

THE U.S. SUPREME COURT
UNIVERSITY OF CALIFORNIA, WASHINGTON CENTER
CORE SEMINAR, FALL 2013

INSTRUCTOR: Dr. Peter Ryan

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COURSE MEETING TIME: 6-9PM Thursdays

COURSE LOCATION: Room 311

OFFICE HOURS: Room 350 Wednesdays 5:30PM-7:30PM. Available for appointment before and after class on Thursdays in Room 332.

COURSE OVERVIEW

This course is primarily focused on the Supreme Court as an institution. As such it examine the following topics: the evolution of the doctrine of judicial review; the Court's relationship with the body politic; the process of judicial selection; and how the justices determine their docket. It will also examine the factors that influence the Court's decision-making, such as modes of legal interpretation, ideological viewpoints, political constraints, the impact of oral argument, the position of the solicitor general, amici briefs, and the media.

The latter part of the course will look at how the Court has approached a particular subset of constitutional issues, namely equal rights and personal liberties. Specifically, we will look at how the Court has approached issues of race, affirmative action, abortion, and same-sex marriage. We will discuss the jurisprudential history of these issues and assess the factors that are likely to influence the Court's decisions in the future.

COURSE REQUIREMENTS

The following assignments will determine your grade in this course:

Attendance at Supreme Court tour: Required

Participation: 15%

Reading Response (Semester Students ONLY): P/NP

Cert Memo: 22.5%

Opinion Memo: 22.5%

Final Papers: 40%

SUPREME COURT TOUR (ALL STUDENTS): DATE TBA

Students are required to attend a group tour of the Court. The date of this tour will be announced as soon as possible. Students will only be excused from this requirement under extraordinary circumstances. If necessary, I will furnish your employer with a letter certifying that this is a mandatory academic event.

PARTICIPATION (ALL STUDENTS)

Students are expected to come to class having read all the assigned readings and should be prepared to discuss them in class. Please note that while attendance is a prerequisite to participation, your grade will be based on the frequency with which you actually participate in class discussion *and* the quality of your contributions (that is, your preparedness).

Please also note that students are required to meet with me *at least* once before the end of October; failure to do so will negatively impact your participation grade and likely hurt your performance on written assignments.

READING RESPONSE (SEMESTER STUDENTS ONLY): DUE SEPTEMBER 19

Semester students are required to complete a 3-page, 1.5 spaced critical discussion paper at the end of the fourth week of instruction. This paper will be graded on a pass/no pass basis.

CERT MEMO (ALL STUDENTS): DUE OCTOBER 17TH

Students should select a case decided by the Supreme Court during the 2012-2013 term or a case on the Court's docket for the 2013-2014 term. You are required to explain why, in your opinion, the Court granted *certiorari* in the case. Your paper should reference the criteria we discussed for granting cert. As such, it should explain why the specific issues in this case merited review, what happened in the lower courts, the position taken by other interested parties (e.g., briefs by the Solicitor General and *amici*), and recent Supreme Court precedent on the issue.

Your paper is to be 5 pages long, 1.5 spaced.

OPINION MEMO (ALL STUDENTS): DUE NOVEMBER 7

Students should a case that is either currently on the Supreme Court's 2013-2014 docket or is likely to be granted cert in the future (this would include federal appeals and district court decisions. See "cases in the pipeline" on SCOTUSblog for some ideas of cases to choose from). Explain how you would decide the case, based on a sampling of the briefs and the lower court decisions. Be sure to draw upon the modes of interpretation we discussed in class and past precedent in this area in your discussion.

Your paper is to be 5 pages long, 1.5 spaced.

FINAL PAPERS (ALL STUDENTS): DISTRIBUTED NOVEMBER 21; DUE DECEMBER 5

Students will be required to write critical paper-length answers to two of four essay questions that will be distributed on November 21. The questions will tie together the major themes covered in the class. The questions will require students to both demonstrate a competence with the readings as well as conduct a small amount of original legal research.

Each paper will be 5 pages long, 1.5 spaced.

OTHER POINTS

ACADEMIC INTEGRITY

Academic integrity requires you to be responsible students with your research, writing, and scholarship. Plagiarism will not be tolerated under any circumstances and will result in automatic failure in this class and possible disciplinary action. Talk to me if you are unsure about the appropriate way to cite outside material or ideas in your written work. You should also familiarize yourself with your institution's academic honesty guidelines for students.

