

CONSTITUTIONAL LAW

Mr. Cole

Spring, 2001

This examination is scheduled for three hours and 15 minutes. Each question is rated at one point per minute - that is, a five point question is worth five points and no more. You should examine the points allocated on each question and budget your time carefully in light of the points possible on each question.

The examination will be picked up at 5:30 P.M., thus allowing an extra 15 minutes finish the examination.

Please Write in examination books only unless you type. Write on your examinations only the following information

Mr. Cole
Constitutional Law
Spring, 2001
Examination Number (No names)

This examination is a closed book examination and no materials of any kind may be used.

Good Luck! Have a great summer.

I. (3 questions at 5 minutes each = 15 minutes)

A. What is Marbury II power, and how did the Court employ Marbury II power in the case of *Marbury v. Madison* (Marbury I power)? What was the statute that the Court interpreted in that case? (5 minutes)

B. In a nutshell, what are the two basic ways that a Court could find that a state can charge out-of-state students much higher tuition than in-state students, consistent with the Privileges and Immunities clause of Article IV, section 2? Why does such a differential tuition not violate equal protection?

C. In a nutshell, why does one have a constitutionally protected right to refuse medical treatment, including food and water, to hasten their death, but no constitutionally protected right to ask for a lethal injection to hasten their death? Explain. (5 minutes)

II. (90 minutes)

A. (6 questions at 5 minutes each 30 minutes)

In the following cases, indicate what scrutiny level the Court used and why the majority chose that scrutiny level. At the chosen scrutiny level, did the State or Federal Government meet their burden?

1) *Hunt v. Washington State Apple Advertising Commission*. (5 minutes)

2) *Minnesota v. Clover Leaf Creamery*. (5 minutes)

3) *Slaughterhouse Cases*. (5 minutes)

4) *Korematsu v. United States*. (5 minutes)

5) *Michael M v. Superior Court*. (5 minutes)

6) *Plyler v. Doe*. (5 minutes)

B. (6 questions at 10 minutes = 60 minutes)

In each of the following questions, include a brief description of the named cases and the approximate date.

1) How would *Yick Wo v. Hopkins* be decided under the principles of *Washington v. Davis*? (10 minutes)

2) How would *Loving v. Virginia* have been decided applying the principles of *Plessy v. Ferguson*? (10 minutes)

3) How would *Muller v. Oregon* have been decided applying the principles of *Lochner v. New York*? (10 minutes)

4) How would *Philadelphia v. New Jersey* have been decided applying the principles of *United Budding and Construction Trades Council v. Mayor and Council of Camden*? (10 minutes)

5) How would *Palko v. Connecticut* have been decided applying the principles of *Duncan v. Louisiana*? (10 minutes)

6) How would *Bowers v. Hardwick* have been decided, applying the principles of *Romer v. Evans* in a case concerning a statute that made homosexual, but not heterosexual, sodomy a criminal offense? (10 minutes)

III. (3 questions at 15 minutes = 45 minutes)

A. Macon has a strip club which features naked dancers who strip all the way for their (primarily) male customers. The City wants to shut the club down and wants to know from you if an ordinance banning nude dancing would be constitutional. What are the problems with such an ordinance and how would you advise the City to proceed if they wanted to ban naked dancing in the club? (15 minutes)

B. Georgia wants to pass a Statute that reads as follows:

A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he produces, directs, or promotes any performance which includes sexual content by a child less than 19 years of age. "Sexual conduct" is defined as actual or simulated sexual intercourse deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.

Several legislators expressed concern that such a statute might raise constitutional concerns, but the proponents of the statute answered that the Court would undoubtedly stay at low scrutiny because the statute was only banning obscenity. Explain why this statute would most probably not be considered an obscenity statute,

and discuss what the appropriate scrutiny level might be in this case. Would the statute survive the appropriate scrutiny level? (15 minutes)

C. Explain the difference between de facto discrimination, de facto plus discrimination, facial discrimination, and de jure discrimination, and explain their significance to the problem of *inter-district* remedies in the school integration cases. (15 minutes).

IV. (One question at 45 minutes)

On September 16, 1998, the defendant was stopped by a Kansas City, Kansas police officer after the car he was driving sped away from the area where police were responding to a report of an attempted burglary. The license tags on the vehicle were expired. As the officer attempted to conduct a pat down search of defendant, defendant took a bag containing 20.3 grams of cocaine base ("crack cocaine") out of his front pants pocket and threw it down. The officer also found \$928 in currency in a wad in the defendant's pocket. While searching the passenger compartment of the vehicle, the officers found some government WIC food vouchers, a pipe used for smoking narcotics, and another bag containing 2.4 grams of rock crack cocaine.

On October 4, 1998, defendant was charged in a two-count information with possession with intent to distribute approximately 27 grams of crack cocaine, a Schedule II controlled substance, in violation of a federal statute (21 U.S.C. §841(a)(1)). On November 17, 1998, a jury was impaneled, and the defendant's trial began. After the government presented nearly all of its case in chief, the defendant agreed to plead guilty to the lesser-included offense of simple possession of crack cocaine in violation of another federal statute (21 U. S.C. § 844). Since the defendant was stopped about 500 feet from a public school he was sentenced on January 22, 1999 to ten years in prison.

The statute that the defendant was sentenced under reads as follows:

§ 844. Penalties for simple possession and other matters

(a) Unlawful acts; penalties

It shall be unlawful for any person knowingly or intentionally to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice, or, except as otherwise authorized by this subchapter or subchapter H of this chapter. Any person who violates this subsection may be sentenced to a term of imprisonment of not more than 1 year, and shall be fined a minimum of \$ 1,000, or both. Notwithstanding the preceding sentence, a person convicted under this subsection for the possession of a mixture or substance which contains cocaine base (crack cocaine) shall be imprisoned not less than 5 years and not more than 20 years, and fined a minimum of \$1,000. In addition,

any person found with cocaine base (crack cocaine) within 1000 feet of a school will be imprisoned for a minimum of ten years. Also, any person, found within 1000 feet of a school, who espouses the use of cocaine base or suggests that it is harmless and should be legalized, whether or not that person is in possession of the drug will be imprisoned not less than two years and' not more than five years. The imposition or execution of a minimum sentence required to be imposed for offenses dealing with cocaine base under this subsection will not be suspended or deferred. (Assume that there is no relevant State statute involved in this case.)

The defendant, relying on legal advice from a fellow inmate, has attacked his plea and sentence, arguing that the Federal statute was 1) beyond the power of Congress under recent cases, and violated his rights under the 2) the Due Process Clause, 3) the Equal Protection Clause, 4) the First Amendment, 5) the Dormant Commerce Clause, and 6) the Preemption Clause. He alleged and offered to prove that cocaine base "crack cocaine" is the drug of choice of many more African-American males than Caucasian males. He also offered statistics to show that very few women use crack cocaine. He points to remarks made by several legislators at the time the law was passed regarding the serious drug problems in the black community. The remarks also included statements that it is time that "those people" were punished severely because they are disrupting the "American way of life" with their crack cocaine use.

As a law clerk to the federal judge dealing with this matter, write a memo thoroughly exploring all possible arguments that the defendant could raise that would have any chance of succeeding and include the responses that you would expect from the government. If you think that any of the arguments raised by the defendant have no merit, be sure to inform the judge of that fact and explain why there is no merit to those arguments. (45 minutes)