



Written by [Kurt Williamsen](#) on February 4, 2009

Assignment: Make the Constitution “Live”

“Mister Welter! Mister Welter!,” Brooke Forrest yelled down the hallway of Oprah’s School for Relativistic Females and All Males Who Dress or Feel Womanly, formerly known as Ms. Prim’s Academy for Genteel Young Ladies. “Please wait!” she called. “I need to talk to you! Please!” she gushed in a rush as she skittered up the hall, careening off one student after another as she sought to catch up to her reclusive English lit teacher.



Finally, just as it appeared her teacher would once again elude her by disappearing into the teachers’ lounge, the inner sanctum of teachers where even the thought of students is not allowed, let alone actual students, he turned to face her and waited. “Yes? How may I help you?” he asked quickly and curtly, while alternately raising himself up on his toes to peer down at her imperiously and turning to gaze longingly at the lounge door as a bout of laughter emanated from inside the room.

“Mister Welter,” Brooke exclaimed, “you gave me an ‘F’ on my paper about the living Constitution, the one where we were supposed to *interpret* the Constitution to achieve something useful for society.”

“First of all, Brooke, being called ‘Mister Welter’ makes me uncomfortable. Other staff members may think that I am demanding that my students call me ‘Mister’ and that I’m training you to subconsciously hold males in higher esteem than females.”

“But I call my female teachers ‘ma’am,’ so isn’t it okay?”

“No, I’m afraid not. There is no inherent reason to give respectful titles to people who have lived longer than you. Just call me Mark.... Back to your problem.”

“Okay, Mark, you gave me an ‘F.’...”

“I didn’t *give* you an ‘F’; you *earned* an ‘F.’ There’s a difference,” he said and he began to push the lounge door open to make good his escape.

Brooke gave a worried little screech and grabbed his arm, “Please wait!”

Mister Welter seemed to cringe inwardly as he stopped. “Brooke, take your hand from my shoulder. Physical touching is the same as love, and we are not in love — not that there’s anything wrong with intimacy between adults and teenagers, but it may appear to others that my grading system can be swayed through sexual favors, and that’s not true. It costs far more than that.”



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"Mark, I got an 'F'! Why?"

"You advocated having the U.S. government hire world-traveling killers to assassinate international businessmen whose companies pollute the oceans! That's just plain wrong!"

"How is it wrong? Didn't you yourself tell us that saving the oceans from pollution would save millions or billions of animals and people — maybe even the human race — from utter annihilation?"

"Yes, but..."

"Didn't you tell us that the 'good of the world' is the greatest good?"

"Yes, but..."

"Didn't you tell us..."

"Brooke!" shouted Mister Welter as his entire body seemed to sort of twitch, "stop! Willful murder is wrong; end of story! Someone in 11th grade should recognize that limitation on human behavior. That's



why it is an 'F'!"

"Since when is murder forbidden in governments? Name one government on Earth that doesn't kill the people that it feels it needs to kill, and I'll accept the 'F'," she blurted out quickly to keep him from running. "Our government and governments all over the world kill people all of the time. Our government has tortured people to death; we've executed spies; we've killed millions in wars...."

"This is different! We are *not* in a war to save our environment!" he shot back, as his body again gave a compulsive lurch.

"But we could be: simply use executive privilege to add the designation *environmental terrorism* to our war on terror. All done. It's as simple as that. Besides, didn't you tell us when we talked in class about President Obama's friend Bill Ayers and that terrorist group he belonged to, the..."

"The Weather Underground."

"Yeah, the Weather Underground, which blew up government buildings and killed a guy. Didn't you say you admired them and that they should be judged based on their motivation to make the country a better place?"



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"Brooke," Mister Welter said calmly and deliberately slowly, trying to regain his teacher's demeanor, "you are missing the point. Remember that article we read in class by law professor Jack Balkin, in which he defended the living Constitution? Balkin made clear that one cannot justify *just anything* under a living Constitution. That would be nonsense because then the Constitution really wouldn't *mean anything*. Though the meaning of the Constitution is always changing to meet the demands of our more enlightened times, the amount it can change is still constrained by popular sentiment, by court precedent, and by the original words of the Constitution, as they are applied to today's circumstances. I'm sorry but there is just no way that assassinating international businessmen can reasonably satisfy those constraints — as you were told it must do to get a passing grade on this assignment," he said. Mister Welter then turned his back on the girl and tried once again to make a strategic retreat, but she stopped him again.

"You're wrong!"

The words had a dramatic effect. It was like someone grabbed him by his ponytail, yanked him backward, and twisted his head around in her direction. A nervous tic fluttered under his eye and then seemed to continue throughout his body. With a look on his face somewhere between nauseous anger and 'kid caught in the cookie jar,' he asked *very slowly*, "What do you mean I'm 'wrong'?"

"I *can* satisfy all of the criteria. First, Americans can easily be convinced to support this. Just call the polluting business guys 'terrorists.' Republicans, as we know from years of the war on terror, are *all for* killing *all terrorists*, and Democrats are *all for saving the planet*. When NASA scientist James Hansen told Congress that we should prosecute oil-company CEOs for 'high crimes against humanity and nature,' Democratic websites went nuts with applause. And Democrats have shown they are practical about which lives they protect: they support euthanasia and abortion on demand. Second, the idea works under the Supreme Court and the Constitution too. Precedent was set by the Supreme Court in considering the fate of the Guantanamo prisoners: the Supreme Court ruled that foreigners are not afforded equal protection by the Constitution, and even if they were protected, the Fifth Amendment, as I said in my paper, states that no person shall 'be deprived of life, liberty or property, *without due process of law*,' meaning the Founders were not against taking the lives of high criminals." Brooke finished and then stopped and stood there, waiting for Mister Welter to answer.

Mister Welter stood silently as well, jerking spasmodically while obviously weighing his options. Then he made a characteristically 'Welter' decision. "Brooke," he said finally, "I'll tell you what I'll do. I'll give your paper to another teacher to grade, and I'll give you whatever grade they decide it deserves. Good day!" And he lunged through the teachers' lounge door.

Brooke paused for a moment before going to her next class; she stood with a little grin on her face thinking that if she kept reading *The New American*, keeping up with the political news and learning about how the Constitution works, the twitch Mister Welter got when he was stressed out might become permanent by the end of the year.

Cartoon: Billy Miller



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