SUBMISSION OF ASSIGNMENTS

All assignments are to be submitted in paper format at the beginning of class on the due date;

if appropriate, I may direct you to also submit your assignments electronically. Your assignment will be deducted one full letter grade per day late. Therefore if you anticipate a problem completing your assignment on time, you are strongly advised to meet with me well ahead of time to discuss the issue.

SPECIAL NEEDS POLICY

Any student with special needs that may affect his/her academic performance should contact me within the first two weeks of instruction.

USEFUL WEB RESOURCES

You will find the following to be useful, particularly in preparing your cert and opinion memos:

<http://www.scotusblog.com>

<http://www.supremecourtus.gov> United States Supreme Court

<http://supreme.lp.findlaw.com> United States Supreme Court, FindLaw

<http://supct.law.cornell.edu/supct> Supreme Court Collection, Legal Information Institute

<http://www.oyez.org> United States Supreme Court Multimedia (oral arguments etc.)

<http://www.law.com/jsp/scm/index.jsp> Law.com's Supreme Court Monitor

<http://www.abanet.org/publiced/preview/home.html> ABA's Supreme Court Preview

<http://www.llrx.com/features/supremectwebguide.htm> Guide to Supreme Court Research

READINGS AND COURSE SCHEDULE

OBTAINING COURSE READINGS

All readings for the course are available on the course Blackboard site, which can be accessed at <https://ucdc.blackboard.com/webapps/login/>. Readings are also available in print form upon request from U.S. Printing and Copying (1725 M Street, NW, ph: 202-785-9424).

CHANGES TO SCHEDULE

I reserve the right to make changes to this schedule and the list of readings contained within it. Students will be notified of any changes in as far in advance as possible.

POP QUIZZES

At least once during this course, I will begin the class with a short quiz to ensure that you are completing the readings. Pop quizzes obviously will not be announced ahead of time.

GLOSSARY

The reader contains a glossary at the front with the following items (also posted on Blackboard).

- Glossary of legal terms
- How to read a Supreme Court decision
- A list of Supreme Court Justices
- The Constitution of the United States
- All of these items are sourced from Savage, David G. (2004) *The Supreme Court and Individual Rights*, 4th Edition, Washington, DC: CQ Press.

WEEK 1 (AUGUST 29): INTRODUCTION FOR SEMESTER STUDENTS

WEEK 2 (SEPTEMBER 5): JUDICIAL REVIEW I – EARLY DEVELOPMENT

- Fisher, Louis and David Gray Adler. (2007) “The Doctrine of Judicial Review,” in *American Constitutional Law, 7th Ed.*, Durham, NC: Carolina Academic Press, pp. 35-64 and pp. 75-77. Be sure to review the questions at the end of the chapter. Also includes the following cases:
 - o *Marbury v. Madison* (1803)
 - o *Martin v. Hunter’s Lessee* (1816)
 - o *Cohens v. Virginia* (1821)
- *McCulloch v. Maryland* (1819)
- Recommended: Levinson, Sanford. (2003) “Why I do not teach *Marbury* (except to Eastern Europeans) and why you shouldn’t either,” *Wake Forest Law Review*, Vol. 38, pp.553-578.

WEEK 3 (SEPTEMBER 12): JUDICIAL REVIEW II – HOW THE CONTEMPORARY COURT INTERACTS WITH THE OTHER BRANCHES

- Dahl, Robert. (1957) “Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker,” *Journal of Public Law*, Vol. 6, pp. 279-295.
- Tushnet, Mark. (2006) “Political Power and Judicial Power: Some Observations on Their Relation,” *Fordham Law Review*, Vol. 75, Issue 2, pp. 755-768..
- Ginsburg, Ruth Bader. (1992) “Speaking in a Judicial Voice,” *New York University Law Review*, Vol. 67, No. 6, pp. 1185-1209.
- Toobin, Jeffrey. (2012) “Money Unlimited: How Chief Justice Roberts orchestrated the Citizens United Decision,” *The New Yorker*, pp.1-22 (will re-read for module on campaign finance).

