016/feb/24/marc-zwillinger-surveillance-law-apple-battle-fbi.
February 21	<p><i>The All Writs Act: the government’s authority to compel third parties to help execute search warrants</i></p>	<p>Moot Court Day! <i>Apple v. FBI</i> Assigned readings and team assignments will be discussed on February 7.</p>

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.”

February 28	<i>The Fourth Amendment in the 21st Century: an introduction</i>	<ul style="list-style-type: none"> • <i>Kyllo v. U.S.</i> (Supreme Court of the United States 2001); Read entire court decision (including concurrences and dissents). • <i>U.S. v. Jones</i> (Supreme Court of the United States 2012); Read entire court decision (including concurrences and dissents). • <i>Riley v. California</i> (Supreme Court of the United States 2014); Read entire court decision (including concurrences and dissents).
March 7	<i>The Fourth Amendment in the 21st Century: the third-party doctrine</i>	<ul style="list-style-type: none"> • <i>Carpenter v. U.S.</i> (Supreme Court of the United States 2017); Read entire court decision (including concurrences and dissents). • <i>The Spies We Trust: Third Party Service Providers and Law Enforcement Surveillance</i>, Christopher Soghoian (2012); Read ii-x, 31-40. • <i>Automated License Plate Readers (ALPRs)</i>, Electronic Frontier Foundation, https://www.eff.org/pages/automated-license-plate-readers-alpr.
March 14	Midterm Exam	Format of the exam and covered topics will be discussed on March 7.
March 21	Spring Break	No class.
March 28	<i>The Fourth Amendment in the 21st Century: metadata, particularity, and border searches</i>	<ul style="list-style-type: none"> • <i>U.S. v. Ulbricht</i> (Second Circuit 2017); Read 1-7; 12-14; 35-60. • <i>U.S. v. Cotterman</i> (Ninth Circuit 2013); Read entire court decision. • Skim and refresh your recollection of previously assigned case, <i>Riley v. California</i> (Supreme Court of the United States 2014).

<p>April 4</p>	<p><i>The Fourth Amendment in the 21st Century: private searches</i></p>	<ul style="list-style-type: none"> • <i>U.S. v. Jarrett</i> (Fourth Circuit 2003); Read entire court decision. • <i>U.S. v. Ackerman</i> (Tenth Circuit 2016); Read entire court decision. • <i>If a Best Buy technician is a paid FBI informant, are his computer searches legal?</i>, Washington Post, published 2017, available at https://www.washingtonpost.com/local/public-safety/if-a-best-buy-technician-is-a-paid-fbi-informant-are-his-computer-searches-legal/2017/01/09/f56028b4-d442-11e6-9cb0-54ab630851e8_story.html.
<p>April 11</p>	<p><i>The Fourth Amendment in the 21st Century: government hacking</i></p>	<ul style="list-style-type: none"> • <i>Tor: Overview</i>, The Tor Project, https://www.torproject.org/about/overview. • <i>Tor: Onion Service Protocol</i>, The Tor Project, https://www.torproject.org/docs/onion-services. • <i>In re Warrant to Search a Target Computer at Premises Unknown</i> (Southern District of Texas 2013); Read entire court decision. • <i>U.S. v. Krueger</i> (Tenth Circuit 2015); Read only the concurrency by Judge Gorsuch (now on the Supreme Court). • <i>U.S. v. Werdene</i> (Third Circuit 2018); Read entire court decision (do not read concurrency).
<p style="text-align: center;"><u>The Fifth Amendment</u> “No person . . . shall be compelled in any criminal case to be a witness against himself”</p>		
<p>April 18</p>	<p><i>The Fifth Amendment: the limits of the government’s authority to compel suspects to provide access to electronic devices</i></p>	<ul style="list-style-type: none"> • <i>U.S. v. Doe (In re Grand Jury Subpoena Duces Tecum)</i> (Eleventh Circuit 2012); Read entire court decision. • <i>In re Application for a Search Warrant</i> (Northern District of Illinois 2017); Read entire court decision. • <i>State v. Diamond</i> (Court of Appeals of Minnesota 2017); Read 1-3, 5-7. • <i>In the Matter of the Search of a Residence in Oakland, California</i> (Northern District of California 2019); Read the entire court decision.