WEEK 4 (SEPTEMBER 19): SELECTION OF THE JUSTICES: PROCEDURE AND POLITICS

- Baum, Lawrence. (2013) “The Justices,” in *The Supreme Court*, Thousand Oaks, CA: CQ Press, Required: pp. 28-59. Recommended: rest of chapter.
- Watch “Bork’s Lasting Impact on the Modern Supreme Court Confirmation Process,” <http://www.pbs.org/newshour/rundown/2010/06/borks-lasting-impact-on-the-modern-supreme-court-confirmation-process.html>
- Stone, Geoffrey. (2010) “Understanding Supreme Court Confirmations.” You should either read the *Supreme Court Review*, Vol. 2010, No.1, pp. 381-467 **OR** watch Professor Stone’s related lecture at <http://blip.tv/video-from-the-university-of-chicago-law-school/geof-stone-understanding-supreme-court-confirmations-6042792>

WEEK 5 (SEPTEMBER 26): INTRODUCTION FOR QUARTER STUDENTS; DISCUSSION OF COURT, JUDICIAL REVIEW

- Introduction for Quarter Students in first hour. Semester students are not required to attend. The rest of the class will discuss judicial review and the history of the Court. Semester students are encouraged to attend this seminar, however but it is not strictly required.

- Quarter students are encouraged to *familiarize* themselves with the readings from weeks 2-3. Required readings:
- Baum, Lawrence. (2013) "The Court," in *The Supreme Court*, Thousand Oaks, CA: CQ Press, pp. 1-27 (a straightforward overview of the Court and its history).
- Breyer, Stephen. (2010) "Part I: The People's Trust," in *Making Our Democracy Work*, New York: Vintage Books, pp. 1-72 (a very accessible history of judicial review).

WEEK 6 (OCTOBER 3): SETTING THE COURT'S AGENDA – THE CERTIORARI PROCESS

- "Supreme Court Procedure," *SCOTUSblog*.
- Baum, Lawrence. (2013) "The Cases," in *The Supreme Court*, Thousand Oaks, CA: CQ Press, pp. 69-104.
- Shapiro, Stephen. (1999) "Certiorari Practice: The Supreme Court's Shrinking Docket," *Applelate.Net* (this is written for lawyers, but gives you a useful guide to what makes a good petition for cert).
- Discussion of cert memo and legal citations.

WEEK 7 (OCTOBER 10): ORAL ARGUMENT AND OPINION WRITING

- Baum, Lawrence. (2013) "Decision Making," in *The Supreme Court*, Thousand Oaks, CA: CQ Press, pp. 105-121, 131-140.
- Fisher, Louis and David Gray Adler. (2007) "Decision Making: Process and Strategy," in *American Constitutional Law, 7th Ed.*, Durham, NC: Carolina Academic Press, pp. 152-169. Review the notes/questions at the end of the chapter.
- Johnson, Timothy, Ryan C. Black, Jerry Goldman, and Sarah A. Treul. (2009) "Inquiring Minds Want to Know: Do Justices Tip Their Hands with Questions at Oral Argument in the US Supreme Court." *Washington University Journal of Law and Policy*, Vol. 29, pp. 241-261 (you can skip over the statistics portions of the paper).

WEEK 8 (OCTOBER 17): THE IMPACT OF OUTSIDE "LOBBYISTS" ON DECISION MAKING: THE SOLICITOR GENERAL, AMICI, AND THE MEDIA

- Meriweather-Cordray, Margaret and Richard Cordray. (2010) "The Solicitor General's Changing Role in Supreme Court Litigation," *Boston College Law Review*, Required: pp. 1323-1338, Recommended: Entire article.
- Collins, Paul M. (2004) "Friends of the Court: Examining the Influence of Amicus Curiae Participation in US Supreme Court Litigation." *Law & Society Review*, Vol. 38, No. 4, pp. 807-816, 825-832.
 - Additional short reading on Court and media to be assigned.

WEEK 9 (OCTOBER 24): MODES OF LEGAL INTERPRETATION AND THEIR IMPACT ON DECISION MAKING

- Gruber, Paul "Constitutional Interpretation," in Hall, Kermit. (ed) *Oxford Companion to the Supreme Court of the United States*
- Breyer, Stephen. (2010) "Part I: The People's Trust," in *Making Our Democracy Work*, New York: Vintage Books, pp. 73-105 (an argument in favor of "practical" or "living" interpretation of statutes and the Constitution).

- Scalia, Antonin. (1997) “Common Law Courts in a Civil Law System: The Role of the United States Federal Courts in Interpreting the Constitution and the Laws” in *A Matter of Interpretation*, Princeton: Princeton University Press. pp. 23-47 (an argument in favor of “textualism” and critique of the “Living Constitution”).

WEEK 10 (OCTOBER 31): THE IMPACT OF PRECEDENT AND IDEOLOGY ON DECISION MAKING

- Silverstein, Gordon. (2007) “Law is Different: The Power of Precedent,” in *Law’s Allure: How Law Shapes, Constrains, Saves, and Kills Politics*, New York: Cambridge University Press, pp. 63-92.
- Baum, Lawrence. (2013) “Decision Making,” in *The Supreme Court*, Thousand Oaks, CA: CQ Press, pp. 121-131.
- Additional short reading on the impact of ideology to be assigned.

WEEK 11 (NOVEMBER 7): EQUAL PROTECTION AND RACIAL EQUALITY

- Savage, David G. (2004) “Equal Rights and Personal Liberties,” in *The Supreme Court and Individual Rights*, 4th Edition, Washington, DC: CQ Press, pp. 253-296 (the first part of the chapter discusses general standards for equal protection review and will be important to note for our future class discussions. The rest of the chapter examines the Court’s historical treatment of race in a variety of areas).

WEEK 12 (NOVEMBER 14): EQUAL PROTECTION AND AFFIRMATIVE ACTION

- Savage, David G. (2004) “Equal Rights and Personal Liberties,” in *The Supreme Court and Individual Rights*, 4th Edition, Washington, DC: CQ Press, pp. 296-304 (rest of chapter that we read last week, with this section focusing on affirmative action).
- *Regents of the University of California v. Bakke* (1978)
- *Grutter v. Bollinger* (2003)
- Howe, Amy. (2013) “The *Fisher* Decision in Plain English,” *SCOTUSblog* (a brief overview of the most recent affirmative action case decided by the Court).
- Recommended: Read the *Fisher* case and further commentary at SCOTUSblog <http://www.scotusblog.com/case-files/cases/fisher-v-university-of-texas-at-austin/>

WEEK 13 (NOVEMBER 21): LIBERTY, PRIVACY, AND ABORTION

- Savage, David G. (2004) “Equal Rights and Personal Liberties,” in *The Supreme Court and Individual Rights*, 4th Edition, Washington, DC: CQ Press, pp. 323-330.
- Fisher, Louis and David Gray Adler. (2007) Selections from “Rights of Privacy,” in *American Constitutional Law*, 7th Ed., Durham, NC: Carolina Academic Press. Includes following cases:
 - *Griswold v. Connecticut* (1965)
 - *Roe v. Wade* (1973)
 - *Planned Parenthood v. Casey* (1992)
- Silverstein, Gordon. (2007) “Poverty and Abortion: The Risks and Rewards of a Judicial Strategy,” in *Law’s Allure: How Law Shapes, Constrains, Saves, and Kills Politics*, New York: Cambridge University Press, pp. 95-127.

WEEK 14 (NOVEMBER 28): NO CLASS, THANKSGIVING BREAK.

- Tour of Court will occur in lieu of this class

WEEK 15 (DECEMBER 5): THE EVOLVING TREATMENT OF GAY RIGHTS

- Savage, David G. (2004) "Equal Rights and Personal Liberties," in *The Supreme Court and Individual Rights*, 4th Edition, Washington, DC: CQ Press, pp. 332-336.
- *Bowers v. Hardwick* (1986)
- *Lawrence v. Texas* (2003)
- *Romer v. Evans* (1996) (Opinion and Scalia dissent)
- *Windsor v. United States* (2013) (Opinion and Scalia dissent. Note jurisdictional discussion in opinion and dissent has been excluded.)
- Denniston, Lyle. (2013) "Opinions recap: Giant step for gay marriage," *SCOTUSblog*.