<u>The First Amendment</u>		
“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”		
April 25	<i>The First Amendment: free speech and democratic participation on the internet</i>	<ul style="list-style-type: none"> • <i>Janet Reno v. American Civil Liberties Union</i> (Supreme Court of the United States 1997); Read entire court decision (including concurrences and dissents). • <i>Packingham v. North Carolina</i> (Supreme Court of the United States 2017). • <i>Sandvig v. Sessions</i> (United States District Court for the District of Columbia 2018); Read entire court decision.
<u>Miscellaneous Topics</u>		
May 2	<i>Misc.</i>	<ul style="list-style-type: none"> • In what venue should computer hacking be prosecuted?: <i>U.S. v. Auernheimer</i> (Third Circuit 2014); Read entire court decision. • Should private companies be allowed to ‘counter-hack’ those attacking their networks?: <i>The Hackback Debate</i>, available at https://www.steptoecyberblog.com/2012/11/02/the-hackback-debate/. • What factors should courts consider when sentencing computer hackers?: <i>Trespass, Not Fraud: The Need for New Sentencing Guidelines in CFAA Cases</i>, Orin S. Kerr, published 2016, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2781111.
May 9	<i>Final Exam Prep and Review of Recent Developments in the Law</i>	This class will be an opportunity to ask questions about the material covered thus far to help you prepare for the final exam. I may also assign cases that have been recently decided or articles reflecting new developments in the law relevant to this course.
May 16	Final Exam	Format of the exam and covered topics will be discussed on May 9.

COURSE MATERIALS

This course does not require students to purchase any reading materials. Course readings will consist of primary legal documents (court decisions, legal briefs, etc.) and material available on the internet.

COURSE REQUIREMENTS

Attendance Your attendance in this class is very important. Class participation is 20 percent of your final grade. Additionally, you will also be expected to understand and apply the legal principals contained in the assigned readings on the midterm and final, which are collectively worth 80 percent of your final grade. Attending class will greatly enhance your understanding of the assigned materials as a typical lecture will consist of questions and answers about the assigned material.

Participation One of the objectives of this class is to improve your ability to think and argue about legal issues. Class participation is one way for you to practice this skill, and for me to evaluate your progress in this area. Accordingly, class participation is important. At a minimum, I expect all students to have read the assigned reading material and be prepared to provide a factual summary of that material. Students who are also able to articulate the legal principals discussed in the material, and how those legal principles were applied by the court, will be considered as having *fully* participated in that evening's class.

Exams There are two exams in this course. The first exam is a midterm, and is scheduled for March 14, 2019. The midterm will cover all of the material discussed in the first half of the course. The final exam, scheduled for May 16, 2019, is *non-cumulative* and will cover all the material discussed in the second half of the course. The format of both exams will be 2-3 essay questions that require you to apply the various legal principals covered in this course. Both exams may also contain approximately 10 multiple choice questions.

GRADING PROCEDURES

Grades will be based on:

Class Participation	(20%)
Exam I: Midterm	(40%)
Exam II: Final	(40%)

ACADEMIC INTEGRITY

Undergraduate Honor System

Enrollment into the undergraduate class of Stevens Institute of Technology signifies a student's commitment to the Honor System. Accordingly, the provisions of the Stevens Honor System apply to all undergraduate students in coursework and Honor Board proceedings. It is the responsibility of each student to become acquainted with and to uphold the ideals set forth in the Honor System Constitution. More information about the Honor System including the constitution, bylaws, investigative procedures, and the penalty matrix can be found online at <http://web.stevens.edu/honor/>

The following pledge shall be written in full and signed by every student on all submitted work (including, but not limited to, homework, projects, lab reports, code, quizzes and exams) that is assigned by the course instructor. No work shall be graded unless the pledge is written in full and signed.

"I pledge my honor that I have abided by the Stevens Honor System."

Reporting Honor System Violations

Students who believe a violation of the Honor System has been committed should report it within ten business days of the suspected violation. Students have the option to remain anonymous and can report violations online at www.stevens.edu/honor.

EXAM ROOM CONDITIONS

The following procedures apply to exams for this course. As the instructor, I reserve the right to modify any conditions set forth below by printing revised Exam Room Conditions on the exam.

1. Students may use the following devices during exams. Any electronic devices that are not mentioned in the list below are not permitted.

Device	Permitted?	
	Yes	No
Laptops	X	
Cell Phones	X	
Tablets	X	
Smart Watches	X	

2. Students may use the following materials during exams. Any materials that are not mentioned in the list below are not permitted.

Material	Permitted?	
	Yes	No
Handwritten Notes	X	
Typed Notes	X	
Readings	X	

3. Students *are not* allowed to work with or talk to other students during exams.

LEARNING ACCOMODATIONS

Stevens Institute of Technology is dedicated to providing appropriate accommodations to students with documented disabilities. The Office of Disability Services (ODS) works with undergraduate and graduate students with learning disabilities, attention deficit-hyperactivity disorders, physical disabilities, sensory impairments, psychiatric disorders, and other such disabilities in order to help students achieve their academic and personal potential. They facilitate equal access to the educational programs and opportunities offered at Stevens and coordinate reasonable accommodations for eligible students. These services are designed to encourage independence and self-advocacy with support from the ODS staff. The ODS staff will facilitate the provision of accommodations on a case-by-case basis.

Disability Services Confidentiality Policy

Student Disability Files are kept separate from academic files and are stored in a secure location within the Office of Disability Services. The Family Educational Rights Privacy Act (FERPA, 20 U.S.C. 1232g; 34CFR, Part 99) regulates disclosure of disability documentation and records maintained by Stevens Disability Services. According to this act, prior written consent by the student is required before our Disability Services office may release disability documentation or records to anyone. An exception is made in unusual circumstances, such as the case of health and safety emergencies.

For more information about Disability Services and the process to receive accommodations, visit <https://www.stevens.edu/office-disability-services>. If you have any questions please contact: Phillip

Gehman, the Director of Disability Services Coordinator at Stevens Institute of Technology at pgehman@stevens.edu or by phone (201) 216-3748.

INCLUSIVITY

Name and Pronoun Usage

As this course includes group work and in-class discussion, it is vitally important for us to create an educational environment of inclusion and mutual respect. This includes the ability for all students to have their chosen gender pronoun(s) and chosen name affirmed. If the class roster does not align with your name and/or pronouns, please inform the instructor of the necessary changes.

Inclusion Statement

Stevens Institute of Technology believes that diversity and inclusiveness are essential to excellence in academic discourse and innovation. In this class, the perspective of people of all races, ethnicities, gender expressions and gender identities, religions, sexual orientations, disabilities, socioeconomic backgrounds, and nationalities will be respected and viewed as a resource and benefit throughout the semester. Suggestions to further diversify class materials and assignments are encouraged. If any course meetings conflict with your religious events, please do not hesitate to reach out to your instructor to make alternative arrangements.

You are expected to treat your instructor and all other participants in the course with courtesy and respect. Disrespectful conduct and harassing statements will not be tolerated and may result in disciplinary actions.

MENTAL HEALTH RESOURCES

Part of being successful in the classroom involves a focus on your whole self, including your mental health. While you are at Stevens, there are many resources to promote and support mental health. The Office of Counseling and Psychological Services (CAPS) offers free and confidential services to all enrolled students who are struggling to cope with personal issues (e.g., difficulty adjusting to college or trouble managing stress) or psychological difficulties (e.g., anxiety and depression). Appointments are strongly encouraged and can be made by phone (201-216-5177) or in-person (on the 7th floor of the Howe Center). CAPS is open from 9:00 am – 5:00 pm Mondays, Wednesdays, Thursdays and Fridays and from 9:00 am – 7:00 pm on Tuesdays during the Fall and Spring semesters.

EMERGENCY INFORMATION

In the event of an urgent or emergent concern about the safety of yourself or someone else in the Stevens community, please immediately call the Stevens Campus Police at 201-216-5105 or on their emergency line at 201-216-3911. These phone lines are staffed 24/7, year round. Other 24/7 resources for students dealing with mental health crises include the National Suicide Prevention Lifeline (1-800-273-8255) and the Crisis Text Line (text “Home” to 741-741). If you are concerned about the wellbeing of another Stevens student, and the matter is *not* urgent or time sensitive, please email the CARE Team at care@stevens.edu. A member of the CARE Team will respond to your concern as soon as possible.